sheridan hills
BAPTIST CHURCH

PERSONAL PLANNER

LIVING TRUST - LIFE AND DEATH DECISIONS

In discussing your living trust with your attorney, there are several very important decisions for you to consider. Some of your decisions affect the management of property during life, and others will determine how your successor trustee manages your property for the benefit of family, friends and charity after you pass away.

MEDICAL CARE PLANNING

The living trust works together with other important estate planning documents in the event that you have a medical crisis or emergency. When you sign a living trust, your attorney will also prepare an advance directive or, in some states, a durable power of attorney for healthcare and a living will.

These documents will be different in the various states, but have the same general purpose. The durable power of attorney for healthcare enables you to select a person who will make medical decisions if you are not able to advise the doctors yourself. A living will explains the circumstances that will be surrounding your final weeks or days and makes requests to the attending doctors and nurses concerning your preferences for care at that time.

While these medical documents are important to ensure that you receive the best care, the living trust also contains provisions that make certain your property is managed for your benefit. If you are ill, your designated successor trustee may manage your property, pay bills and ensure good medical care for you.

TRUST FOR MINOR CHILDREN

If you are a single parent or a couple with minor children, then the living trust will usually include a family trust for the benefit of those children. If both parents have passed away, the successor trustee will manage the family trust for the children.

The trust provisions frequently permit the trustee to allocate the income to the children based on his or her understanding of their individual needs. Unless the trust is quite substantial, it is common for the entire family trust for minors to be used to provide for the room, board, tuition and medical expenses of the minors until the youngest child reaches the age for distribution. For many parents, this is when the youngest child is age 25 or older.

During the existence of the trust, a trustee of a family trust for minors generally has quite broad discretion. For example, the trustee may distribute income to any of the children and may invade principal for medical expenses, educational expenses or other needed items. The parent will frequently provide a general statement of guidance for distributions, especially of principal, but the trustee will often have broad discretion. Therefore, it is common to select a trusted friend, advisor or family member as trustee of the trust for minor children.

If your estate is substantial, you may want to select one person as guardian of your children and another as successor trustee of your property. In this way, you build a "check and balance" into the plan that encourages both your guardian and trustee to use the assets to best benefit your children.

SINGLE PERSON—"GIVE IT TWICE" TRUST

The living trust directs the distribution of assets after the demise of a single person. Frequently, the assets are distributed to family and favorite charities. The family could be children, but many times includes nephews and nieces.

A single person may choose to create a trust for nephews and nieces. One trust that is gaining popularity is a "Give It Twice" trust. The trust pays income to the nephews or nieces until the initial value of the trust has been paid out as income. Trust principal is then distributed to charity.

For example, a single person with four nephews and nieces passed away and transferred $500,000 into the "Give It Twice" trust. The trust paid approximately $500,000 of income over a term of 18 years to the four nephews and nieces. After that time, the trust principal of $500,000 was distributed to a favorite charity.

PLANNING BY MARRIED COUPLES

If married couples have minor children, then a family trust for minors is appropriate. However, particularly if the married couples have a larger estate, then your advisor may suggest a plan with two trusts. With a larger estate, your advisor may recommend a combination of a qualified terminable interest property trust (QTIP) for the surviving spouse and a bypass trust.

The QTIP distributes all income to the surviving spouse. It can be invaded, but only for the benefit of the surviving spouse. After the surviving spouse passes away, the assets are distributed under the will of the first person to pass away. This distribution is frequently made to children, but may also include favorite charities. The QTIP protects both the surviving spouse and the children from the first marriage.

The second trust is the bypass trust. It is normally funded with the amount of the exemption equivalent. This trust usually distributes income to the surviving spouse. There is also a limited power to invade principal for the benefit of the surviving spouse if needed for health, education, maintenance or support.

Because this trust uses the exemption of the first to pass away and follows the appropriate guidelines, it is not subject to tax in the estate of surviving spouse. Only the QTIP and the other personally owned assets will be subject to estate tax from the assets of the surviving spouse.

TEN REASONS TO UPDATE YOUR ESTATE PLAN

You have completed a will and perhaps a revocable living trust. Your durable power of attorney for healthcare and a living will are accompanied by a HIPAA release. All of your records are safely in place and carefully organized.

So you now are finished with your estate planning. Or are you? Will there be changes in your circumstances or your family that should lead to a review of your plan? Could some events cause you to need to revise or update the plan?

Yes, there are a number of reasons to consider revising or updating your plan. These include any of the following reasons:

1. NEW CHILDREN, GRANDCHILDREN OR OTHER HEIRS

Your estate plan almost certainly makes provision for children and other heirs who are living when you pass away. If you have a specific transfer to one child, a new child may receive a smaller than intended inheritance.

For example, John Smith had a $1 million estate and left a $400,000 residence to child A. He then divided the balance of the estate with 1/6 of the balance to child A and 5/6 to child B. If a third child is born, depending upon state law, the child might receive nothing or perhaps would benefit from a portion of the residue. In either case, the uncertainty could lead to estate litigation or to family strife.

If you have a sizeable estate and there are large specific bequests, the arrival of a new heir is a good time to review your plan. One option is to transfer assets to the heirs "then living" when you pass away.

If the estate is $1 million, in some states a child C who is born later would receive 1/3 of the estate. This could dramatically change the benefit for child B and leave her with a reduced inheritance. In addition, child C could be a minor or a very young adult and not be capable of managing his or her property. For several reasons, the arrival of a new heir makes a review of your plan very important.

2. MOVE TO A DIFFERENT STATE

If you are married and move to a different state, there may be a change in the laws that affect ownership. Some states are called "common law" property states and some are "community property." If you move from one state to another and change in either direction, it may be important to clarify the ownership of your property as separate property or joint property.

For individuals with moderate to larger estates, there could be significant estate or inheritance taxes. Several states have inheritance taxes that will apply at lower levels than the federal exemption per person. Depending on who among your relatives receives your property, a new state may have a substantial tax.

Finally, many states have specific rules on durable powers of attorney for healthcare, living wills or advance directives or even the HIPAA release. If you acquire permanent legal residence in the state, your doctors will expect that your medical planning documents reflect their state law.

3. SALE OR PURCHASE OF A MAJOR ASSET

You may have a major real estate asset or a business that is to be transferred to one of your heirs. If that property is sold or substantially increases in value, your entire plan could change. For example, if a property greatly increases in value and there is a large estate tax that is paid out of the residue of your estate, the beneficiary of that specific property could receive a much larger inheritance than you intend. Those children or other heirs who are receiving the residue could find their inheritance greatly reduced by estate tax paid on the asset transferred to the first child.

Alternatively, if the first asset is sold, then a child may receive a smaller than intended inheritance. Therefore, a significant sale or purchase is a good time for an estate planning review.

4. REACHING AGE 70½

The four types of estate property are generally cash and cash equivalents, stocks, real estate and qualified plans. Over the years, your qualified retirement plan may become a large portion of your estate. Your IRA, 401(k) or other qualified plan will require distributions to start on April 1 of the year after you reach age 70½.

If you pass away before the entire plan is paid out to you during your retirement years, the balance is transferred to your designated beneficiary. Because retirement plans have grown substantially over the past decade (even with a reduction in plan value during the 2008 downturn), it's very important to review your beneficiary designations. Many individuals pass away and the plan value is transferred to beneficiaries who have been selected 10, 15, and even 25 years earlier. There could be many reasons why you would want to update that beneficiary designation, and age 70½ is a logical time to do so.

5. YOUR SELECTED BENEFICIARY IS DECEASED

In many families there are unmarried brothers or sisters. It is quite common for these individuals to receive an inheritance and to remember the surviving brothers and sisters in their plans. However, even if there are two or three unmarried brothers or sisters, one will inevitably be the survivor and hold most of the assets. If you are remembering a sibling in your plan, there is a substantial possibility that he or she will pass away before you do. In that case, it is useful to revise the plan and select a new recipient of that share of your estate.

6. DIVORCE OR REMARRIAGE

Estate plans for single persons are quite different from those of married couples. A single person who transfers assets to a former spouse will not qualify for the unlimited marital deduction. While property settlements are typically handled during the dissolution of marriage proceedings, there are many cases where individuals forget to change beneficiary designations on retirement plans and insurance policies. Particularly if you later remarry and then pass away with a new spouse, there is a high likelihood of litigation between the ex-spouse and the new spouse if you have forgotten to update your beneficiary designations. Therefore, your plan and your beneficiary designations should always be reviewed in the event of a divorce or remarriage.

7. SUBSTANTIAL CHANGE IN VALUE

If your estate increases or decreases significantly in value, there can be major impact on beneficiaries. For example, mother has children A, B and C. She leaves a home valued at $300,000 to child A, a farm valued at $400,000 to child B and the liquid assets to child C. While she is in a nursing home and no longer able to change the will, oil is discovered on the farm. When mother passes away, child B receives not $400,000 but $4 million. To add insult to injury, the estate is now larger than the estate exemption and each child must pay estate tax on his or her inheritance. While child B with the largest inheritance will under most state tax apportionment laws pay the largest tax, it will be a matter of considerable sibling unhappiness for the two children who receive the smaller shares and still have to pay a large estate tax on their portion.

8. ADDING A MAJOR PROPERTY TO A LIVING TRUST

If you have a substantial estate, you may hold your real estate in a living trust. If you invest in real estate or acquire a major new property and transfer that to the living trust, it will be useful to review the plan. In some circumstances, there may be different beneficiaries for the living trust than for your qualified plans and life insurance. The addition of a high value asset to the living trust could increase the benefits for the persons receiving shares from the trust in comparison to the rest of your heirs.

9. SELECTED EXECUTOR OR TRUSTEE NOT AVAILABLE

With a will or a revocable living trust, you may also select a successor executor or trustee. While this usually will handle the situation in which the primary executor or trustee predeceases you, it still is useful to review your plan if one of these persons passes away. You can easily select a new primary executor or trustee with an appropriate backup person.

10. PASSAGE OF TIME

Estate plans are affected by changes in your asset value, by changes in your family, and potentially by changes in federal or state law. Therefore, it is useful every three to five years for you to sit down with your attorney and review your plan. Given all the potential areas that can change, it's quite likely that you may wish to modify some portion of the plan.

PASSING UNEQUAL SHARES IN YOUR WILL

Because children look at the inheritance as a representation of their parents' love, most parents leave children equal shares of their estate. However, there are a number of good reasons why a parent might leave unequal shares. These reasons consider the needs of children, the potential large financial success of one child, a benefit previously given to a child that will be balanced in the estate, estrangement from a child or a blended family.

You will want to discuss carefully these circumstances with your attorney and other advisors. After thinking through your situation, you may decide that there are good reasons for making an unequal distribution of property to children.

SPECIAL NEEDS CHILD

Mary is a single mother with three children. Her oldest daughter Jane is age 30 and is a nurse. She is married with two children.

Son Joe is age 27, single and pursuing a career in sales. The third child, Kara, is age 17 and is disabled. She lives at home with Mary.

Mary has been financially careful and is building her estate. She owns her home, has an insurance policy that will be sufficient to pay off the mortgage on the home and provide an additional benefit for her children, and has a good retirement plan.

Because Mary does not have a huge estate, she wants to be certain that Kara has sufficient resources. Both Jane and Joe are successful in their careers and do not need assistance for their present lifestyle. While Mary would like to provide some inheritance for them, her primary concern is to make certain that Kara receives needed care.

Therefore, Mary makes provision for a modest bequest of cash to Jane and Joe in her will. She also leaves a small bequest to a favorite charity. However, the majority of Mary's estate is transferred to a "special needs trust" for the benefit of Kara.

The benefit of the special needs trust is that the trustee may receive the property and use it at his or her discretion for Kara's benefit. If the special needs trust is correctly written, it will not reduce Kara's potential qualification for state or federal benefits.

The special needs trust also permits the trustee to pay for Kara's care as he or she determines appropriate. After Kara passes away, the special needs trust will be divided between the grandchildren of Mary and her favorite charity.

FAVORED CHILD

Sue and Tom have raised three children and are now empty nesters. Their oldest child Sam attended a very fine university, followed by an excellent medical school, and is now a surgeon. Their younger children Julie and Linda both graduated from a state university.

Because Sue and Tom provided much greater financial support for Sam that enabled him to complete medical school and become a surgeon, they decided to transfer a larger proportion of their estate to Julie and Linda. While Julie and Linda both are successful and graduated from the state university, Sue and Tom believe that giving them a larger portion of the estate will create balance when compared with the benefits previously received by Sam.

Sue and Tom recognize that it's not possible to be perfectly equal in these circumstances, but hope the larger inheritance for Julie and Linda will make the total distribution as fair as possible.

GREAT SUCCESS CHILD

Tara and Jim have two children. Their oldest son Harvey has always had strong technical skills. After Harvey completed his engineering degree in college, he began working as a software programmer for a small company. In just a few years, he received shares of stock and the company went public. Harvey now has substantial wealth.

Harvey's sister, Lynn, also completed school and teaches third grade. She lives by herself in an apartment and has many friends at her school. However, Lynn has a very modest lifestyle and earnings in comparison to Harvey.

Tara and Jim thought carefully through the situation and talked to their attorney Harold. He explained that Harvey now has a large estate that could be subject to a significant future estate tax. If Tara and Jim were to transfer more property to Harvey, it simply makes his estate tax problem more difficult.

Because Lynn has comparatively modest resources, Tara and Jim decided that the vast majority of the estate would be transferred to her. However, they do have a family heirloom—a grandfather clock that has been handed down through four generations. While the grandfather clock does not have huge value, it is an important family memento. Tara and Jim decided to transfer the grandfather clock to Harvey and the balance of the estate to Lynn.

ESTRANGED CHILD

Peter and Janet have raised two children. The oldest is a son named Bill and their daughter is Nancy. While Bill was in his early 20s, he dropped out of college and left without making contact with his parents or his sister Nancy. Bill was gone for 12 years and no one knew his location. After 12 years of wandering and traveling, Bill returned to his hometown community. However, he has not reached out to his parents or his sister. When they have attempted to contact him, Bill has avoided contact with his family.

While this is a difficult situation and brings sadness to Peter and Janet, they feel that Bill has quite deliberately separated himself from the rest of the family. Given Bill's decision to go his separate way, Peter and Janet believe that their inheritance can be used most productively by Nancy.

They are also concerned that if Bill receives an inheritance, he will not use it for good purposes. Therefore, Peter and Janet have decided to leave their estate to daughter Nancy.

BLENDED FAMILY

Joe was a very successful bachelor entrepreneur and businessman. He invested very well and built a number of commercial buildings.

When Joe met Helen, she was divorced and had two children from her first marriage. Her children William and Lorraine were in their early 20s when Joe and Helen were married. They have had very minimal contact with Joe since the marriage.

Joe and Helen had a son named Steve. Helen's third child is quite diligent and has always been a good student. He completed college and recently passed his CPA exam.

When Joe and Helen were married, Joe was already in possession of a very large estate. His attorney recommended that they create a prenuptial agreement. Under this agreement, Helen would receive a substantial amount in trust for her lifetime. When she passes away, the trust assets will be distributed by the terms of the qualified terminable interest property trust created in Joe's estate plan.

Joe and Helen discussed their situation. Joe would like a larger portion of the estate to be transferred to their son Steve. Because the estate is quite large, there are more than sufficient resources to take care of Helen.

After discussion with their attorney Clara, Joe and Helen decided that if he were to pass away first, one-half of his estate would be transferred to Steve. The other half will be placed in a marital deduction trust to benefit Helen. She will have the income and, if needed for her care, the principal from that trust.

When Helen passes away, that marital trust will be divided with one-third to each of the three children.

While this plan provides a much larger inheritance for Steve, the other two children from Helen's first marriage will still also receive substantial assets.

DISCUSSIONS WITH CHILDREN

These five plans all show specific reasons why a parent may choose to leave unequal amounts. While the reasons are apparent to the parent, they may not always be as easily understood by the children.

Many parents choose to explain and disclose an "unequal shares" plan during life. A meeting is frequently set up at the office of the family attorney. The entire family is invited. The parents explain the reasons why they have decided to create the estate plan with different amounts. Children have the ability to discuss the plan with the parents and ask questions of the financial advisors.

Later, many parents also will meet individually with children to explain the situation and circumstances. With the exception of the estranged child in the "Peter and Janet" example, most children will understand their parents' reasoning. The children may not always agree with their parents, but it usually is helpful for future family harmony for children to discuss their parents' decisions about inheritance.

Therefore, if you as a parent are thinking about passing an unequal amount to children, it may be wise to discuss a possible family meeting with your attorney, CPA or other financial advisor.

WILLS - GOOD AND BAD
WHERE IS THE MISSING WILL?

More than 40 wills were submitted to the probate court, with a multitude of potential heirs each claiming to be the true recipient of a wealthy business owner who passed away in 1976. With a $2.5 billion estate at stake, there was intense interest in the decision of the court.

After extensive review of the 40 documents, the court finally determined that none of the 40 wills were valid. Because there was no valid will, the court divided the $2.5 billion estate among 22 relatives. Court costs, attorney costs and estate taxes were enormous, but the 22 heirs still each received millions of dollars.

WHY IS A WILL IMPORTANT?

There are at least seven reasons for creating a will. A "peace of mind" estate plan starts with your will. The will passes your property to family, friends and favored organizations, could direct distribution of a recent inheritance, may fix errors in living trust funding, allows you to select a guardian, enables you to disinherit a child or other relative, permits you to select your executor and may help with a simplified probate.

1. **Transfer of Property:** There are some types of property that are best transferred by will. Many types of personal assets are difficult to transfer through a living trust or are not appropriate for a "pay on death" transfer. Because vehicles and other personal assets are likely to be bought and sold, it is much easier to keep vehicles, furniture, collections and other items in the probate estate and transfer them by will.

2. **Potential Inheritance**: You might be planning to receive an inheritance from a parent or other relative, but the inheritance could be delayed by the probate process, potential estate issues or other reasons. Therefore, when you finally receive title to the property, there may not be a convenient time or opportunity to transfer the assets into a revocable living trust. As a result, the inheritance will form part of your estate.

There also have been cases in which a person passes away in a tragic accident. The estate may receive an insurance settlement or a claim under a wrongful death action. These assets would become part of the probate estate and are transferred under the residuary clause of your will.

3. **Living Trust Errors:** A living trust is a very appropriate way of avoiding the probate process. However, in too many cases a person has a valid living trust but has not properly transferred the real estate, securities accounts or other assets to the trust. As a result, the property that has not been legally transferred to the trust will be part of the probate estate covered by your will.

4. **Guardian for Minors:** The selection of a guardian for minor children is done through your will. Most states do not permit you to use a living trust (there are a few exceptions) for this purpose, so it is very important to designate the guardian in your will. When you create the will and designate the guardian of the person, it is also quite common to establish a family trust for the minor children and appoint the trustee.

5. **Disinherit Someone:** It is possible to disinherit a child or other heir. The appropriate place to explain that disinheritance or explain why the inheritance is a nominal amount (such as $1.00) is in your will.

6. **Select the Executor:** Your executor is a key person for a successful estate property transition. The executor will inventory your estate, advertise for creditors, pay bills and taxes, submit your will to the probate court and obtain the court's approval for the final distribution. Your will is the document in which you will name your executor. Even if you have a revocable living trust with a trustee and a successor, it is essential to select an executor who will manage your probate property.

7. **Simplify Probate:** In many states it is possible for people who pass away with modest to moderate resources to have a simplified or summary probate. This permits your executor to manage your property and make distribution of it with very minimal contact with the probate courts. For example, California allows many estates with assets valued under $150,000 to use a simplified probate process. The executor will follow the directions in your will and distribute your property accordingly. In most cases, this will simplify administration and reduce your estate costs.

GOOD AND BAD WILLS

As was the case in the estate of Business Owner, there are many submitted wills that are not deemed valid or legal. In order to have a valid or legal will, you need to comply with the state law requirements for wills. While there is some variation between the states, most states will follow several guidelines.

1. **Legal Age:** In most states you must be 18 years old to sign a will.

2. **Sound Mind:** As we become more senior, we do not have as clear a mind as we had back in our youth. Most states permit you to create a will if you have "lucid intervals" and understand the nature of your property and the fact that the will is going to direct the transfer of that property to your selected recipients.

3. **Typed or Printed:** A will normally is either typed or printed. While some states permit handwritten or other types of wills, the vast majority of wills will be typed or printed and will contain at least one substantive transfer of property.

4. **Date and Sign:** Your will must be dated and signed. The date is essential in order to make certain that this is your final will. Many individuals might write and sign two or more wills during a lifetime. Only your final will is going to be used by the probate court to distribute your property.

5. **Witnesses:** Under your state law, you will need to sign your will in the presence and hearing of two witnesses. Your witnesses must be adults who are of sound mind and should not be beneficiaries under the will. They need to be told that this is a will, but you do not need to disclose the contents of your will to the witnesses.

6. **Self-Proving Will:** In some states, it is permissible to have a notary or an affidavit witness form in which the will is either notarized or the person pledges under perjury that this is a valid will. If the will is "self-proved," it will simplify the probate process. Ordinarily, the witness is not required to testify in the probate court with a self-proved will.

WILLS - PERILS OF PROBATE

"I am an heir of the decedent and here is his will." Potential Heir

Business Owner passed away on April 5, 1976, with an estate of $2.5 billion. Many people appeared claiming, "I am Business Owner's heir" and submitted wills with themselves as beneficiaries. The court finally determined seven years later that none of the wills were valid and split the estate among 22 of the decedent's cousins. The costs and fees to lawyers during administration of Business Owner's estate were in the millions of dollars.

PROBATE PROCESS

When a person passes away, it is important to have an organized process to transfer his or her property. The probate process is an organized method to gather all of the property of the individual, pay all of his or her bills, determine the appropriate beneficiaries to receive the property and make the actual transfer.

The probate process can be quite easy and rapid for small estates or can last for many years with larger or more complicated estates. Most people do not spend much time thinking about probate unless they are potential beneficiaries, then probate is a topic of great interest. To the 22 cousins who received multimillion-dollar inheritances, Business Owner's probate process was very interesting.

PROBATE PLAYERS

There are at least four general categories of probate players. First, an executor or personal representative is the manager of the estate. Second, an estate attorney is involved to advise the executor or personal representative on all probate and legal matters.

Third, a probate judge will rule on the validity of any will, review many of the actions of the executor, and approve the final distributions. Finally, heirs will be the beneficiaries of the estate.

PROBATE PROCESS

The probate process involves eight separate steps to ensure an orderly transfer of all of the property to the right individuals. Let's assume that Ed Executor and Ellen Attorney are probating the estate of Business Owner.

1. **Accept the Will:** Ed or Ellen will normally submit the will to the court for probate. Usually, there is one final will that is accepted. However, there are many cases in which individuals wrote their own wills or there was a question about the validity of a given will, resulting in a wills contest. Eventually, the court will determine the validity and meaning of the will. However, for Business Owner's estate, none of the wills were valid and state law determined who received the $2.5 billion.

2. **Locate Heirs:** Because Business Owner did not have a valid will, Ed Executor needed to locate all of the heirs. But, the 22 cousins still needed to be approved by the court. Under state law, Business Owner's estate was transferred to his relatives. With $2.5 billion at stake, all of them had attorneys to ensure that each cousin received the proper share. Even if Business Owner had signed a valid will, it would have been essential to locate all the heirs. In

some cases, the selected recipients had passed away and property was distributed to their children or other relatives.

3. **Determine the Estate Assets and Values:** Ed Executor is responsible for finding all of Business Owner's estate assets. The assets included real estate, bank accounts, securities accounts and other property. Because Business Owner's estate was taxable, all property was valued so that federal taxes could be paid. Finally, the balance of the estate was distributed to the 22 cousins.

4. **Pay Executor and Attorney**: Not surprisingly, Ed Executor and Ellen Attorney were paid a large fee from Business Owner's estate. The costs for the probate process may be quite substantial and the executor and attorney are always paid. Costs may be as low as 2% of the estate value or may range up to 7% or 8% of estate value. However, if there is an estate contest, costs can consume a large portion of the entire estate.

5. **Make Debt Payments:** After determining the nature of the property and the approximate value of Business Owner's estate, Ed Executor will also advertise for any claims by creditors. The state probate law determines the period of time and the type of public notice to be given. If creditors do not file claims against the estate, they risk losing their ability to collect their debts. All debts and taxes are paid before the final distribution.

6. **Resolve Controversies:** Seven years of controversies in Business Owner's estate required continuous attention from Ed Executor and Ellen Attorney. Most of the controversies centered on the submitted wills. If there are any controversies, such as a claim that the final will is invalid due to undue influence of a party who obtained the will, then the court must determine the rights of all parties under the will and applicable state law. After seven years, the court decided that none of the wills in Business Owner's estate were valid.

7. **File Income and Estate tax Returns:** Because Business Owner's estate was $2.5 billion and produced income each year, Ed Executor had to file the final income tax return for Business Owner and annual returns for the estate. After the final valuation by the court, Ed and Ellen also filed the estate tax return and paid the estate tax to the IRS.

8. **Distribute Assets to Heirs:** After seven years of court proceedings, payment of estate taxes, court costs, executor fees, and attorney fees, the probate judge approved the final distribution order and the 22 cousins of Business Owner received their inheritance.

PROBATE PROBLEMS

There are several negative results for which probate has a deservedly bad reputation. First, the process is public. Anyone can obtain the will of Jacqueline Kennedy Onassis and read her provisions for children John Jr. and Caroline.

As was true for Business Owner's estate, the probate process may be both lengthy and expensive. Both time and money can be easily wasted in the bureaucracy of the process.

Probate is also as good and as bad as the judge who is involved. Judges are people, with the good and bad characteristics of humanity. Some are very dedicated and capable and some are primarily interested in an early exit to the golf course in the afternoon. Depending upon the quality of the judge, the probate process can be easy or quite challenging for the executor and estate attorney.

Finally, the existence of a substantial estate (such as that of Business Owner) invites relatives to submit claims and is fertile ground for developing probate controversies. If there is any question about the validity of the will, or there are conflicting methods of transfer of the same property (joint tenancy with one person and attempting to transfer the same property through a will to a second person), a will contest and probate battle may occur.

AVOIDING PROBATE

There are multiple methods that are used to avoid probate. These can be quite successful, but all methods must be coordinated carefully to be certain that the overall plan works correctly.

1. **Joint Tenancy with Right of Survivorship:** Under property law, the surviving joint tenant owns the real estate.

2. **Designated Beneficiary**: An insurance policy, an IRA, a 401(k) or other qualified plan is transferred to the designated beneficiary. There is a contract with the insurance company or the retirement plan custodian and that person agrees to make the transfer to the individual or organization selected by the owner. Typical forms permit the selection of a primary beneficiary and also a contingent beneficiary.

3. **Pay-on-Death (POD) Accounts:** Most states that follow the Uniform Probate Code may allow a "POD" account. Most savings accounts, checking accounts and certificates of deposit are under state law permitted to be transferred to the "payable-on-death" recipient.

4. **Revocable Living Trust:** Perhaps the most popular method for avoiding probate is a revocable living trust. The grantor is taxable on the assets of the trust, but frequently will

transfer a personal residence, securities accounts and other major assets into the trust. The assets in the trust avoid the probate process.

Plan Your Will: https://imb.giftlegacy.com/?DID=1671&pageID=99&destPageID=wills