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Chapter 1
Ensuring That Your Last Wishes Are Honored

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You've worked hard all your life, have accumulated some assets, and have bought a copy of this book. You're ready to plan your estate.

My best guess? You're not excited about planning your estate. You have already figured out that you have a lot of work to do. You must also think about unpleasant things, including your death, the possibility of your incapacity, and how your family will cope without you.

What's the primary purpose of an estate plan? Taking care of your loved ones after you're gone. Why plan your estate now? Because the sooner you start, the more certain you can be that your plan will take care of your family's needs in the way that you want.

As you proceed with this process, you'll probably find out your estate planning needs aren't as complicated as you thought. You may discover that all you need is a will, perhaps backed up by a simple living trust. You may instead discover that your needs are more complicated than you realized and enlist the help of an estate planning professional. Yet even then, your understanding of the estate planning

process and tools will help you communicate your needs and choose your best options.

Having an estate plan also provides a great deal of comfort. You'll be able to plan for your family's financial needs. And after your death or incapacity, your loved ones won't have to fret about what you would have wanted them to do. They'll know your actual wishes.

The Good, the Bad, and the Ugly: What Can Happen When You Don't Plan Your Estate

Simply put, if you don't plan your estate, the government has an estate plan in store for you. Your state's laws of *intestate succession* will apply, and the state will decide who inherits your assets, usually your spouse and children. But that's not all:

- In the event of your incapacity, a court may appoint people to make decisions for you regarding your personal and medical care and the management of your money. A stranger may end up deciding where you live, what medical treatment you receive, and perhaps even whether you really need $20 for a haircut.
- If you have minor children, a court will have to decide who will care for them but will not have the benefit of your input.
- The business you spent a lifetime building may end up failing or in the hands of a court-appointed receiver.

Planning your estate isn't a one-time task. Changes in your life circumstances can dramatically alter both your wishes for your estate and whether your original estate plan even remains viable.

Sometimes it seems like your life doesn't change much, so you may be wondering what sort of changes I am talking about. Consider the following:

- Your estate will probably grow substantially over the course of your life, although it may also shrink.
- You may marry, divorce, separate, have or adopt a child, or experience a death in your family.
- Your children will grow up and establish their own households.

- You may move between states, buy and sell property, or start your own business.
- Your designated personal representative (also called an *executor*) or trustee may no longer be available, or your relationship with that person may change.
- Laws may change. In fact, they will. You never know when Congress will change estate tax laws, but give it time and it will happen.

In all probability, you'll update your estate plan several times during your life, and on occasion you may even start over from scratch.

WARNING

If you don't update your estate, over time your estate plan may become largely ineffective. When that happens, you're not much better off than you were before you created the outdated estate plan.

Reaping the Benefits of Planning Your Estate

The biggest advantage of planning your estate is that your wishes will be respected, both while you're alive and after your death.

Your estate plan helps you in several ways:

- Incapacity planning helps ensure that you receive the type of medical care and treatment you want, that your assets are managed according to your own wishes, and that your end-of-life decisions are respected.
- Your will and trust ensure that your assets are distributed to the heirs you choose, under terms and conditions you define.
- Your business succession plan helps ensure that your business doesn't fail following your incapacity or death, and that control of your business passes to a suitable successor.

When you don't plan your estate, your incapacity plan will be defined by a court, and your estate will be carved up according to state law. The result may be far different from what you desire.

Planning for your care while you're alive

In addition to planning for the distribution of your assets after you die, a complete estate plan looks at what will happen to your estate if an accident or illness leaves you unable to properly care for yourself.

Your incapacity plan includes your durable power of attorney, healthcare proxy, and living will:

- Your durable power of attorney appoints an attorney-in-fact who can make financial decisions for you if you become incapacitated.
- Your healthcare proxy appoints a healthcare advocate who can help you make medical decisions if you're unable to make or communicate those decisions yourself.
- Your living will describes what care you want to receive and don't want to receive during the final days of your life.

If you don't appoint people to help with your medical and financial needs, your family may have to go to court to have somebody appointed to make decisions for you. Your loved ones will face unnecessary burdens and confusion:

- Your family will have to go to court to have somebody appointed to manage your personal and financial needs, at a time when they're already under stress due to your incapacity.
- The court won't know who you'd prefer to assist with your medical and financial decisions, and may appoint somebody who you would find unacceptable.
- Your helpers won't know your wishes or the limits you'd impose on their choices if you were able to communicate them. They'll have to try to guess what you would have wanted.

WARNING

The impact of these choices may be profound. Whatever your plans, with a court-appointed guardian supervising your medical care, you're more likely to undergo more intrusive medical care than you might choose for yourself and to spend your last days in a hospital or nursing home. (Chapter 14 discusses incapacity planning in more detail.)

Ensuring that your assets go where you want

When you plan your estate, you pick your heirs and decide how much you want to leave to them. Although state laws do restrict your ability to disinherit certain heirs, especially your spouse, for the most part you can leave your money to family, friends, schools and charities, or anybody else you choose.

In defining your bequests, you may choose to simply distribute your assets to your heirs upon your death. But you may also choose to be very creative in how you distribute your assets.

- You can defer your bequests to a later date (for example, "When my son turns 25").
- You can mete out your gifts in installments (for example, "$20,000 to my daughter upon her 18th birthday, $20,000 on her 23rd birthday, and $60,000 upon her 30th birthday").
- You can impose conditions on your bequests, requiring your heirs to satisfy those conditions before they receive the inheritance (for example, "$50,000 to my son upon his graduation from college").

If you don't plan your estate, the state will make all those choices for you. Your estate will go to your heirs according to your state's laws of intestate succession, described later in this chapter in the section "Realizing What Happens If You Don't Have an Estate Plan." If you have minor children, the probate court may appoint a conservator to look after their assets until they turn 18. But any adult heir will immediately receive their legally defined inheritance. Your wish to support your alma mater or to give to charity? Forget it.

REMEMBER

The only way to be sure that your assets are distributed the way you want is to plan your estate. (Chapters 3 and 4 detail the process of collecting information about your assets and planning your bequests.)

Making things easier for your family

Most families want to carry out the wishes of an incapacitated or deceased relative, but to do that they must know what those wishes are. If you become unable to make your own medical decisions, your family may choose a treatment plan that you would not like. After your passing, your family will want to celebrate your life in the way you prefer, but they can only do that if you tell them what you want. They will want a good home for your minor children, but they need to know what home you think would be best. They will find a way to divide cherished items of

property and heirlooms, but they may prefer to divide them in accord with your wishes.

When you create an estate plan and communicate your wishes to your family, you keep them from having to make difficult choices about your estate and assets. You significantly reduce the chances of disagreement or argument among your heirs, and make it much more likely that your wishes will be carried out. (Chapter 4 explains the benefits of discussing your estate plan with your helpers.)

Getting Started Quickly

You understand that an estate plan is called a "plan" for a reason, that it's important to develop your estate plan carefully, to make sure that you remember all of the gifts you want to make and that your heirs will be able to locate all of your assets, and make sure that you select appropriate people to carry out your wishes after you are gone. But you're about to take a once-in-a-lifetime trip, you leave in five days, and you want to write a will before you depart. This is not an approach that I recommend, but I understand that sometimes it may be necessary.

For rapid estate planning, your focus should be on creating a will. You may also create a healthcare proxy or durable power of attorney, then execute those documents at the same time that you execute your will. Creating a trust on a short timetable is likely to become an exercise in frustration, because you will not only need to properly execute the trust but also subsequently transfer assets into the trust in order for your wishes to be carried out.

For quick reference,

- Gather information and inventory your estate, both assets and debts (see Chapter 3, Appendix C).
- Plan your bequests (see Chapter 4).
- If you have minor children, provide for their care (see Chapter 5).
- Draft and execute your will (see Chapter 7).
- If you have a prior will, make sure that you revoke it in your new will, try to collect any copies that you have distributed, and destroy the original when your new will is executed (see Chapter 9).
- Let your designated personal representative and select family members know about your will and where it is stored (see Chapter 2), distributing copies if you choose.

When the urgency of your situation passes, it is time to go back and revisit your estate plan. Make sure it is complete and that it reflects your goals and wishes, and consider additional options such as creating a trust. It doesn't matter whether that's a few weeks or months from when you create your will. You will serve your own interests and those of your heirs by performing an early review of your estate when you have the breathing room to do so.

Looking Out for Common Pitfalls

Everybody makes mistakes, but some mistakes get made a lot. Actions that may seem like they'll simplify your estate may in fact make it more complicated, burden your ability to use and enjoy your own assets, or increase the tax burden to your estate and heirs.

At the same time, when you understand the common pitfalls, most are pretty easy to avoid. You can avoid some mistakes simply by planning your estate now, rather than putting it off until your health starts to fail. (For more discussion of common estate planning mistakes, see Chapters 8 and 18.)

Benefits and dangers of jointly titling real estate, property, and bank accounts

A common shortcut to estate planning involves adding your desired heir to the title of your real estate, financial account, or other titled asset. You can choose between a number of different types of joint ownership, discussed in Chapter 17. In all likelihood, when you add somebody as an owner, you'll create a *joint tenancy with right of survivorship*, meaning that they automatically inherit your share if you die before them.

Some huge risks can arise from joint ownership of a home. Take a common example, where you add your child to the deed as a joint tenant:

- Your son gets divorced, and his wife asks the divorce court to award her half of "his share" of your house.
- Your daughter may decide that the home is "more than you can handle" and ask a court to force the sale of the property.
- Your son decides to move in. It's his home, too, isn't it?
- Your daughter suffers financial problems or doesn't pay her taxes, and her creditors or the IRS try to collect against "her share."

Also, adding a joint owner can increase that person's capital gains tax exposure when the property is eventually sold.

Other issues may also arise:

- What happens if you no longer can afford to support your home, or are no longer physically able to care for it, but your child won't agree to a sale?
- What happens if you want to refinance your mortgage to improve the property, get a better interest rate, or withdraw equity from your home, but your child refuses to cooperate?
- What if you want to sell your house and move into a smaller home or condo, but your child wants to keep "the family home"?
- What happens if you have to move into a long-term care facility?

When you give up your full ownership interest, you run the risk that your children will suddenly decide that they know what is best for you, and prevent you from making perfectly reasonable decisions relating to your own home.

Similar issues arise with joint ownership of bank accounts. As the law presumes that both you and your joint account holder have equal rights to the money, your co-account holder may empty the account. Their creditors may try to garnish the account to satisfy their debts. If it truly is a joint account, with both of you contributing toward the balance, the IRS will still try to include the entire account balance in your taxable estate, and your child will have to prove to the IRS that he contributed part of the money and that their contribution should not be taxed.

Possible alternatives to joint ownership include the use of a living trust, or transfer-on-death titles and accounts. (Part 3 discusses living trusts. For discussion of joint ownership of real estate, see Chapter 17.)

Benefits and dangers of having your assets "pay or transfer on death"

An alternative to the joint ownership of assets is to instead designate a beneficiary to the specific asset, such that the asset will transfer to your heir upon your death without going through probate. This type of provision can quickly get the asset into the hands of your heir. But it also carries some risk.

For example, you may forget that you have designated an account or asset as payable on death and have it go to the wrong heir, or give that heir more of your estate than you had intended. If the beneficiary tries to fix a mistake by

redistributing the asset to your other heirs, there is a possibility that your heir will incur eventual gift tax liabilities. If they don't, you may create a rift between the beneficiary and your other heirs over that unintended windfall. (For more discussion of payable-on-death designations, see Chapter 4.)

Benefits and dangers of life estates

You own your home, and you want your children to inherit your home. So how about a life estate? In a *life estate,* you retain the right to use and control your home for the rest of your life, and you provide for your ownership of your home to pass to specific people upon your death. You're called the *life tenant,* and the people who eventually receive your home are your *remaindermen.* Although I'm speaking in terms of your marital home, you can create a life estate for other property as well, which is called a *retained life estate.*

In a typical arrangement, after you create a life estate, you retain the exclusive right to the use and possession of your home. You pay the day-to-day expenses of your home, including routine maintenance, homeowner's insurance, and property taxes. You pay the interest on the mortgage, but your remaindermen pay the portion of the mortgage payment that goes to the principal balance.

"MY CHILDREN WOULDN'T DO THAT TO ME"

You probably have thought at one time or another that your offspring would never do any of these awful scenarios to you. Although other people may have children who will abuse joint ownership or empty a joint bank account, your children would never do such a thing. You know what? You're probably right. The worst abuses happen in exceptional cases, and most children try to respect their parents' wishes. But not all the problems arise from malice.

Your child may encounter financial troubles. It's easy to "borrow" a car payment or a house payment from your joint bank account. Maybe your child even repays the loan the first time or two. But then she finds herself having borrowed two or three payments. Then four. And before she even appreciates what she's doing, she's "borrowed" far more of your money than she can realistically pay back. Do you sue your child? Call the police? The odds are that you won't. You'll suffer a strain in your relationship and have a less comfortable retirement than you had previously expected.

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On the flipside, your child may be far more concerned with your financial stability than you are. Every time you make a purchase, your child may be demanding to know what you spent "all that money on" and "did you really need it." I recently encountered a case where a child emptied out her mother's joint bank account, not because her mother was spending inappropriately but because the daughter was afraid she *might*. She didn't approve of her mother's new boyfriend and was concerned that her mother might make excessive gifts.

As a life tenant, you face the same type of dependence upon the goodwill and cooperation of your remaindermen as you do with joint ownership (see preceding section). You need your remaindermen's consent to refinance or sell your home, and difficulties can arise if you become unable to pay the home's ongoing expenses.

A life estate may also appeal to you if you have children from a prior marriage who you want to eventually inherit your home, but you want your current spouse to be able to live in your home following your death. You can provide in your estate plan for your spouse to receive a life estate in your home, with your children as the remaindermen. But consider the consequences:

- Say that you're considerably older than your spouse. You die at age 82, and your spouse is 63. At this time, your children are nearing retirement age. If your spouse lives for another 20 years, your children will be elderly by the time they inherit your home. By then, they may have little need for an inheritance.
- Your spouse may neglect the property, causing your children to have to pay insurance, taxes, and repairs, and perhaps even to end up having to take your spouse to court.
- You may create acrimony between your spouse and your children, who see your spouse as standing in the way of "their inheritance."
- Your spouse may remarry. Do you want to subsidize your spouse's new family?

TIP

An alternative? Keep your house in a trust for five to ten years, or whatever other time period you desire, and let your spouse have full use and enjoyment of it during that period. Then have your trust convey your house to your children.

Danger of subjecting an asset to Medicaid spend-down rules

Medicare is a federal health insurance program that provides payment for certain hospital and medical expenses for people age 65 and older. But as you age, you face a huge potential expense that Medicare doesn't ordinarily cover: long-term care.

If you're wealthy enough, lucky enough, or hold sufficient long-term care insurance, you may not need to worry about the cost of your long-term care. But even with some insurance, most people can face significant financial hardship from the high cost of residential care.

This is where Medicaid comes in. Medicaid is an additional federal program that covers medical costs, including the cost of long-term care if you're financially unable to pay for that care yourself.

But before you can qualify for Medicaid, *spend-down rules* apply. If you have too much income or too many assets, you won't qualify for Medicaid until your income or assets are spent down to a qualifying level. The goal here is to make you pay for your own care before the government takes over, while still protecting you and your family from becoming impoverished by the costs of long-term care. Note that spend-down rules don't require that your assets be spent on your medical care, but you do face restrictions on how you can spend your excess money without affecting your qualification for Medicaid.

What if you give your assets away instead of spending them? Can you qualify for Medicaid? That's where *look back rules* kick in. When you apply for Medicaid benefits to pay for long-term care, the government examines your financial transactions over the past five years to determine whether you've transferred assets out of your estate. If you have, the government will impose a penalty period before you can qualify for Medicaid benefits. Any gifts, including payment of tuition for an adult child, charitable donations, and even Christmas presents, can trigger a penalty period for long-term care benefits.

You benefit from a modest Medicaid exemption for income and savings. But you may benefit from a large exemption in the form of your home. If you're in a nursing home but are expected to return to your own home, your home is exempted from the spend-down rules. Note that if you stay in a nursing home for six months or longer, Medicaid assumes that you won't return home. Also, if you're married, as long as your spouse remains in your home, it's exempt from spend-down rules.

So how do you accidentally lose your exemptions? Usually in one of two ways:

- You don't understand the exemptions and believe that the government will take your house no matter what. You transfer title to an heir, probably your children. Your home is no longer yours, and the government will apply spend-down rules to its fair market value.
- You aren't even thinking about Medicaid. You decide that the easiest way to leave your home to your heirs is to add them to the title, giving them outright ownership. The transfer of an interest in your home for less than fair market value during the look-back period can trigger spend-down rules or penalties.

Traditionally, people often used life estates to try to avoid Medicaid spend-down rules. The value of a life estate isn't counted toward your assets when you apply for Medicaid benefits. But states are eager to recover Medicaid expenses and are increasingly imposing liens against the property a Medicaid recipient has placed into a life estate.

One more thing to consider: Even when an exemption applies during your lifetime, the state may seek to recoup its costs by imposing a lien against your property after your death.

Your best approach is to engage in estate planning well before you end up in long-term care. If you plan for your long-term care needs and implement an asset protection strategy before the Medicaid look-back period begins, you can minimize the effect of spend-down rules and recoupment policies on your estate.

If you believe you or your spouse will require Medicaid benefits later in life, you can consult a lawyer who specializes in Medicaid planning. Your lawyer can help you create a strategy to minimize the effects of Medicaid's spend-down and look-back rules, as well as helping you avoid or minimize liens Medicaid may attempt to assert against your estate after you die.

Potential for increased tax exposure

Most people won't pay federal estate tax. The current estate tax exemption is over $11 million for an individual, and twice that amount for a couple. But sometimes it seems like whenever tax laws are settled, the laws change. The next big change to federal tax law will likely affect how estates are taxed.

The estate tax is substantial. Above the exemption, the current federal estate tax rate is as high as 40 percent. If your estate is large enough to pay estate taxes and you do no advance planning, the government may turn out to be your biggest beneficiary.

Realizing What Happens If You Don't Have an Estate Plan

Are there drawbacks to not planning your estate? Yes, and some of them are *big*.

If you have a large estate, you will maximize your estate tax liability (see the preceding section). But in addition to the possibility that you'll increase the government's cut, you have two huge reasons to have an estate plan:

- If you don't plan your estate, the government will decide who inherits your assets.
- If you don't designate a custodian for your minor children, the state will pick somebody for you.

You may enjoy many smaller benefits as well, including picking the person who will administer your estate and providing instructions for your funeral and memorial service. If you don't draft a will, others will make those choices for you.

Following the laws of intestate succession

If you don't make an estate plan for yourself, the state has already made one for you. State *laws of intestate succession* define who inherits the property of people who die without a will. Typically, your surviving spouse will receive half of your estate, with the remainder divided between your children. If you have no surviving spouse or children, your estate is distributed by formula to other surviving members of your family.

In some cases, the state's plan for your assets may be very similar to your own. In others, it will be wildly different. The only way to be certain that your estate is distributed the way you want is to create an estate plan.

Even if you plan your estate, intestate succession laws may apply to some of your assets in the following situations:

- You forget to include an asset in your estate plan.
- You direct an asset to an heir through your living trust, but forget to transfer ownership of the asset into your trust.
- After all of your bequests are made, you'll almost certainly have something left over in your estate, even if just a small amount of cash or your clothing and personal effects.

TIP

You should include a *residuary clause* in your will, describing how any assets left in your estate are to be distributed after all specific bequests have been made. That way, all your assets will be distributed consistent with your own wishes, and not through choices the state makes for you.

Determining the custodian of your minor children

Although uncommon, tragedy can strike your family and kill both you and your spouse. Families tend to travel together, so a terrible car accident or plane crash could leave your children as orphans.

If you draft a will, you may designate custodians for your minor children. You can pick people you trust to care for your children and raise them in a manner you approve. If you want, you can designate one person to care for your children and a different person to manage their money.

Although courts aren't bound by your designation, judges usually defer to a parent's wishes. But if you don't make a choice, the judge will pick somebody for you. That person or persons could be:

- Your in-laws, who were abusive to your spouse throughout her childhood
- Your sister, whose husband was adamantly opposed to caring for your children until he learned about their Social Security survivor benefits
- Your cousin, who has never been able to manage money but will now be responsible for overseeing your children's inheritance

Granted, often the court will make a good decision and pick somebody who will provide excellent care for your children. But why take the chance?

TIP

Even if you're divorced from the other parent, you can designate a guardian. That way, you don't have to update your will if something happens to their other parent. If you have custody of your children and have serious concerns about the other parent's ability to properly care for them if something happens to you, you can include with your will an explanation of why you'd prefer somebody else to take custody of your children. Although courts will almost always give custody to a surviving parent, as that's typically what the law requires, you will at least make the court aware of your concerns.

Issues you may face in providing for your children and dependents are discussed in Chapter 5.

Creating Your Will or Trust

If you're reading this book, you're probably considering drafting your own estate plan. If you don't expect to owe estate taxes, don't want to disinherit your spouse or child, and have the time to work through the process, you should be able to do it yourself. But if you lack the time or inclination, have a very large estate, are disinheriting an heir, are the owner of a business, or have a complicated plan for the distribution of your estate, you'll almost certainly benefit from professional estate planning services.

Whatever you decide, your understanding of the estate planning process will help you. It's essential to planning your own estate, but it will also help you understand your own needs and communicate your wishes to an estate planning professional.

Deciding who should create it

As you embark upon the estate planning process, you need to ask yourself, are you able to plan your entire estate yourself? You may discover that:

- You're capable, but don't have sufficient time or interest to go through the process of planning your estate.
- You can plan the bulk of your estate but require some specialized estate planning services that should be performed by a lawyer.
- Whether due to the size and complexity of your estate or your own discomfort with the process, you may find that you need to hire a professional to plan your estate.

There's absolutely nothing wrong with getting help with your estate plan. Most lawyers I know don't plan their own estates. It's not a matter of ability, as most are capable of figuring out what they would need to do. It's a matter of getting things done quickly, and getting the benefit of an expert's advice and knowledge.

Although you may cringe at the thought of paying money to a lawyer, remember that your time is valuable. How many hours of your time do you want to spend learning the intricacies of estate tax law or business succession, when by dint of experience an experienced estate planning lawyer will be able to do a better job in a fraction of the time? And if you make a mistake, the increased capital gains tax, income tax, and estate tax exposure will probably dwarf the cost of professional estate planning services.

For more guidance on working with estate planning professionals and figuring out when you need an expert, see Chapter 2.

The state of Louisiana has chosen to make it very difficult to draft your own will. The steps you must take to execute a valid will are the most complicated in the nation. But that's not all. The state's *forced heirship laws* mandate minimum bequests to certain heirs and restrict your right to reduce their bequests or disinherit them. You can create what by all appearances is a valid, properly executed will, yet still have the state restructure your bequests to your heirs. Pretty much everybody in Louisiana, including most lawyers, should consider having a professional draft their will.

Understanding the process

Planning your estate can be a big job, but it's something you can handle. Approach the process step-by-step:

1. **Gather your facts.**

   Take stock of your personal situation, including where you live, who lives with you, your extended family, and other potential heirs, including friends and charities.

   Take a thorough look at your assets, determining what you own, how you own it, and what it's worth. Also review your debts, including what you owe and who you owe it to.

   This process is covered in Chapter 3.

2. **Determine your estate planning needs.**

   Ask yourself the following questions:

   - You need a will, but do you also need a living trust?
   - Do you want to use other trusts, to delay or structure inheritances, or to protect your heirs?
   - Will your estate owe estate taxes? How complex does your estate planning strategy need to be? Do you also need a gifting strategy, to transfer wealth to your heirs during your lifetime?
   - Do you own your own business? What sort of business succession plan do you need?
   - What other special circumstances do you need to address? For example, do you have children from a prior relationship? Do you want to disinherit an heir?
   - Who will serve as your helpers? Your *personal representative* manages your estate in probate court, pays your bills and taxes, and oversees your funeral and burial arrangements. Your *trustee* manages, controls, and

distributes assets held in your trust. Your minor children need a *custodian* to take care of them if something happens to you, and perhaps a second person to take care of their money.

- If you're creating a trust, what property do you want to put into your trust?
- How will you leave your assets to your heirs? Will they receive their inheritances immediately, or will they be held in trust until some point in time in the future? Will any of your gifts be conditional, with your heirs only receiving their inheritance when a condition (such as college graduation) is met?
- How will your estate pay its bills and expenses? Do you have enough money available to pay your debts and taxes, pay for the administration of your estate and trust, and cover funeral expenses? Should you carry some life insurance to cover those costs?

This process is described in Chapter 4.

3. **Prepare your will and living trust, making sure that you address all your major assets, including those with sentimental value.**

   For some assets, you'll want to designate contingent beneficiaries, in case an heir dies before you do or declines an inheritance.

   You will also include a residuary clause, directing how any assets left in your estate will be distributed after all your specific gifts have been made.

   For guidance on drafting your will, see Part 2 of this book. Trusts are covered in Part 3.

4. **Execute your estate planning documents to give them legal effect, obtaining proper witness signatures and notarization.**

   You can execute your documents as you complete them or, if you prefer, as you complete each document. Guidance for executing your will is provided in Chapter 7 and Appendix A. Instruction for executing your trust is found in Chapter 11.

5. **Lather, rinse, repeat.**

   You'll review your estate plan on a regular basis, perhaps annually (and not less than once every few years), to make sure that it still suits your needs.

   You'll also review your estate plan when you experience major changes in your life, including moving to another state, marriage, divorce, separation, childbirth or adoption, significant change in your financial situation, or the death of an heir.

   For information on reviewing and updating your will, see Chapter 9. Guidance for updating your revocable living trust is provided in Chapter 13.

Throughout this process, ask yourself whether it's realistic for you to plan your estate yourself. You can manage a will and living trust, but tax planning, business succession planning, more complicated trusts, or complicated plans for the distribution of your assets can change that. So can state laws, particularly if you want to leave your spouse less than the law requires, or if you live in Louisiana.

Thinking about your kids, money, life insurance, and more

You need a plan for your incapacity. That plan may include a living trust, granting the trustee authority over the trust's assets if something happens to you. But you should also prepare a durable power of attorney and healthcare proxy and should consider a living will (see Chapter 14).

If you own a business, you probably need a business succession plan. This plan has two major components. First, how do you convey your business to your heirs while minimizing capital gains taxes and estate taxes, and second, who will take control of your business and manage it if you die or become incapacitated. Without a good succession plan, you risk that your business will collapse (see Chapter 4).

Do you have life insurance? Take a look at who owns the policy, and who you have named as beneficiaries. Ownership will affect whether or not your insurance proceeds are included in your taxable estate. Your beneficiaries will receive the proceeds outside of probate, meaning that your beneficiary designation controls who receives the money even if your will says something else. When you review and update your will, you should also review and update your life insurance beneficiaries (see Chapter 16).

Do you have retirement accounts? As with your life insurance policies, they'll typically pass to a named beneficiary instead of going through your estate. Have you considered what rollover rights your beneficiary may enjoy? Inheritance of tax-deferred retirement savings can be more valuable to an heir who can roll those savings into his own retirement accounts instead of having to immediately pay taxes (see Chapter 15).

How will your estate pay its bills? Do you have enough cash assets, or investments that can be liquidated to pay the costs of your estate? Do you need to have life insurance to help cover those costs? If so, will the insurance proceeds be subject to estate taxes, and can those taxes be avoided? (See Chapter 6 on the costs of estate administration and estate taxes.)

Will your estate have to pay estate taxes? Are you unsure? If your estate will owe estate taxes, you will almost always benefit from professional estate planning services. Estate taxes are so high that in the long run those services will typically pay for themselves several times over. (See Chapter 6 on estate taxes.)

How do you keep your estate planning documents safe? How can you be sure that your personal representative can find your will, or that it won't be lost or destroyed? (See the suggestions on safeguarding your estate plan in Chapter 2.)

Telling Your Family about Your Estate Plan

After you form your estate plan, it is important to let your family know your wishes and also where to find your estate planning documents. At a minimum, your family needs to know that you have an estate plan. But it is crucial that the people you choose to help you with your personal care or estate know that they are named in your estate planning documents, and that you confirm they are willing to serve. Giving your family some sense of what you intend to do with your assets may also help avoid later conflict.

How much you tell your family is up to you. For example, if you are planning to leave money to your favorite charity and you are concerned that your family might argue with you about it, you can keep that information to yourself. But if you are dividing your estate less equally than your heirs might anticipate, or if you are leaving specific assets to your heirs that may have different economic or sentimental value, it can be helpful for them to know why you made those choices. (Information on valuing your property can be found in Chapter 3, and information on planning your bequests is provided in Chapter 4.)

These conversations aren't easy. They raise issues that a lot of people prefer not to talk about, and may be uncomfortable hearing about. But they are an important part of your estate planning process and they may affect your legacy, how your family members will remember and think about you.