Chapter 4
The Estate-Planning Process

When we take the time to consider all the details that comprise our daily lives and think about how monumental a task it might be to put those details of our lives together in a format enabling someone to step into our shoes and handle our affairs if we become unable to do so, it is perfectly understandable why most of us never get around to it. Or perhaps it is our denial of the inevitable.

When we finally realize we need to do so, procrastination usually wins out. We rank getting our affairs in order on an even keel with getting a root canal, or cleaning the leaves out of the gutter. Cleaning out the gutters may well rank higher on our priority list, and is probably easier to accomplish, but the reason that most people procrastinate with the estate-planning process is a lack of understanding of what estate planning is, what is involved, and how to get started.

If you have life insurance; own a home, bank, or investment account in joint tenancy with your spouse; have named a beneficiary on an insurance policy; and have a file where you keep your important documents, you have already started the estate-planning process.

You may notice that I keep using the word "process." An estate "plan" is just a static snapshot of your financial assets,debts and your current state of health at the particular moment in your life when the plan is prepared. But your life is continuously evolving. People pass away, tax codes change, your financial situation changes, your health changes, and your life and the lives of your friends and family are constantly changing. People get married, have babies and grandbabies, change their jobs, move to new locations, buy and sell their homes or businesses, and more.

You change insurance plans at work, doctors, banks, and medications. How about all the passwords you need to remember to have access to all your important information, websites, programs, and social media?

So, like your life, your estate plan needs to be monitored and updated periodically.

Most people think that an estate plan refers merely to the estate-planning documents a lawyer may prepare for you, such as a Last Will and Testament, Revocable Living Trust, Health Care Directives, Living Wills, and more. While these documents are an integral part of your estate plan, they are not the plan in its entirety.

I believe that an estate plan is a comprehensive review of your ever-changing life, and keeping one's health and mortality in mind, because at some point in time, it is guaranteed that someone else is going to have to have the responsibility of helping you and dealing with the details of your life, due to injury, illness, disability, stroke, dementia, or even death.

I consider that the estate-planning process includes:

1. **Preparation of your <u>estate-planning documents</u>** - Your Last Will and Testament, Revocable Living Trust, Durable Power of Attorney, Designation of Health Care Surrogate, Living Will, Pre-Need Guardian Designation, and other documents provide the details and instructions about what you want to be done on your behalf if you are unable to handle your affairs, and name the person(s) and/or organization(s) you want to handle them for you.

2. **A review of <u>how your various assets are titled</u>** - Every asset you own should be reviewed to confirm how it is titled (e.g. is an asset owned by you solely, jointly with a spouse, in the name of your business, or in the name of your trust?) How your assets are titled (i.e., who owns the assets?) may have an impact on how your assets are administered on your behalf while you are alive and how they are distributed after your death. Ownership or title may need to be changed to better carry out what you are trying to accomplish.

3. **A review of <u>joint ownership</u> of and <u>beneficiary designations</u> on ALL your assets** - If you have named a beneficiary or own an asset in joint tenancy with right of survivorship, these designations may override conflicting directives in your will and/or trust. You and your attorney will need to clearly and correctly designate whom you want to inherit your assets upon your demise.

4. **A review of your <u>insurance coverage</u>** - A review of your various types of insurance coverage should be done with your financial and insurance professionals to confirm your loved ones are protected from potential catastrophe and will have sufficient funds available to support them should you become unable to do so. This would include reviews of:

   a. Your **life insurance** coverage, to make sure your loved ones have sufficient assets and income to support them without your paycheck (e.g. put your children through college, cover living expenses, prevent your spouse from losing the house due to an inability to pay the mortgage, provide a caregiver for your children, etc.)

   b. Your **disability** insurance coverage, to make sure your income continues if you become unable to continue working

   c. Your **long-term care** insurance coverage. At over $80,000 per year for a nursing home, one's life savings and estate can be rapidly eaten up by the costs of long-term care

   d. Various types of **business insurance** coverage, if you own a business such as: Key Person coverage, liability, business continuation, funding your business succession plan, and more

   e. Burial insurance – prepay the eventual and inevitable expense

   f. Health, automobile, homeowners, dental, vision, and many other types of insurance

5. **A review of your <u>tax situation</u>** with your CPA to consider the impact of your death or disability on your taxes and upon the taxes of the individuals who may inherit your assets

6. **<u>Asset Protection</u>** - A discussion of methods of protecting assets from the taxes, losses, claims of judgment creditors, government agencies, and methods of paying your mortgages and other debts and obligations would be advisable

7. **<u>Out-of-State Property</u>** - If you own real estate in more than one state, your attorney will want to take action to avoid the necessity of a second probate estate (sometimes called "ancillary administration") in order to ease the transfer title of the out-of-state asset into the name of your desired beneficiaries.

8. **<u>Business Succession Planning</u>** - If you own a business, the estate-planning process should include a discussion about your business succession plan with your attorney, CPA, insurance, and financial advisors. You have worked hard to build a business, so if it is the type of business that can be sold, you will want to have a potential buyer of your business in place, a formal written buy/sell agreement prepared to protect your loved ones should

you unexpectedly die or become disabled, and have the plan properly funded so the buyer will have sufficient funding to be able to buy your business (usually through a life and/or disability insurance policy).

9. **Consolidation and Simplification** - Do you have a hodgepodge of investment, retirement accounts, old 401(k) plans, savings, checking, and other types of accounts strewn amongst several different banking and investment companies and previous employers? While you are making the effort of going through the estate-planning process, you may want to consider consolidating your assets with fewer advisors or organizations. Consider rolling old 401(k) plans into IRAs with your financial advisors. Consider having just one banking relationship if you have two or more. Bring mutual funds held directly by the company and individual stocks and bonds in electronic format at a clearing house into your brokerage account. This will help to simplify your life by reducing the number of accounts you need to monitor, 1099 forms you need to input into your tax returns, and save your loved ones a lot of extra work in managing and finalizing your financial affairs. In addition, this may be a good time to consider scanning and/or shredding old, unnecessary account statements and documents, which will save your loved ones the hassle of having to go through mountains of unnecessary paperwork to locate the important information they need.

10. **Organization and Preparation of Your "Everything" File** - Do your loved ones know where all your important documents are located? Do they know where all your assets are located, to whom you pay your bills, and then, account numbers, names, addresses and phone numbers of your advisors and organizations to contact if you are unable to do so? Do they know what doctors you see, what medications you take and the dosages, whether you have allergies, and family medical history that may be needed in the future? Do you have automatic payments coming out of your checking account, charges automatically being charged to your credit card, automatic renewals of subscriptions and services, and how to turn them off? Does someone know how to access your online accounts and social media, along with your user names and passwords? It is important to prepare a comprehensive list of everything your named representative needs to know about you. This is the reason the **"Everything" File** was created!

11. If you are entering into a **second marriage**, especially if you have children from prior to the marriage, a discussion about whether or not you should consider a prenuptial agreement (sometimes called a premarital agreement) to protect your premarital assets for your children, or if you are already married, a discussion as to whether or not to consider a post-nuptial agreement, would be useful.

12. Planning **your funeral** in advance. You may think this is a morbid topic, but frankly, nobody is immortal. Someone is going to have to make the decisions as to whether you are to be buried or cremated, where it is to take place, whether the coffin is to be simple or ornate, whether it is to be a small, private service or a massive celebration of life. If you make all the decisions in advance, you have saved your loved ones the difficulty of making a lot of hard decisions. If you'd like, you can even make the arrangements in advance and pay for them through a pre-paid funeral plan.

The purpose of the "Everything" File is to help you to get started with the process. It will help you to collect the information your representatives and loved ones will need, and then help you to organize it, consolidate it all in one place, and establish a process to keep the information up to date.

As I will often repeat throughout this book, your thoughtfulness in having the forethought and taking the time and initiative to go through the entire estate process will be appreciated by others as a significant act of love by you.

The easiest way to begin is to understand what will happen if you do no planning at all. Let us review what will happen if you live (and are incapable of caring for yourself), and what will happen if you die.

WHAT HAPPENS IF YOU DO NOTHING?

If you live and are unable to care for yourself

If you become unable to care for yourself due to injury, disability, illness, stroke, dementia, etc., someone else is going to need to be able to care for you and handle all your financial matters.

Who is this person going to be? Hopefully, you have a spouse, parents, or children who can step in to take care of you. But without the necessary documents naming whom you prefer, granting them the written authority to act on your behalf, most doctors and hospitals will not follow their instructions about your healthcare, and banks, investment firms, and other financial institutions will not honor their instructions made on your behalf. In fact, most financial institutions will not even discuss the accounts with them if they are not co-owners of, or authorized signers on, the account with you.

In most cases, a costly and inconvenient guardianship proceeding will be required to determine who will serve as your guardian, and the guardian will serve under the supervision of the court. In other words, a judge—not you—is going to make the final decision about who will have the authority to take action on your behalf. And the judge may not name the person whom you would have preferred.

If you have no health insurance, your medical bills will need to be paid somehow. So, if you have no health insurance, your personal assets may need to be liquidated to cover your health care expenses. Consider that an emergency operation, long hospital stay, and other catastrophic medical bills are some of the most common causes of bankruptcy.

If you need to be put in a nursing home, which can cost over $80,000 per year, without some sort of long-term care insurance coverage, it doesn't take long to deplete one's life savings.

If you own a business that can be continued in your absence, someone needs to have access to your records, know what to charge, how to collect money for the business, pay the bills, order inventory (and the vendors from whom to order your inventory), and keep the business operational until you are able to return, if ever. If you are not able to return, someone needs to have the authority to determine whether to sell it on your behalf, keep it operating (if it is an ongoing business that doesn't require your personal actions to keep it running), or wind down and close the business if it cannot survive without you.

Someone will need to try to figure out everything you have, where it is located, and how to access it.

If you are married, some of the above issues may be averted, such as with some of the health issues, since medical facilities will usually follow the instructions of a spouse. Hopefully, your spouse is working and earning enough to care for herself or himself and your children while you convalesce. And hopefully, your spouse knows everything he or she will need to know regarding your financial matters, such as how to keep your business running, etc.

But will he or she have the ability to continue working while taking care of you and your children (if they are still at home or otherwise dependent on you)?

If your children are minors and their other parent is unable to care for them, once again, a judge will need to make the determination in a potentially costly Guardianship proceeding to decide who will raise the children on your behalf. And once again, the judge may not choose the person you would have preferred.

The issues mentioned above are just a few of the issues raised by doing nothing.

Maintaining adequate insurance coverage, having a list of everything someone would need to know about you, and having the appropriate estate-planning documents (such as a revocable living trust, a durable power of attorney, and a designation of a healthcare surrogate) will help to avoid many of the issues described above.

If you die

Someone will need to make all the arrangements for your burial or cremation, and will also need all the details required to carry out your wishes. Hopefully, you have told your loved ones whether you would prefer to be buried or cremated, and whether you want a plain pine box or a hermetically-sealed top-of-the-line casket. If not, someone will have to make those decisions for you.

Someone will need to take care of your minor children. If not the other parent, a potentially expensive guardianship will probably be required. As above, a judge—not you—will decide who will serve as guardian for your children. The guardian will take care of your children and manage their money for them (under court supervision), and they will then turn the money over to the child when the child turns 18 years of age. A Will can enable you to name the guardian you prefer, or you can use a revocable living trust to name a trustee to watch over your children and manage and protect the assets you have left them. These and other estate-planning documents are discussed in greater detail in another chapter.

Someone will need to find and collect all your assets, pay your bills, file your last tax return, and distribute what is left to your legal heirs at law.

Since we are discussing what happens if you have done nothing, that means you have not drafted a Last Will and Testament, so the laws of your state will dictate who will inherit your estate, and they may not be the ones whom you would have named.

If you are married, depending on the laws of your state, your surviving spouse will be entitled to inherit a large percentage of, if not your entire estate. In some states, your children will inherit nothing. If your children are minors and entitled under your state's law to inherit from you, a guardianship proceeding, as described above, will be required. As each child turns 18 years of age, he or she will receive their share of their inheritance from you. Do you want an 18-year-old to have access to your money at such a young age? What do you think would be the first thing they would buy? My vote is for a sports car.

A revocable living trust could delay the inheritance to a later time when the child may be more financially responsible and capable of handling his or her financial affairs and protect them from foolish financial mistakes they may make before they learn what it means to be a financially responsible adult. In other sections of this book, I will discuss various estate-planning documents and what they do.

Most married couples want to leave everything to each other, and then to their children. In Florida, upon your death, without any estate planning, your surviving spouse would inherit everything from you. If you wanted your children to inherit anything upon your death, it wouldn't happen in this scenario. They would eventually inherit everything from your spouse when he or she dies. But what if your surviving spouse remarries without doing any estate planning? His or her second spouse may inherit much, or all, of what you had intended to be inherited by your children.

A Last Will and Testament and/or a Revocable Living Trust can help avoid many, if not all, of these problems.

Getting creative to avoid the expense of paying an attorney to prepare estate-planning documents

I'm often confronted with ideas such as the following ways clients have tried to save money on the cost of paying an attorney to create the estate-planning documents:

1. "I've got it covered! I own everything in joint tenancy with my spouse."

Yes, this will help to avoid the expenses and hassles of probate, but the same problem described above with a potential second spouse remains.

If you are involved in a simultaneous death situation, such as a car crash, in which it cannot be determined which of you died first, your beneficiaries may wind up having to file two probate estates (one for you, and one for your spouse).

If you are in a second marriage and have children from a first marriage, you may have just unintentionally reduced (or eliminated) the amount those prior children would be entitled to inherit from you. Unless your surviving spouse protects your children by naming them in their own will, your children from your first marriage may get much less of an inheritance than you had intended.

2. "I've got it covered! My children are grown. I own everything in joint tenancy with them."

If one of your children has financial troubles, gets sued, or goes bankrupt, your assets may be fair game to a judgment creditor or bankruptcy court.

If one of your children goes through a divorce, some of the joint assets may be subject to the claims of their spouse.

You will be treated as having made a gift of part of the value of the asset. So, if you have one child as a joint tenant, one-half of the value would be treated as a gift. If you have two children as joint tenants, two-thirds of the value will be treated as having been gifted to each child (one-third to each child). If the value of the gifted amount is above the annual gift tax exclusion amount permitted in the tax code (currently $14,000 per person in 2014), you may have to file a gift tax return, if not pay a gift tax (for a very valuable gift).

Your children will lose the tax benefit of a step up in cost basis at your death. For example, if you bought some land many years ago for $50,000, and that land is worth $250,000 at your death, and then you leave the land to your child in your will or trust. If you have kept the land in your name (or in your trust), upon your death, your child will inherit the land with cost basis which "steps up" to the date-of-death value of $250,000. If your child now chooses to sell the land for $250,000, there is no taxable gain.

But if you had gifted half the land to your child while you were alive, the cost basis on your half of the land would step up to $125,000. But on the half that was gifted to your child, he or she would have to use your original cost basis of $25,000 (half of the $50,000 purchase price). This half would not step up to the date-of-death value. So, if the child decides to sell the land for the current value of $250,000, there would be no taxable gain on the half you own at death, but on the gifted half, there would be a taxable gain of $100,000 ($125,000 sale price minus $25,000 purchase price). If the long-term capital gains income tax rate is 15%, for example, this would result in a $15,000 tax on the gifted half of the property.

If your child dies before you, you may wind up inheriting the property, which would add it back into your own estate, and you would be back to where you started.

If you have several children, each with children of their own, and one of your children dies before you, would you want that child's children to take his or her share? If everything is held jointly with rights of survivorship, everything will be divided among the surviving children. The children of the deceased child will inherit nothing.

3. "I've got it covered! I own everything in joint tenancy with my brother! He knows what to do if something happens to me."

As with your children, you have just gifted half of everything to him. So, the same cost-basis problem may apply as described above.

If he gets sued or files for bankruptcy, the assets are at risk to the claims of creditors or the bankruptcy court.

If he gets a divorce, the spouse can try to treat half the assets as his assets.

If he dies, the assets will come right back into your estate. If you die first and then he dies, the assets will go through his estate to his heirs, who may know nothing about the assets actually being intended to be left to your loved ones. And even if they know what was intended, what if they don't care, and decide to keep it for themselves?

What if he simply decides to sell his half of the assets and keep the proceeds for himself? You have, after all, made a gift of half to him.

It is my hope that the above examples and questions will encourage you to discuss what you are trying to accomplish with an estate-planning attorney, so he or she can prepare the legal documents that will best serve your needs and protect your loved ones. A will and/or revocable living trust are two of the important documents you will want to discuss with your attorney to avoid these, and other, landmines.

4. "I'm going to save lots of money and prepare my own Last Will and Testament. I can buy one online (or at an office supply store) for under a hundred bucks)!"

While I'm handy around the house and enjoy doing my own home repairs, I know my limitations. I can paint, wallpaper, hang a ceiling fan, lay a tile floor, and replace a light switch or even a toilet. But at a certain level of difficulty, I realize that it is more prudent (and probably less expensive) to let an electrician or plumber work on serious wiring or plumbing issues, lest I burn down my house, or find I have a swimming pool where my living room used to be.

The same logic holds true for the estate-planning process and the preparation of your important legal documents.

Many resources are available on the Internet that will help you organize your paperwork and prepare an asset list such as I have provided in this book. And most of the resources are free. But one has to decide what one's time is worth in doing all the research, compiling, and comparing all the information that is available.

But of greater concern is the risk of missing an important detail, or failing to consider something that could go wrong. These can seriously jeopardize the outcome of what you had intended. Just as you probably wouldn't drill cavities in your own teeth, it is better to have an objective person, trained with the knowledge of what needs to be done, what can go wrong, and how to protect you from those problems, to help walk you through the process.

Online or store-bought wills may be fine for a basic scenario. The reason you hire an attorney is not simply to fill in the blanks on a basic form document. You hire the attorney for the years of learning how to protect you and your loved ones for the attorney's skills of asking probing questions to discover potential situations you may not have considered, to looking beyond the basic plan for what could go wrong; and to recommend solutions to protect your loved ones from as many potential problems as possible, before they arise.

For example, here is one of the most common and basic fact situations in preparing Wills for a husband and wife: "My wife and I want to leave everything to each other, and then to the children in equal shares." What could be easier, right? Let's look deeper.

a. Does the do-it-yourself Last Will and Testament discuss how your children are protected if your surviving spouse remarries? When you die, your spouse inherits everything. But unless there is some other provision made to protect the assets for the benefit of the children, in the event of remarriage and the subsequent death of your surviving spouse, there is a chance that his or her surviving spouse may inherit much, if not all, of what you had intended to go to your children from your first spouse.

b. The directions for your basic do-it-yourself Last Will and Testament will probably coach you to name a Personal Representative (executor). But does it recommend that you consider naming an alternate Personal Representative in case the first one is unable or unwilling to do the job, and perhaps a second alternate, too?

c. Does it discuss potentially naming a Guardian for your minor children's assets, or mention you have the ability to name one Guardian to take care of the children and another Guardian to watch over the money for them?

d. Does it ask whether you want your children to inherit everything when they turn 18 years of age or discuss whether a revocable living trust might be preferable to protect your kids from irresponsible financial decisions until later into their 20s, 30s, or 40s?

e. Does it remind you that the Will controls only assets that are titled in your name; that if you have named someone else as a beneficiary, or own the asset in joint tenancy with right of survivorship, that those assets will pass directly to the named individuals, even if you had specified in your Will that the asset was to go to someone else?

f. Does it discuss with you the costs, hassles, and time involved in putting a will through the court probate process, and recommend methods to avoid some of these types of problems?

g. Does it mention the risk of having two probate estates if you and your spouse are killed in a simultaneous death situation (e.g. car crash) in which it cannot be determined which of you died first, and discuss how you can avoid this situation?

h. If you own real estate (such as a vacation home) in another state, does it make you aware that your loved ones may incur the additional cost of a second probate estate (sometimes called "ancillary administration") in the state in which the second property is located, and that there are various methods that can avoid this problem?

i. Does it discuss how to protect assets for a special needs child, or what to do if you want to leave a larger portion of your estate to one child and less to another (or how to completely disinherit a child if you want to leave them nothing)? If you have loaned money to one child, does it ask you to consider whether the debt should be forgiven, or whether the unpaid balance of the debt should be paid out of that child's share of the estate?

The list of questions that should be considered, asked, and answered, are numerous, and vary from one person to the next.

On another note, do the instructions that come with the store-bought Will discuss the formality of the signing process required for the Will to be valid? The rules are too varied from state to state for me to go into detail in this book, which is why you need to confer with an attorney in the state in which you are domiciled. But as an example, in Florida, the testator needs to be an adult (18 years of age or older), of sound mind and memory (not mentally impaired), and not only needs to sign the Will in front of two witnesses, but the witnesses also need to sign it in front of the testator, and in front of each other. But who can serve as a witness? Can it be a relative? Can it be someone inheriting something in the Will? Who is qualified to serve as your Personal Representative (sometimes called an executor or executrix)? And does the Will need to be notarized? Knowing the right answer to these and other questions can make a significant difference in the ease and expense of how your estate must be handled after your death.

It has often been said that "we know what we know," and "we know what we don't know." But the largest category of concern is that "we don't know what we don't know," and this last category is where most of the problems arise in estate planning.

The education and training that attorneys receive, and the real-life experiences of their clients over the years, help them to foresee and protect you and your loved ones from future problems.

As a real-life example, I've recently been handing a probate matter that will illustrate the point:

Hoping to avoid paying an attorney to prepare a Will for her, a widow purchased a do-it-yourself Will kit online and prepared it herself. She had two children and five nephews. Most of what she owned named her children as joint tenants, so upon her death, all those assets passed directly to her two children, which was what she had planned. No probate was necessary to move these assets since the assets passed to her children by operation of law. Although the use of joint tenancy might have caused some problems as described earlier in this chapter, thankfully everything went as planned regarding these assets. At her death, all the joint assets passed directly to her children without any complications.

Being a loving aunt, she wanted to make a special gift of a $100,000 bank certificate of deposit she owned in her own name to her five nephews. She followed the instructions of the Do-it-Yourself-Will, and made a specific bequest that directed, "I leave my $100,000 CD, account number 12345-6789 at XYZ Bank to my five nephews in equal shares." She wrote down the names of her five nephews. So far, there was no problem. The Will went on to leave the residue of the estate, if any, to her two children in equal shares. A residue clause specified who was to receive anything else not otherwise distributed in the Will.

However, while she was still alive, the $100,000 CD matured. With interest rates being so low on short-term CDs, she decided to invest in a five-year CD in the hopes of getting a better interest rate than the shorter CDs were offering. But she also realized that if she needed access to some of the money in the CD, she would pay a penalty on the entire $100,000 CD. Due to her health concerns, the potential need to access the money was a real possibility. So rather than renew the $100,000 CD for five years, she divided the money into two $50,000 five-year CDs at the bank. This way, if she needed to break one of the CDs to get some money, the early-termination penalty would only be on $50,000 instead of $100,000.

What she hadn't considered was that the $100,000 bank CD she had specified to go to her nephews no longer existed. Remember, she identified the exact asset (including account number) that was to go to the nephews. Therefore, the way she had written her Will, the $100,000 would now go to the children under the residue clause of the Will, and not to the nephews.

Here is an example that will help you to understand the concept of how changing a few simple words could change an outcome. If you specify in your Will that you are leaving your 2009 Toyota Camry to your brother, and then trade it for a 2014 Nissan Altima, you no longer own the Camry at your death. As a result, your brother gets nothing. On the other hand, if you had specified that you were leaving any automobile you own at the time of your death to your brother, he would get the Altima.

As for my client's situation, a lawyer would most likely have foreseen this potential problem, and instead, might have recommended leaving a percentage of the bank account (or of the estate) or perhaps a flat dollar amount without identifying a specific account number to the nephews. (For example, the Will could have provided "I give 20% of my bank accounts at XYZ Bank, plus any accrued interest thereon, to each of my nephews who are alive on the date of my death.") This way, had she not used any of the money and accrued interest brought the value of the accounts up to $105,000, each nephew would get one-fifth of the total amount (i.e., $21,000). Or if she had made a withdrawal of $25,000, leaving just $75,000 in the accounts, each nephew would receive $15,000.

On the other hand, an attorney would foresee a potential problem with the percentage scenario above. What if one of the nephews died before her? Did she want the nephew's share to go to the nephew's children (if any)? Did she want his share to be divided between the remaining four nephews? Or did she prefer that his 20% share be added to the residue of her estate, and therefore be passed to her children?

As another alternative, she could have specified, "I give $20,000 to each of my nephews who are alive upon the date of my death." Even with this seemingly simple and clear instruction, a potential problem could arise if the estate had less than $100,000 in it, so a provision might need to be added to the bequest proportionately reducing the amount each nephew would receive, to cover this possibility.

One needs to go through a lot of what-if scenarios to make sure the assets wind up in the hands of the persons you had intended to receive them.

So, how did my case turn out? At the time of writing this chapter, the case is still pending before the probate judge. Happily, both children and all five nephews knew what the deceased had intended, and are in agreement to carry out those intentions. Even though the children may be entitled to split the $100,000, they agreed the money should be divided between the five nephews. This type of cooperation does not always happen when substantial sums of money are involved.

So, they all signed a document agreeing that it was the intent of the aunt for the money to be divided between the five nephews, even though that specific bequest had lapsed due to the original CD no longer existing. However, this agreement is not binding on the judge. It will now be up to the judge to decide whether it all goes to the two children, or whether the judge will honor the agreement between the children and nephews, providing that the money should go to the nephews only.

If the judge decides that the money is to go to the two children, they can certainly keep it for themselves. But if they prefer to honor their mother's desire to leave it to the nephews, how can they do so? They can renounce the inheritance, but this will result in the money going to their own children, not to the nephews. The only way for the nephews to get the money will be if the children decide to gift it to them.

In the hope of saving a few hundred dollars for a lawyer to prepare her Will, the decedent's unintended consequence was a lot of hassle and over $4,000 in probate fees and court costs which will reduce the inheritance of the heirs.

Ironically, a potentially easier, faster, and less expensive alternative was also available to the deceased. She could have opened five separate $20,000 CDs in her own name, naming one nephew as the TOD (Transfer on Death) beneficiary on each CD. These would have passed automatically upon her death to each of the nephews and the necessity of a probate estate could potentially have been completely avoided.

Of course, if she needed some of the money, would she take it all from one CD (meaning that nephew would get less than the others)? Or would she take it proportionately from all five CDs (meaning that she would pay an early termination penalty on the entire $100,000)?

As I said, one must continue exploring the what-if scenarios. Sometimes, there is no clear solution that satisfies everything one is trying to accomplish. But at least one can now make an informed decision as to the various outcomes and prepare for them accordingly.

The chapter on estate-planning documents will go into much more detail on how each document will help you to avoid some of the problems outlined above and more.

But as a short synopsis of some of the contents of that chapter, I'll discuss some of the pertinent forms that are involved in the estate-planning process:

A **Durable Power of Attorney** will enable your attorney-in-fact (the person you have named to act on your behalf) to continue to operate your business, manage your properties and financial affairs, and do whatever is needed to buy, sell, and otherwise deal with your assets and debts, pay your bills, deposit your checks, and almost anything else you would otherwise be able to do yourself.

A **Designation of Health Care Surrogate** (sometimes called a "Medical Power of Attorney") will enable your representative to make medical decisions on your behalf if you are unable to do so.

A **Last Will and Testament** will, upon your death, specify whom you want to serve as your Personal Representative (also known in some states as an Executor or Executrix) to collect your assets, pay your bills, and distribute whatever is left to the beneficiaries you have specified. If you have minor children, you can also name whom you would prefer to serve as their Guardian and/or the Guardian of their assets. Everything that is not titled in joint tenancy or with a named beneficiary will still be required to go through the probate process, along with the time and expense probate encompasses. The benefit of probate is that it will all be handled under the supervision of the probate court, to make sure the provisions of your Will are followed.

A **Revocable Living Trust** is one of the most powerful estate-planning documents you can have prepared. It can be used to avoid probate, as well as a second probate estate if you have out-of-state property. It can delay distribution to assets to your children beyond the age of 18 without the necessity of establishing a Guardianship. It can protect your beneficiaries from creditors through "spendthrift" provisions.

A trust is a complex, detailed document, and is therefore more expensive to have created than a simple Will. But the cost of preparation is often less expensive than the cost of probate and/or Guardianship proceedings, and sometimes is significantly less expensive.

In general, while you are in good health, a revocable living trust enables you to do anything and everything you can otherwise do with your assets while you are alive. If you become unable to handle your own affairs due to illness, injury, disability, dementia, stroke, etc., the Trust enables your successor trustee to do anything and everything you could have done on your own behalf for your own benefit. Upon your death, it becomes irrevocable and enables your successor trustee to do anything and everything that needs to be done for the benefit of the beneficiaries, without the need, time, hassle, or expense of having your estate go through probate.

Please read the chapter regarding your estate-planning documents to learn more about these and the other estate-planning documents that can be prepared for your benefit and for the benefit of your loved ones.