Legal Guide Series

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Law Offices of R. Shane Smith

Estate Planning Guide for Georgia

Estate Planning Guide for Georgia

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Why I Wrote This Book

I focus my practice on crafting estate documents that meet our clients' unique, individual needs. I've found that a lot of my clients have delayed creating their estate documents because they incorrectly believe that their estate isn't large enough for estate planning, or that if they passed unexpectedly their families would step in and make sure that what they had verbally relayed to them will happen with regard to their kids and their belongings. I've seen this misconception cause a lot of unnecessary stress and heartache.

Other major impediments to estate planning are that people really just don't know a lot about the law and what could happen when they pass, and they feel they don't have the time right now to take on that task. It's this uncertainty and procrastination that leads to the government deciding what happens to your assets. Let me tell you, I don't want the government to decide what happens to my stuff and how it gets handed out. You can bet that their rules don't take advantage of any tax minimizing strategies, nor do they take into account what's better for your children. They simply apply the standard rules when there hasn't been any proper planning.

After years of practice and answering the same questions over and over, I decided to write this book to explain the "ins and outs" of estate planning. This book is designed to educate people in Georgia so they can make sure their assets AND their loved ones are protected. If you are reading this in another state, things very well may be different. I would encourage you to contact a lawyer in your state. If you need help finding a lawyer in your state, just go to my website - www.shanesmithlaw.com. Under the links page, you can find a listing of personal injury lawyers in your state. Alternatively, you may contact my office at (770) 487-8999 or toll free at (888) 927-6955 and we will gladly refer you to a lawyer in your area.

About the Author

I am R. Shane Smith. I grew up in a military family and have lived all over the Eastern part of the United States. I moved to Georgia in 1991 and graduated high school in Fayette County. I then attended the University of Georgia for two years and then transferred to Georgia State in Atlanta. While at Georgia State, I was in Army ROTC and received numerous academic awards.

After receiving my Bachelor of Science in Criminal Justice, Magna Cum Laude, I attended Georgia State's College of Law. While there, I was active in the Student Trial Lawyers Association. I also interned with several prosecutors' offices and worked for a local personal injury lawyer. I married my wife, Holly, during my last year of law school. I graduated in June of 2000, Cum Laude, and after being admitted to the bar, I entered the United States Army and served in the Judge Advocate General's Corps.

My first duty station was Ft. Campbell, Kentucky, home of the 101st Airborne (Air Assault) Division. There I did legal aid for a year and then began to defend soldiers in criminal cases, handling primarily sexual assault cases in our multistate region. The Army moved my family to Ft. Benning, Georgia, several years later and I once again served my country by defending its soldiers. I handled the most serious felony cases in our multistate area.

In January 2004, I left the Army and began serving in private practice. After working for a major law firm in Atlanta for several years, I established the Law Offices of Shane Smith in Peachtree City, Georgia, so that I could better represent my clients. My practice has grown tremendously over the past several years and as a result, I've been able to hire several attorneys with over 35 years combined experience.

I moved into the trust and estate and elder care area of the law when, after doing an analysis of the attorneys in our area who are doing this type of law, I felt that there weren't enough attorneys who were proficient and could provide not only good legal documents, but also a good customer experience for people in our area and surrounding counties.

We began to focus more and more on the small business owner when we started discussing with them what plans they had made and what they talked to their attorneys about. That's when we realized that they were not getting a full transition plan. This hit home when I started trying to figure out what would happen to my business if I died and thinking about how my wife would get the maximum value out of my business. Once I

talked to numerous attorneys who really didn't have a plan and acted like they hadn't thought about it, it frightened us so much that I went out and did the research and started an estate plan for my own family. I realized that if I was a lawyer and talking to other very high-level lawyers who didn't have plans, then there is a dire need for this area of practice in the business community. This is why we began doing such a significant amount of business transition planning work in our practice.

About the Firm

At the Law Offices of Shane Smith, we serve clients throughout the state of Georgia and pride ourselves on being advocates for the people, practicing personal injury law, estate and elder care planning, and fair debt collection violations.

What makes our firm different from other law firms that practice in multiple areas is that each attorney at the Law Offices of Shane Smith and their supporting staff members are dedicated to practicing in *one area of law* rather than each doing a little bit of everything. My philosophy is that by limiting each of my attorneys to one practice area, they gain a very deep understanding of that area in full and are highly equipped to represent the best interests of our clients.

Disclaimer

The state bar of Georgia requires that I inform you that this book is not legal advice. I am not your lawyer. I cannot become your lawyer unless we sign a contract to retain my services. While the information in this book can detail your rights and offer suggestions, I cannot advise you on your estate planning needs specifically unless we discuss your unique situation. If you need legal advice, please contact an attorney to discuss your situation.

This book is also not a substitute for legal counsel. As I'll say frequently in the book, every situation is different. Your assets, family dynamic, and estate planning needs are unique to your family. I will always encourage you to contact an attorney who handles estate planning. This guide is just that – a guide to estate planning. It covers the basic information that every person should know when creating an estate plan.

Introduction

This is a book designed to teach you about the basic elements of estate planning. This is not a substitute for good legal advice. It is not a guide to creating your family's estate plan. There are other books out there that talk about this. I would caution you that every family is different and some estates are more complicated than others, so it's important to work with an experienced estate planning attorney to ensure that no detail falls through the cracks.

That being said, this book is designed to educate you about estate planning and eliminate any hesitation to do so. A lot of people tend to delay because they don't want to have to make difficult decisions, but by planning you can take away a lot of yours and your loved ones' stress and fear about what would happen if someone passed away.

If everyone knows that if something happens to you and your spouse or to Mom and Dad, they should go to the safety deposit box and the Will and estate plan will be there, then much of the apprehension and fear will be gone. Eliminating this fear and apprehension is key to ensuring you take every necessary step to ensure that your family is protected. If you have specific questions, please feel free to contact my office. We would be glad to talk to you.

1

Estate Planning Basics

WHY DO I NEED AN ESTATE PLAN?

There are two basic reasons a person needs an estate plan: 1) to make sure that what you want to happen to your assets after you pass actually does happen, and 2) to minimize the impact of taxes and fees on the value of your estate. All of us have probably said at some point during our lives, or know someone who has, things like, “I want Joe to have my old rifle when I die” or “I would give Aunt Susan my house since she’d get custody of my kids if I die.” Often, this is as far as people get in their planning.

So, what happens when you pass without a Will? The estate is split according to what the government decided was the best method years ago. We will discuss this in detail later on, but generally it will go to your spouse first, and then to your children in equal proportions. What if you own a house with two other people? Each person owns one-third of the property, and when you pass away either person can force a sale, or they can fight about it and do nothing while the property gets run down.

If you have children and pass away without a Will, your loved ones will have to decide amongst themselves who will get custody of your children. To top it off, your family is left having to make decisions about funeral arrangements during one of the most heartbreaking times of their lives, and I've even seen situations where they can't even buy a tombstone because they can't agree on the appropriate type.

As you can imagine, in these situations things rarely end up the way you had in mind. This is why it’s important to have a Will and name an executor who will make these final decisions. We recommend that when you are in good health and making clear decisions, come in. Let's discuss your situations and see what type of estate plan is appropriate for you so you can be comfortable knowing that your estate will be dispersed in the manner in which you would like with minimal reduction through estate taxes.

WHAT IS THE DIFFERENCE BETWEEN HAVING A WILL AND A TRUST? DO I NEED BOTH?

Generally, when I talk about estate planning it includes the formation of a trust. The primary difference between a trust and a Will is that a Will is a document that states what you want to happen in accordance with the law and breaks down the transference of your assets. What it doesn't do is *create* anything, establish a *system* to manage your estate, or protect your estate from estate and gift taxation. It is simply a set of instructions, albeit critically important ones, on how your estate shall be dispersed upon your passing.

A trust, on the other hand, is a special type of estate plan that moves a portion of your assets into an account, prior to your passing, and handles them in a continuing manner after you pass until some other pre-determined circumstances take place and the funds are dispersed. While a Will cannot protect your assets from the hefty estate and gift taxes, a trust *can* drastically reduce the amount of taxes paid by your estate. That is the benefit of a trust. There is a seemingly endless variety of trusts, so one can be created to suit nearly any situation.

The second part of this question is "Do I need both a Will and a trust?" I've never come across a situation where it would've made sense to set up a trust and not a Will, but since each family and estate is different, there *might* be some situations where this would make sense. However, I would say that for the vast majority of people, if you need a trust, then you also need a Will stating how that trust will operate.

Conversely, everyone who has a Will does not necessarily need to have a trust. If you don't have a lot of assets, if you don't have any minor children or special needs children, if you're not concerned about estate taxes or if you don't own a business, then you may not need a trust. A simple Will could serve your needs by stating your wishes regarding your children and assets after you pass. However, if any of those special circumstances I listed apply to you, then you may very well need a trust. Although many people think they don't have enough assets to benefit from setting up a trust, but even a modest estate can benefit greatly from a trust. Additionally, the *type* of assets is also a determining factor. I recommend that every person talk to a lawyer to find out what their options are and have at least some form of estate plan in place.

WHAT WOULD HAPPEN IF I HAD NO ESTATE PLAN?

I covered this briefly earlier, and I'll explain it in detail here. In Georgia, if an individual dies without a Will or a trust in place, assets pass by what is known as *intestate succession*, which is a statutory rule that establishes when and to whom your property will pass if you die without a Will. In the state of Georgia, there are many types of assets that pass outside of probate, meaning that they don't go through your Will and they aren't affected by these laws of intestate succession. Here are some examples of assets that will not pass through intestate succession:

- Any property that you transfer to a living trust;
- Any life insurance proceeds;
- Funds in an IRA, 401K or any other retirement account;
- Securities held in a transfer on death account, payable on death bank accounts, or property you own jointly with someone else. (Instead, these assets will pass to the surviving co-owner or to any beneficiary you might have named, whether or not you have a Will.)

For intestate succession in Georgia, who gets what depends on whether or not you have living *descendants* (meaning children, grandchildren, great-grandchildren, etc.), parents, or other close relatives when you pass. Here's a quick overview of how the government has determined your assets will be split up depending on your surviving relatives:

- If you pass and you have a spouse, but no children or grandchildren, then your spouse would inherit everything.
- If you pass and have both a spouse and children, then your spouse and children will equally share your property. However, your spouse's share cannot be less than one third of the total amount of your assets. Thus, your spouse's share in Georgia is going to be controlled primarily by whether or not you die leaving any descendants.
- If you pass away with parents living, but no spouse, or any children or grandchildren, then your parents would inherit everything.
- If you pass away leaving siblings, but no spouse, no descendants, and no parents, then your siblings would inherit everything.

- If you pass and have children, but have no spouse, then your children will inherit all of your property in equal distribution. For example, if you had no spouse when you passed but left three living children, each child would receive roughly one third of your inheritance. In Georgia, your children would share and share alike. However, if one of your children had passed, leaving behind your grandchildren, then your grandchildren would equally share your deceased child's portion of your assets. Thus, grandchildren share and share alike, great-grandchildren share and share alike, all of their pre-deceased parents' percentage of the intestate property.

Georgia also has other rules affecting children. The legal status of whether an adopted child, a foster child, a child placed for adoption or a child conceived by artificial insemination, or born outside of marriage are also going to have their own rules that are affected by Georgia's intestate rules governing whether or not the child will inherit *any* of your assets.

Additionally, there are laws governing whether or not half-relatives or relatives who are conceived before but born after a person dies will also be governed by Georgia's intestate rules. However, if someone dies leaving no Will or trust to pass property down and without leaving any intestate heirs, then their property will *escheat* back to the state of Georgia, meaning that the state will keep everything.

As you can see, if you pass without an estate plan or a Will, then the *state* determines what happens to your assets. The issue is that your assets will always be distributed according to the law unless you have an estate plan or a Will. Sometimes, this isn't an issue for a person. However, there are many situations where this would not be the ideal distribution of a person's assets.

For example, say you're married with two children and you own a building. If you don't have an estate plan or a Will when you pass, your spouse and children would each inherit an equal portion of your building. This means that if one of them wants to sell the building, they can force the others to do so, and there's nothing they could do about it. This is very detrimental in situations where the person who wishes to sell wants to do so in a hurry, because a quick sale of the property can significantly cut its value. In that case, not only would the other two parties be forced to sell a piece of property that they don't necessarily wish to sell, but they could be forced into selling it for much less than they could under different circumstances.

Essentially, when you pass with no estate plan or Will, the state decides how your property will be distributed based on whether you have living children, parents or other close relatives. At that point, you've lost all control over how your assets are distributed. Even if your assets aren't significant, you can benefit from some estate planning so that *you* can control how your belongings are distributed after you pass.

I'M UNCERTAIN ABOUT SHARING SUCH PERSONAL INFORMATION. HOW MUCH DO I NEED TO TELL MY ESTATE ATTORNEY?

Everything you say to your attorney is privileged information, so you can be at ease revealing personal information, such as a concern that one of your children has a gambling problem that would lead to them squandering their inheritance. That's information you should definitely share with your attorney so that he can create an appropriate estate plan that addresses all of your needs and concerns.

The biggest mistake you can make is only sharing a portion of your needs and concerns with your attorney. What I mean by that, for example, is telling your attorney that you want to have access to the money in your trust, but leaving out your concerns about your child's financial responsibility. A situation I've seen before is where a client transitions their business to their child, who then decides that they don't like the business and sells it. At that point, the business is gone because the client relinquished control to their child, which is what they thought they wanted to do, but it wasn't the plan that would've been set in place had the client shared their concerns about the child running the business. If we know the whole picture, we can create an estate plan that is unique to your particular situation.

WHAT DO I NEED TO LOOK FOR IN AN EXECUTOR OF MY WILL?

The executor is the person tasked with the responsibility of carrying out the wishes you express in your Will. When counseling clients on how to pick an executor for their Will, many people will already know who they want to choose. I always tell people that this is a big decision, and depending on your estate and the state you live in, the executor can have some personal liability when handling your estate. This means they can be sued if they mismanage your estate or don't pay the bills that need to be paid. That's important to consider.

In years past, many people would always pick their eldest child and in some cultures, there's a strong propensity to pick the oldest male child. I caution people that the age of their children is not necessarily the best way to choose who will handle your estate. Maybe you have a son or daughter who is very good at business. That might be person they should choose. Or, maybe one of your children is very kind and caring and you think they would do a better job of making sure everyone's wishes are taken care of. If you have strong feelings about one of your assets, such as a family home, staying in the family, maybe one of your children is more likely than the others to ensure that happens.

Here are some other qualities that make for a good executor:

- Honesty;
- Willingness to follow your wishes and abide by your Will;
- Authoritative personality – someone who others will listen to and whose decisions they won't challenge.
- Sense of urgency – to keep the process moving at a rapid pace.

These are all important things to consider, but the primary consideration is whether the person is going to be fair and make sure that what you wanted to happen, *happens*. Sometimes this person is a family member, sometimes it's an outside friend and sometimes it's an attorney. Rarely do I caution against using a family member. I do, however, try to impress upon my clients the importance of carefully considering who is going to be your executor. The bottom line is that you want your executor to be loyal to your wishes, and choosing the appropriate person is a big decision.

WHAT DO I DO ABOUT LIFE INSURANCE?

Life insurance generally does not go into your taxable estate, when handled correctly, meaning that it can pass outside of probate. This is important to know because those payments can be a large amount of money, and taxation would eat up a large portion of those funds. Another reason you wouldn't want life insurance money to go into your estate is because of timing. Upon your passing, your estate has to be probated and depending on the county where you live, this can sometimes be a very lengthy process. In Georgia, the amount of time estates take to probate can vary drastically by county.

When handled properly, life insurance funds will immediately go to whomever you designate and that person will immediately have access to those funds to use as they choose. Ensuring the funds pass quickly can be especially critical when the deceased was the main breadwinner or if they have a very complicated estate, such as one with a business or a lot of real property or commercial property, all of which lengthen the amount of time it takes to settle the estate and allow your loved ones to receive those assets.

2

Death Taxes

WHAT ARE DEATH TAXES?

"Death tax" is a term used to describe the federal estate tax. However, this term is sometimes used loosely as a catchall phrase to describe other similar taxes that are assessed on a person's estate. Let me clear up some of the confusion about terminology. There are three general types of taxes that can be assessed against your estate, either while doing your estate planning or upon your passing, that you should try to avoid as much as legally possible: 1) federal estate taxes; 2) federal and state gift taxes; and 3) state inheritance taxes.

Estate taxes are assessed against the total value of your estate after creditors are paid, but before any heirs receive their inheritance. This tax is paid by the estate itself.

The gift tax is a tax on the *transfer* of property by one person to another, while receiving nothing, or less than full value, in return. This tax applies regardless of whether you intend the transfer to be a gift. The federal government levies this tax, and some states do, as well.

Finally, some states levy inheritance taxes once the federal government collects estate taxes. This tax is paid by the heir. This means that an estate could be taxed twice – first by the federal government, then by the state government.

At the time of this book, Georgia does not impose any of these taxes, but I would be remiss if I didn't include these taxes in this discussion since the laws are constantly changing. The *federal* estate and gift taxes *are* assessed against the estates of Georgia residents, and we'll discuss these taxes in detail in the following sections.

WHAT IS THE ESTATE TAX?

As I stated in the previous section, the estate tax is a tax imposed by the federal government (and some states) based on the size of an estate. This includes all of the assets a person owns that must be probated at the time of their death. Now, as I've explained previously, some assets pass outside of probate. Life insurance plans, for instance, don't go into your estate when handled properly. A properly executed and documented life insurance plan is going to pass directly to the intended recipient outside of probate.

Estate taxes are assessed to any assets that exceed the federal and state tax threshold, which for 2013 is $5.25 million per person. If the value of your estate is below the estate tax threshold, then you don't have to pay the estate tax. However, the taxes can increase if you are doing any generation-skipping taxes. In other words, if the government feels like you're trying to avoid paying tax by giving things to a grandchild, they're going to tax you more.

In Georgia, the federal estate tax is what we are attempting to avoid paying when we emphasize trust and estate planning for the future. We want to minimize those taxes because they can be *very* substantial. They run at 40% for the federal estate tax, and some states assess their estate taxes on top of that.

With proper estate planning, we can help prevent your loved ones from being hit with a very large estate tax. If your estate is large enough to be subject to this tax, the government will take a substantial amount from your estate. What makes things worse is when your estate is property or a business, rather than a liquid asset, because estate taxes are due right away. Assets such as real estate and businesses take time to pass through probate or sell, so your family can find themselves in a very difficult spot.

WHAT IS A GIFT TAX?

As I mentioned, the gift tax is a federal tax on the *transfer* of property by one person to another, while receiving nothing, or less than full value, in return. The purpose of doing so is to reduce the value of your estate in order to avoid the federal estate tax. The annual gift tax amount changes from year to year.

Currently, the law states that each individual can give away up to $14,000 per year (called the "annual exclusion") to any *one* person without paying any taxes on that transference. This means that if you give $20,000 to someone, $14,000 of it is exempt from the gift tax, but you must pay the gift tax on the remaining $6,000. If assets are transferred correctly, there are ways that you can gift more than the annual exclusion, up to a certain amount, and avoid the gift tax without violating any rules.

For example, if you are married, you and your spouse could *each* give a $14,000 gift to your son without having to pay a gift tax. You could increase the amount you are able to give your son's family by then each gifting $14,000 more to your son's wife. In that way, you would be gifting a total of $56,000 to your son and his wife. A good deal of gift taxing can be avoided if the gifting is done correctly. Once again, when you are making large cash gifts or large gifts of any type we recommend you see a planning attorney so it can be done correctly because nobody likes to pay unnecessary taxes, especially when you could have just modified the method of gifting.

HOW CAN I AVOID THE ESTATE TAX?

One of the primary concerns when a person has substantial assets is how to avoid the federal estate tax. This can become a difficult matter depending upon the size of the estate. Property that is included in the value of your estate for the purposes of calculating this tax includes personal property (your home, cars, furniture, etc.); business assets (including machinery and inventory); and investments (stocks, bonds, and real property). For any assets valued over the $5.25 million exemption, those who inherit your estate will owe the tax within nine months of your death.

One simple way to cut out potential loss through estate taxation is to include certain provisions in your Will. One such provision states that if your spouse passes within a 30-day time period from the date of *your* passing, the Will acts as if they were dead at the time you passed. This prevents your estate from essentially being passed a second time during this time period so that it would only be subject to the estate tax once. Another provision states that, in the event you and your spouse pass, certain amounts are disclaimed and go to your children.

Gifting is another useful way to avoid the federal estate tax. Establishing a coordinated and sustained program gifting the statutorily proscribed monetary limit for the calendar year, you can reduce the value of your estate that is subject to the estate tax. This will help avoid or reduce the estate taxes, since the amount of estate taxes assessed will increase proportionately with the size of your estate.

A third way to avoid the estate tax is by passing some of your assets outside of probate. The primary way to do this is by establishing various trusts prior to your passing. A properly set-up trust can transfer some of your assets outside of probate, and anything passed outside of probate is not subject to the federal estate tax. Those assets can be life insurance proceeds, payable on death accounts, a joint tenancy with right of survivorship on a deed, or bank accounts. Additionally, I previously mentioned earlier that you could add your intended heir’s name to your bank account(s) so that those accounts aren’t probated.

Which method, or combination of methods, is used to avoid the estate tax depends on the size and nature of your estate. It’s just a matter of doing early estate planning to protect your assets. The complexity of the estate plan is going to depend on the size of the estate as well as whether you have children, own a business, and a number of other variables. That's why a very detailed estate plan is so important. At my firm, we closely

analyze each one of our clients' unique financial situations in order to create a customized estate plan based on their needs and desires, the specific types of assets included in their estate, and the potential federal and state taxes that could be assessed on their assets.

SHOULD I GIVE OUT GIFTS ANNUALLY?

I am sometimes asked this question by clients who are concerned about reducing the value of their estate by gifting to their children or grandchildren. If you have a large estate, we would definitely recommend gifting annually, and the reason this is beneficial is the very reason my clients are wary of this form of transference – to reduce the value of your estate. If you have more assets than you are going to need during your lifetime and you're not worried about maintaining access to the money, then gifting is a very simple and cost-effective method of reducing your estate. When I say cost-effective, what I mean is that as long as you're below the annual exclusion that I discussed previously, the cost involved is the cost of having your accountant fill out a form. It doesn't include any costs that are associated with other methods of reducing an estate, such as setting up trusts and paying monthly maintenance fees.

A situation where you would not want to do that is when you are concerned that you might need the money and it wouldn't be there. When dealing with this situation with my clients, the decision to gift generally depends on the financial responsibility of the person to whom the client wishes to gift and whether or not the client thinks the person is likely to hold the money in an account. If you think you may need the money at some point and believe your child or their spouse might not hold onto it or might not be willing to give it back to you, then gifting annually would clearly be a bad idea and we would need to consider other trust or estate planning options.

3

Guardianship

WHAT WOULD HAPPEN TO MY KIDS IF I DON'T HAVE A PLAN?

Many parents take for granted that they will always be there for their kids. They make plans for how their kids will be raised so they will turn out to be responsible, well-rounded, self-sufficient adults. However, planning for your children in the event that you weren't able to be there for them is often overlooked. Many people assume that their family members will step in and be there for their kids, and that they'll raise them in generally the same manner as if they were raising them themselves. After all, who knows you better and would want to make sure your wishes are met than your family? I've seen firsthand that this kind of thinking can have very detrimental effects on a person's kids and family relationships.

So, what happens when there is no plan in place? Typically, the authorities will become involved. Most parents these days are not able to be with their children at all times, whether it be because their kids are at school, a babysitter's, a daycare center, with family members, or older children who are home alone. If you and your spouse were to pass unexpectedly and not come home or not show up to pick up your kids, the person caring for them would, after calling you and your emergency contacts, have no choice but to contact the authorities to let them know that something is wrong.

Without any legal documentation telling the police who you authorize to take custody of your children, they have no choice but to place them in the hands of social services. A lot of parents think providing schools and daycare centers with a list of emergency contacts gives those facilities authority to *release* their kids to the emergency contacts, but they are wrong. Those lists only give the personnel authority to *contact* those individuals.

This means that your children will be placed with strangers while undergoing one of the most traumatic and stressful events in their lives, and they'll remain there until a judge makes a ruling on who will get custody of them. Obtaining an initial ruling on a short-term guardian can sometimes take weeks, and then your children will have to wait again for weeks or even months for a judge to make a ruling on who should get custody in the long run. If there is any dispute amongst your family members about who should get custody of your kids, this process can take even longer.

If your kids have any allergies or special medical or emotional needs, those needs will likely not be known and your children may not be able to communicate those needs themselves. If they have a medical emergency while in the care of social services, the

social workers will have only the authority to administer first aid and cannot authorize any serious emergency medical procedures. If your children have any security items that you know would help them during this time, such as a special blanket or stuffed animal, they may not have that much-needed source of comfort during this time.

Clearly this is not a situation parents would want to subject their children to, but by not planning for the unthinkable, this is a very likely possibility. By not having a plan, those important decisions about who should raise your kids and what values you want them raised with are left up to chance. For parents, the most important "possession" is their children, and their happiness, safety, and sense of security are too precious to leave up to chance.

SHOULD I PUT MY KIDS' NAMES ON MY CHECKING ACCOUNTS? WHAT HAPPENS IF I DO?

This is one of the more common questions I am asked, and it's one that has a fairly simple answer. Many of my clients have told me that, as they've gotten older, they've considered simply adding their children to their bank accounts as a quick, easy way to give their children access to their liquid assets. One benefit of doing so is that the accounts will pass outside of probate and go immediately to the children because their names are on them.

However, the downside is that if you want your account to be split between three children and you only put one child's name on the account, guess what? It doesn't get split three ways. It goes right to the one child, who may or may not share the money with the other children. Even if you were to put all three children's names on the account, one child could easily go withdraw all of the funds at any point.

Another problem is that by adding your child to the account, they are a legal owner of that money and can withdraw it whenever they want prior to your passing, which may or may not suit your needs. Also, this method of transferring your assets may not protect them from Medicaid "look-back" provisions. I'll explain how those work later on. As you can see, adding a child's name to your bank accounts may suit your needs under certain circumstances, but there are many alternate estate plans that are much more likely to give you stable, guaranteed results.

IF MY CHILD GETS A DIVORCE, WILL THE EX-SPOUSE GET PART OF MY ESTATE WHEN I PASS?

The short answer is that it's going to depend on the community property laws in the state in which your Will and estate are probated. This could very well be a possibility, but it can be prevented with proper planning and a well-crafted Will. A situation more likely to cause a portion of your estate to go to your child's ex-spouse is if your child passed after getting a divorce, leaving your grandchildren to the ex-spouse. If you then pass, any portion of your estate that would've gone to your deceased child would then go to your grandchildren, and if they are minors, it would in effect go to your child's ex-spouse. This scenario sounds uncommon, but it happens more often than you would think, and it's just another example of why estate planning is so very important.

We always remind our clients when preparing their Wills that they must come back and see us in the event that they have any major life changes so that we can update their Will accordingly. It's generally a very simple process that involves changing some names and reworking a few documents. It's unlikely that we'll have to draft an entirely new Will. I've found that people would always rather have their Will adjusted before there is any kind of issue, because those issues can become very expensive and drag out a very painful process for your loved ones once you've already passed.

4

Trusts

WHAT IS A TRUST AND WOULD I WANT ONE?

A trust is a type of legal entity that you create to handle very specific situations, typically when you have money that you need to set aside for someone but either aren't yet ready for them to have the money or they legally they can't have it yet. For example, you would establish a trust for an 11-year old child so that if you pass away, your life insurance proceeds would be paid into the trust for safekeeping until the child reaches an age which you previously determined, rather than going directly to the minor child.

Then, you will choose a responsible adult, called a trustee, to manage that trust. The person could be your attorney or a person in your family. We generally do not act as a trustee for our clients, but that can be done if you really trust your attorney. I have also seen clients choose a specific person at a bank, though banks will charge a monthly fee for this service.

What most of our clients do is choose someone in their family who is very financially responsible to be the manager of the trust. We normally recommend you pick a very responsible family member or friend to manage the money. This does not always have to be the person who is going to maintain custody of and raise your children. I've seen situations where one family member is very good with money and the other one is very good with children, so my clients have given each person the responsibility that best suits them. This can be done quite successfully and is fairly simple to set up with the proper documentation.

While most people think of situations such as the one described above when they think of trusts, it is by no means the only reason you would ever need a trust. A major function of trusts is to protect portions of an estate from the hefty estate and gift taxes. To that end, there are a variety of trusts, including revocable trusts, irrevocable trusts, Q-tip trusts and trusts from which you can remove your money if something comes up. For example, a person can place their assets into a trust when they get older in order to earn interest to be used during their lifetime and then pass the remaining money to their children when they pass away. This type of trust is very useful in avoiding some of the estate taxes and other penalties and fees that will be assessed immediately upon your death.

There are more trusts than you can believe, each with specific functions and purposes. That's why you need to spend time setting up your estate planning and figuring

out exactly what you want so that we can use all of the tools at our disposal to meet your needs.

DO I HAVE TO BE A MILLIONAIRE TO NEED OR BE ABLE TO AFFORD A TRUST?

What a lot of people think of when they hear “estate planning” is the rich person down the road with tens of millions of dollars, and they think that’s the only type of person who would need a trust. While those people certainly need trusts, people with less substantial means may benefit from trusts, as well. We recommend that people with stable small businesses, people with minor children or special needs children of any age, and those who wish to have more control over how funds are used after their death, such as limiting their children’s access to the funds, at least talk with an experienced estate planning attorney. Generally, these people can truly benefit from establishing a trust.

Is there an income threshold where it makes more sense to have a trust? That's going to depend a lot on your unique situation, which is why you need the help of an attorney to ensure that you make informed decisions. Sometimes a simple Will can meet a person’s needs just as well as a trust could, so it’s important that an attorney analyze your assets and learn what’s important to you when planning the distribution of your estate. There is a lot of information floating around regarding the suitability of trusts to various situations. That's where you're getting the value of having an attorney who's an estate planner help you make some informed decisions that best suit your needs.

WHAT IF I NEED THE MONEY BEFORE I DIE?
HOW DO I AVOID PAYING TAXES ON IT AND STILL USE IT?

I often have clients who have had some very lean times when they were younger, have now earned a substantial amount of assets and are concerned that if they put their money into trusts or aggressively gift to their loved ones that they're going to run out of money if they fall on lean times again. This is a very valid concern and why I emphasize that correct and proper estate planning is very important and can prevent such issues.

Can we set up trusts where you maintain a great amount of control? Certainly. Are they more complicated than just making a quick decision that those assets will go to your children? Yes, this is a more complicated estate plan, but you can absolutely enjoy the tax advantages of a trust while also maintaining access to your money.

Unique trust solutions are especially useful for small business owners, people with large assets, and those whose children may not be as financially responsible as they themselves are. No two people have identical estate-planning needs. That's why it’s important to sit down with an estate planning attorney and tell them what you are trying to accomplish and what your fears and concerns are.

WILL I LOSE MY PROPERTY ONCE IT'S IN A TRUST?

Whether you will lose your property once it's placed in a trust depends on two things: the type of trust you place your property into and what you mean by "lose." There are two types of trusts – *revocable* trusts, sometimes called living trusts, and *irrevocable* trusts.

In a revocable trust, the settlor (the person who creates it) is the owner, the trustee, and the beneficiary of the trust. So to answer the question, the owner of a *revocable* trust would not lose the property because they retain title to the property, have control of and access to the property, and will receive the property when it is taken out of the trust.

The answer is a bit hazy in regard to an *irrevocable* trust. In an irrevocable trust, the settlor loses title to the property, but retains control of and access to it. Essentially, the property is no longer in your name, but you gain the protection of knowing that it will pass outside of probate and go to your desired beneficiary. If that's the goal in placing property into a trust, then you haven't really lost anything.

WHAT ASSETS SHOULD I PLACE IN MY LIVING TRUST?

Once you have created a trust for the purpose of avoiding probate (and, therefore, estate taxes) and planning for disability or elder care, you may think that you have finished with your estate planning, but you would be incorrect.

After hiring an attorney to draft the trust document and signing it, you still need to fund your trust with your assets. The need to fund the trust brings with it the common question, “which of my assets should I place in my revocable trust?” The following is a list of the types of assets that can be placed in your revocable trust. Keep in mind that to place these assets into the trust, they will need to be retitled in the name of the trust.

1. Cash accounts, such as checking, savings, money market accounts and certificates of deposit (CDs). Make sure you check with your bank concerning retitling a CD into a revocable trust, because several banks may view this as an early withdrawal of the CD funds, subjecting the funds to penalty. If your bank views retitling this way, you will need to wait until the CD matures before retitling it into your trust.
2. Non-retirement Investment Accounts, which include any accounts you hold in your own name, jointly or as a tenant in common. Nonqualified annuities can also be retitled to your trust. This does not include retirement investment accounts like the common 401(k), IRA, 403(b) or qualified annuities. If you were to place these types of retirement investment accounts into your revocable trust for tax purposes, the transfer would be viewed as a complete withdrawal of funds and would be 100% taxable as income for the year of the withdrawal.
3. Business interests, including stock in privately held corporations, membership in limited liability corporations, and partnerships (either general or limited). Be aware, however, that restrictions on or exact procedures for the transfer of your business interests may be dictated by any written legal document governing your particular business, be it a partnership agreement, a shareholder agreement, or some other type. These procedures and restrictions must be followed to ensure that the interest is retitled into the trust in a valid manner.
4. Real estate can be titled into a trust. However, you must record a new deed in the county in which the property is located.

5. Money owed to you in the form of secured and unsecured loans you have made to other individuals or businesses.
6. Stocks and bonds held in certificate form may be transferred to a revocable trust. You must, however, return the stock to a stock transfer agent who will issue new certificate for a percentage of the stock value. It may be more advantageous, for this reason, to deposit your stock into a brokerage account that is titled in the name of the revocable trust.
7. Tangible personal property, including clothing, jewelry, furnishings, household appointments and art or memorabilia collections, personal vehicles, firearms, and livestock may all be used to fund a revocable trust and avoid probate transfer.
8. Royalties, copyrights, trademarks and patents, and oil, gas and mineral rights are all assignable or can be retitled into a revocable trust.

As you can see, you can put nearly any asset in a trust, so the possibilities are almost endless. What you choose to place into your trust depends heavily on the composition of your estate. For some people, it may make sense to place all of their investment accounts into a trust (or even multiple trusts), while others would benefit more greatly by putting the title to their home in the trust. This is why it's so important for people to consult an experienced estate planning attorney, because they can tell you what would work best for you and what the various tax implications are for the options that are available to you.

DOES A REVOCABLE TRUST REDUCE MY INCOME TAX LIABILITY? WILL I LOSE CONTROL OVER MY PROPERTY ONCE IT'S IN A REVOCABLE TRUST?

A common misconception about the functions of trusts and estates is that all trusts will reduce the settlor's income tax liability. In Georgia, this is absolutely incorrect. A revocable trust will not affect the income tax liability of the settlor, because in a revocable trust, the settlor retains ownership and control of the property placed in the trust. Thus, many of the great advantages of having a revocable trust, such as retaining power and control over the property, retaining access to your property, and maximizing adequate management of the estate during your lifetime, are only offered through the trust because the settlor retains all ownership and control over the trust property.

In essence, it takes three parties to create a trust: 1) the settler, or person who creates the trust; 2) the trustee, or person who controls, maintains and administers the trust; and 3) the beneficiary, or person who benefits from the trust by acquiring ownership or use of the trust property. In a revocable trust the settlor assumes all three roles and, therefore, retains all ownership of the trust property. As a consequence, any income derived by the trust property is taxable as income to the settlor.

Since, in a revocable trust the settlor also acts as the trustee, they do not relinquish any control at all over their property used in funding the trust. The settlor has the power to change, modify or even cancel the terms of trust, which is why this trust arrangement is called a "revocable" trust. An "irrevocable" trust, however, does not allow the settlor to assume all three positions in the trust relationship, and as such, the settlor is relinquishing control and ownership of their property by placing their personal assets into this type of trust. Irrevocable trusts can be extremely advantageous in Medicaid and elder care planning scenarios.

WHO SHOULD I CHOOSE TO BE A TRUSTEE?

Who you choose to be your trustee is a critical decision that *you* need to make. The trustee is not always going to be the guardian of your children nor the executor of your Will. The trustee is simply going to be a trusted person who you know will help manage those assets in an appropriate manner. Sometimes, your choice of trustee is going to depend on the type and value of your assets.

For instance, if you had multiple pizza restaurants, I would hesitate to place a person who had no business background as my primary trustee. Personally, I'm not good at operating a restaurant, so if I was named as a trustee I would actually have to pay someone else to help me manage that trust. For that reason, I would not be an ideal candidate. You would benefit most from having a person with a background in the restaurant business handle your trust. If no such person can be found, you should then look to people who are in a situation where they could appoint other people to help them manage your affairs.

The main thing you're looking for in a trustee is a person with the ability to handle your matters responsibly, who will use your assets to do what you want them to do and who will maximize the value of those assets to make sure that they're not left idle to get slowly reduced over time due to fees, expenses, or taxes. Picking a trustee is a huge and critically important decision that you need to make based on intelligent, informed choices, rather than just picking someone you like or because they're your family member. You need to carefully select somebody who you trust to do what you need them to do, preferably someone who you’ve known for quite some time.

CAN THE SAME PERSON BE THE EXECUTOR, GET THE KIDS AND MANAGE THE TRUST?

As stated in the previous section, the trustee is not always going to be the guardian of your children or the executor of your Will. This does not mean that the same person *cannot* fill all three roles. In fact, it's actually quite common, especially among younger married couples with children. They can choose to designate the same person to be the executor, to have custody of the children, and to manage the trust that was set up for the benefit of the children.

However, I always caution my clients against this arrangement, because sometimes it's a great plan and sometimes it's an absolutely horrible plan. It just depends on the amount of money you are setting up in the trust and who the people are. We caution clients that it is critical to select the right people or the right person for each job, and if that is all the same person, then it makes it easy. If they are not all the same person, just designate that in the Will. Don't feel any obligation to make the person who gets custody of the children also be in charge of managing the money. I've seen many situations where this would be a very bad idea.

For example, Aunt Susie and Uncle Ben are great family people who are wonderful with their own children and you think they'd be wonderful to raise your children. However, they're irresponsible when it comes to finances and they seem to just barely scrape by month to month despite earning a decent living. If you have a $2,000,000 life insurance plan, it wouldn't be the wisest choice to appoint them as your trustee because that life insurance money could easily be gone by the time your children turn 18 years old. Clearly, this is a situation where it'd be better to give Aunt Susie and Uncle Ben custody of the children, but have someone else actually manage the trust. This way, Aunt Susie and Uncle Ben would need to submit a request to the trustee to get funds paid to them, which would guarantee or make it much more likely your children will have funds from the trust when they get older.

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Elder Care Planning

MY SPOUSE WILL NEED MONEY TO BURY ME. HOW CAN I PASS ASSETS OUTSIDE OF PROBATE?

We always recommend to our clients that they have some assets designed to pass outside of probate so that they won't get held up by the courts and that money is immediately available. I previously discussed passing assets outside of probate for the purposes of avoiding estate taxes. In this case, we would want to pass assets outside of probate for the simple fact that your loved ones will need the money immediately in order to pay for funeral arrangements or for other immediate needs they may have.

The passing of assets through probate can take some time to finalize, especially if there are more complex assets to pass, such as a business. It may take quite a bit of time before your spouse can sell your business or get it back to a productive use and positive cash flow. The same goes with real estate – these types of assets take time to liquidate. Therefore, it's important to have assets set up in a way that can quickly pass to your spouse outside of probate.

One of the most common types of assets that can pass outside of probate is a joint bank account. If your intended recipient is named on the account, there would be no need to probate that asset upon your passing. Your spouse or children could immediately have access to that account because it belongs to them. There are other types of accounts, such as Payable-On-Death accounts, that are set up so that when you pass they immediately are paid to whomever you designated. I generally recommend, however, adding your loved one(s) to a joint account for the purpose of allowing them access to funds for immediate use after you pass away. This is the simplest, cheapest, and most fail-proof way to ensure they get the money right away.

WHAT ABOUT MEDICAID AND ITS EFFECT ON MY ESTATE?

When I'm asked this question, what the person is primarily concerned about is the Medicaid look-back provisions. Medicaid eligibility depends on the value of your assets and your monthly income. If those exceed certain limits, you won't qualify for benefits. As of 2013, the income limit in Georgia is $2,130 per month. To some, the obvious answer is to give away some assets so that you can qualify for benefits, but the look-back provisions were created specifically to restrict these "fraudulent" transfers by imposing harsh penalties on the person applying for the benefits.

Here's how the penalty works: any asset transfer over a certain amount that occurs within the look-back period triggers a "transfer penalty," which is a time period during which you are ineligible for Medicaid. In Georgia, during the *five years* prior to your application for benefits, for every $5,000 that you transfer out of your estate, the penalty imposed by Medicaid is a 3 month delay in your ability to receive benefits. Now, this only applies to gifts, and not the sale of property for its fair market value, because in a sale your estate still holds the value of that asset regardless of the fact that it's now a liquid asset.

If you don't foresee needing Medicaid benefits for quite some time and you only have a small amount of assets, then gifting to reduce your estate may be beneficial. However, if your estate is of any substantial value or you think you may need benefits fairly soon, there are other options available to you outside of gifting, such as establishing a trust.

Another function of the look-back provisions is to allow Medicaid to look back at your estate after you pass to determine whether they missed any assets that would've prevented you from receiving benefits. If they find anything, they can seek reimbursement out of your assets for those final years' expenses, which can sometimes lead to substantial estate recovery that will eat up the monetary assets that you leave for your loved ones. Proper Medicaid planning can protect your family home from estate recovery and allow you to leave an inheritance to your family.

WHAT IF I GO INTO A NURSING HOME?
WILL MY FAMILY LOSE EVERYTHING?

A common concern of my clients is being able to afford a nursing home without reducing the inheritance they'll be able to leave for their loved ones. It's not uncommon for the cost of living in a nursing home to be as much as $5,000 to $8,000 or more every single month, and if you have any kind of serious illness that requires hospitalization or treatment in the emergency room, those bills can quickly climb up to $100,000 or more.

When clients ask this question, what they're concerned about is the second function of the look-back period discussed in the preceding section – Medicaid's ability to seek reimbursement out of your assets for benefits paid. I've seen many situations where people have gone into nursing homes, which are notoriously expensive, and then after they passed away Medicaid sought reimbursement from the person's loved ones and took a lot of their inheritance from them. This is why thorough estate planning is so important.

If you plan accordingly and set up trusts or other suitable forms of transferring your assets, you can help protect those assets from Medicaid estate recovery. By doing so, you're not doing anything wrong; you're exercising the proper planning procedures of transferring those assets prior to your death and prior to the time frame covered by the look-back period. The government is aware that people do this type of planning and is fine with these valid transferences. What they won't allow, however, is an abrupt transference of assets during the look-back period in an effort to avoid Medicaid's recovery of those assets after your death.

These issues are why we recommend estate planning when you are in good health, rather than waiting until you are ill and need to receive benefits and are forced to await the expiration of the look-back period in order to preserve your assets for your loved ones. When estate planning is done early, you will have more options available to you. We still do everything we can to help those who are in difficult situations because of a lack of planning, but our options are much more limited and there's only so much we can do in those situations. That's one reason why it's critical to make these plans and to set things up while you're healthy.

IF I RECEIVE MEDICAID BENEFITS, WHAT CAN I DO TO ENSURE THAT MY SPOUSE GETS TO KEEP OUR HOUSE AND MONETARY SAVINGS?

For my clients who wish to apply for Medicaid benefits but make too much money to qualify, I generally recommend creating a trust. There are a number of ways a trust can be set up depending on your needs. Sometimes you retain control; sometimes you do not.

In this situation, I would recommend creating an Irrevocable Qualified Income Trust (QIT), which is also known as a Miller Trust, in order to lower the assets that can be considered in Medicaid eligibility. This type of trust involves creating a legal document and a QIT bank account to hold your chosen amount of assets. Any money that you deposit each month into that account does not count when determining your eligibility for Medicaid. If your monthly income is over the current limit of $2,130, then you must deposit the excess amount into the QIT account in order to maintain Medicaid eligibility each month.

Medicaid laws are extremely complex and constantly changing. That's why it's important to consult an estate planning attorney if you think there's any possibility that you could receive these types of benefits in the future. It's wise to plan for Medicaid now rather than waiting until you're very ill and need benefits in order to receive medical treatment or go into a nursing home, because the time period covered by the look-back provisions can cause a substantial delay in your receiving the treatment and care that you need.

You definitely don't want to be in a situation where you truly need to be in a nursing home or assisted living community, but instead are trying to hold out at home until that look-back period expires in order to save assets for your spouse or children. Proper estate planning with an attorney experienced in elder law can help prevent this situation altogether.

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Creating Your Estate Plan

USING LEGALZOOM OR A CHEAPER LAWYER VERSUS AN EXPERIENCED ESTATE ATTORNEY

One of the questions a lot of clients ask is, “what's the difference in working with an experienced estate planning attorney and using websites like LegalZoom.com to create my Will?” The key difference is the amount of planning involved when using an estate planning attorney. Websites such as LegalZoom.com are going to give you a Will that is generally very basic. If you don’t have a lot of assets, don’t have children, or don’t need any kind of complicated estate planning, it very well might suffice for you and your individual needs.

Complex Estate Plans Need an Expert’s Guidance

I tell people that if they have minor children or an adult special needs child, or own substantial assets, a lot of guns or a business, then they should work with an estate planning attorney to establish a more complex plan in order to adequately protect their family in the even that they pass.

I listed owning guns above because even something seemingly so simple can have serious consequences for your loved ones after you pass. If you create your own Will and state that you want your guns to go to your brother, but you are unaware that the laws changed in his state and he subsequently is charged with a felony offense, you can unknowingly void some clauses in your Will. This is just one example of where using a cheaper attorney or creating your own Will would leave you with a document that is ineffectual.

LegalZoom Gives You Only a Will

LegalZoom.com or similar websites are not going to go through *all* of the options to suit your unique situation, such as establishing medical powers of attorney or designating a specific doctor to be consulted in the event you are incapacitated. Throughout this book, I’ve discussed various types of trusts and how you can benefit from them. With LegalZoom.com, you’ll also miss out on the benefits of having trusts. You’ll simply have a Will, and it may very well be one that doesn’t actually meet your needs.

Your Will Could be Ineffective if the Law Changes

If there are changes in the law, a good estate planning attorney is going to reach out to you and let you know how they are going to affect you, and whether your Will or trust needs to be reworked. If you have any major life changes, an estate planning attorney will know exactly what changes need to be made to your estate plan in order to best protect you and your assets.

Small Business Owners Have Unique Needs

A lot of small business owners think that, since their business is not that big they can create their own Will on one of these websites and their estate will be handled as they wish. Well, as I discussed in detail earlier, your small business may have more value than you think. If you bought your own building 15 years ago, that building is an asset of your company and it very well may be worth half a million dollars or more. Or, you may not realize the small business transitions that need to take place if one of your children worked in the business for years and years. If you don't designate the transference of your business specifically and in detail in your Will, then your three children may fight over it and the child who has been working in the business for years is in a position where they're going to have to sell it because they can't afford to buy out your other children.

Why You Shouldn't Use a Cheaper Attorney or General Practitioner

When looking for a lawyer for estate planning, a lot of people want to know why they need one who practices only in estate planning – can't all lawyers draft Wills? The answer is, yes, almost all lawyers can draft Wills. The real question is "*should* they do Wills?" If your attorney is a general practitioner who does just a little bit of everything and you only require a very simple Will, then a general practicing attorney might be fine for your situation. However, if you need more complicated estate planning techniques, I would recommend you see somebody whose practice is focused on estate law. Obviously, the more complicated your situation, the more reason for you to hire an expert who knows the area of law *inside and out*.

Basically, the primary thing you need to remember is that with an estate planning attorney, you get *planning*. An attorney can discuss all of the documents and planning techniques to determine what options are available to you; make sure that what you *think* you need is actually what you do need; and ensure that the appropriate steps are taken so that it happens.

DO I NEED YOUR SERVICES?

When people contact me and ask if they need an estate plan or help getting through the tax implications affecting their assets, I have to first gather a lot of information about their situation, because as I said in the preceding section, there are times when the answer to this question could be, “no.”

If you're a single person with a small amount of assets and you don’t mind everything going to your parents or a sibling, I would hesitate to prepare a more complicated estate plan when a simple Will may very well suit your needs. If you are a young couple with two children, you don't need a very complicated estate plan, but I would almost always recommend that you have a Will as well as a trust for your children so that they have the protection in case something happens to both of you. This is not an extremely complicated plan, but it is something that an attorney would need to create.

If you own a business, have substantial assets, have minor children, or simply want your assets dispersed in a particular manner, then you have more complicated estate planning needs and should absolutely seek the help of an experienced estate planning attorney. This is something that we would definitely be able to help you with. One of the things I truly hate to see happen is for someone to build up their estate for decades but have no plan in place because they seem to think they’re going to live forever.

This almost always ends badly when they pass because it’s extremely unlikely that what they had in mind for their estate will happen. More often, the transference of their estate is in a state of chaos, and then the personal lives of their loved ones are in chaos as well. This just creates one big mess. Sometimes, that big mess is the ruin of a person’s business because their surviving spouse and children don’t know anything about the business. Sometimes, families suffer irreparable damage as a result of fighting over who gets custody of the kids or who should get the business.

The last thing any of us want is for our loved ones to have to juggle everything and suffer unnecessary stress and heartache after you die. This is already a time during which they’re overloaded dealing with the loss of the loved one. Seeing people have to make so many difficult decisions because somebody didn’t take the time and energy to set up a well-thought-out estate plan is truly a sad thing. That’s why the answer to whether someone needs our services, more often than not, is an unequivocal, “yes.”

Glossary

- **Fiduciary** - An individual, bank or trust company that acts for the benefit of another. Trustees, executors, and personal representatives are all fiduciaries.
- **Grantor** - (also called "Settlor" or "Trustor"). An individual who transfers property to a trustee to hold or own subject to the terms of the trust agreement setting forth your wishes. For income tax purposes, the same term is used to mean the person who is taxed on the income from the trust. Confusing, but different concepts.
- **Testator** - A person who has made a valid Will (a woman is sometimes called a "testatrix").
- **Beneficiary** - A person for whose benefit a Will or trust was made; the person who is to receive property, either outright or in trust, now or later.
- **Trustee** - An individual, bank or trust company that holds legal title to property for the benefit of another and acts according to the terms of the trust. This can be confusing in that you can sometimes be both a trustee and a beneficiary of the same lifetime (inter-vivos) trust you established or a trust established by someone else for you at their death (testamentary trust).
- **Executor** - (also called "personal representative;" a woman is sometimes called an "executrix"). An individual, bank or trust company that settles the estate of a testator according to the terms of the Will, or if there is no Will in accordance with the laws of the decedent's estate (intestacy), although a person acting in intestacy may be called by a different name, such as administrator.
- **Principal** and **Income** - Respectively, the property or capital of an estate or trust and the returns from the property, such as interest, dividends, rents, etc. In some cases, gain resulting from appreciation in value may also be income.