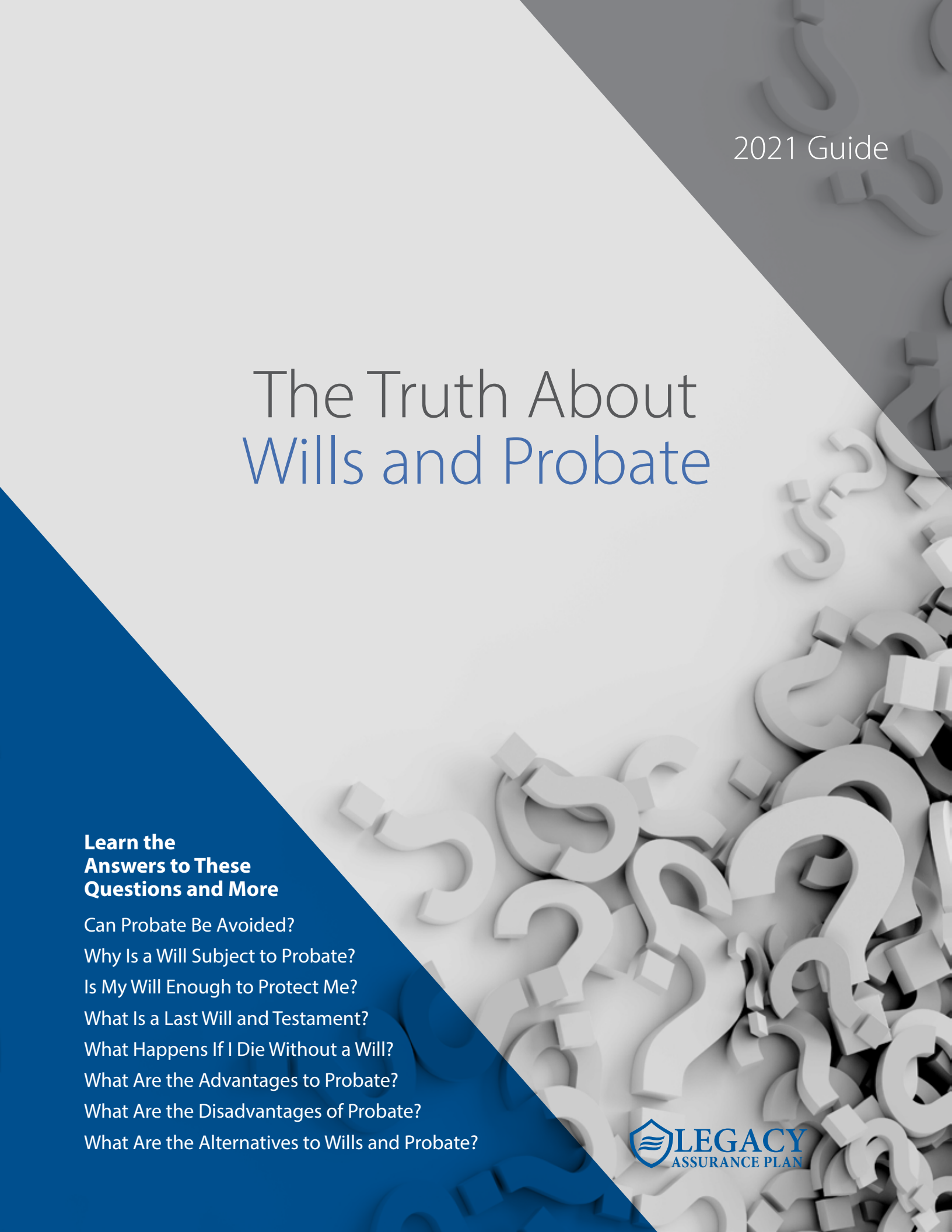
2021 Guide

The Truth About Wills and Probate



Learn the Answers to These Questions and More

Can Probate Be Avoided?

Why Is a Will Subject to Probate?

Is My Will Enough to Protect Me?

What Is a Last Will and Testament?

What Happens If I Die Without a Will?

What Are the Advantages to Probate?

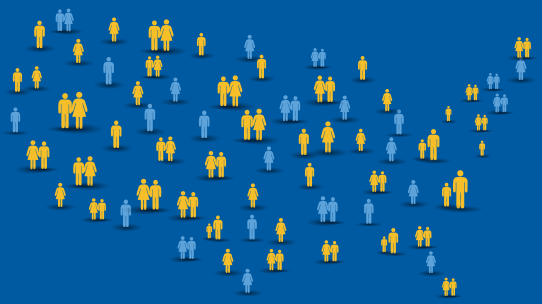
What Are the Disadvantages of Probate?

What Are the Alternatives to Wills and Probate?

LEGACY ASSURANCE PLAN

Nationwide approximately **60-70%** of Americans have

No Estate Plan



If you are one of the 30-40% who do have an estate plan, chances are, you only have a simple Last Will and Testament. You might also believe that your will is sufficient for your situation, but is a simple will really enough? Worse yet, if you are one of the 60-70% who have no plan, where does that leave you?

In this booklet we will give you a true, in-depth look at both of these scenarios, and the processes involved, along with the advantages and disadvantages of each.

What Is a Last Will and Testament?

A Last Will and Testament is a formally executed legal document which outlines the distribution of your estate at death. Its primary function is to make your wishes known about who should get what, and when, in the event of your death. You can also designate your preference for a guardian, if you have a minor or adult disabled child in your care.

In your will, you name someone as your Personal Representative, who will manage your estate, once appointed by the Probate Court. Your Personal Representative is responsible for gathering and securing your assets, paying any outstanding debts, such as mortgages, credit cards, taxes, utilities or other liabilities and filing various reports with the Probate Court.

Once your debts are paid, and approval is received from the Probate Court, your Personal Representative distributes the estate's assets to your beneficiaries in accordance with your instructions as set forth in your will. This process is supervised through a legal process called Probate.

What Happens If I Die Without a Will?

If you die without a valid will, by default, the state provides one for you. Every state has a statute of "descent and distribution" (also called intestate statutes) which creates a "will" for you. These statutes determine how your estate is distributed should you fail to execute a valid will prior to your passing.

The Probate Court appoints an Administrator for your estate, from a list of preferred people listed in the statute. Exactly "who" is selected is based on their relationship to you, their willingness to serve and sometimes their character. The Administrator has the same duties as a Personal Representative, except that the statute, and not your will, determines how your assets will ultimately be distributed.

In an intestate scenario, your assets are generally distributed to your nearest surviving relative(s). These statutes are very inflexible and do not typically reflect what a decedent would have otherwise chosen in their will, had they signed one.

Incredibly, intestate seems to be the preferred method of distribution for most people (60-70%), which is likely due to simple procrastination. However, it's important to realize that intestate

is also the most expensive way to leave an inheritance. That's because, without any clear direction (via your will), the decedent's true intention is left unknown and often difficult to prove. This leaves an estate open for contest by anyone who might seek to challenge its outcome. This, of course, can lead to the expense of litigation.

What's more, when a person dies intestate, the statute generally requires that their estate's Administrator file a Surety Bond. This insures that the Administrator does not mishandle or abscond with assets from the estate, which are under his or her care. The requirement for a Personal Representative to file a Surety Bond is often waived in a will, but in the absence of a will, as with intestacy, it's generally a mandate.

The cost of Surety Bonds often depends on factors such as the size of the estate or even the credit worthiness of the Personal Representative applying for the bond. These bonds range widely in cost, but often cost 1% to 2%, or more, of the required bond amount. This, among other things, is why an intestate estate can be far costlier than those where the decedent left a valid will.

> *"Estate Planning not only can allow you to avoid intestacy, but if done properly, can also allow you to avoid probate entirely."*

What Is Probate?

Probate is a legal process of proving a person's will to be valid and supervising the distribution of the estate's assets. The word probate is derived from the Latin verb "probatio," which means to prove. A common misunderstanding about a will is that, by having one, your estate will avoid probate.

However, the exact opposite is true. In fact, all wills are subject to probate, period. That's because the very purpose of probate is to prove the validity of the will and to supervise the process of distributing estate assets. Again, a will does not avoid probate, it actually invites probate given its need to be proven valid.

As part of the probate process, your Personal Representative, along with his or her attorney, will petition the court to prove the validity of your will. If proven, the Probate Court will supervise a series of legal processes leading to the ultimate distribution of your assets.

The exact probate process varies from state to state, but may include some or all the following:

- Issuing Public Notice of Petition / Estate being opened
- Mailing notices to persons entitled to receive notice (including known creditors)
- Obtaining and filing a bond (in certain circumstances)
- Preparing an inventory of assets and filing reports with court
- Obtaining appraisals for certain assets to establish value, if necessary
- Paying expenses
- Paying off debts
- Filing tax returns
- Filing accounting records with the court (in some circumstances)
- Petitioning the court for approval of final distribution of assets
- Filing declaration for final discharge (closing the estate)

In the final step of the probate process, the Personal Representative, along with his or her attorney, will file a petition with the court requesting approval for final distribution of the remaining estate assets. Once approved by the court, the estate's assets are then distributed to the named beneficiaries. Afterward, something called a Declaration for Final Discharge is often filed with the court to request the closing of the estate.

If for any reason your will fails to be proven valid, either due to a failure to include certain required provisions (which is often the case with do-it-yourself kits) or because it was written in another state, or improperly executed or as a result of litigation, intestate statutes will apply to your estate to determine how your assets will be distributed. Interestingly, in approximately one-third of all will contests, the distribution set forth in the will is either modified or the will is completely invalidated.

Knowledge Block

Go to legacyassuranceplan.com/probate to learn more about your state's statutes on the probate process.

Why Is a Will Subject to Probate?

Every state has a statute requiring wills to be probated to have legal effect. The purpose of probate is to prove that your will was valid and to supervise the process of distribution. These statutes expressly provide that a will cannot transfer title to your assets without first being probated. In summary, in order to be effective, state law requires that your will be probated.

What Are the Advantages to Probate?

While probate can be a complicated and lengthy process, it can provide certain advantages other than simply distributing or retitling a decedent's assets. For example, probate can limit the time for creditors to file claims against the estate. It can also provide a public forum for creditor disputes, should they arise. In addition, probate provides your beneficiaries with clear title to your assets.

That said, these advantages may or may not benefit your heirs directly. Whether they will depends largely on your individual circumstances. Therefore, they should be carefully weighed against the possible disadvantages of probate, should you choose a will as your preferred method of estate distribution.

What Are the Disadvantages of Probate?

While many in the legal profession would have you believe that probate is a fundamental and necessary part of the overall estate distribution process, others would argue in opposition, citing that probate should be avoided at all costs and that it's outmoded, slow, expensive and simply unnecessary.

Here Are the Top 5 Reasons Why

Reason #1: The Cost

Probate can be expensive, but exactly how expensive is nearly impossible to know upfront. That's because no one knows when they will die, what their estate's value would be at the time, whether someone will contest the distribution of their estate or even what type of fee arrangement might be negotiated between their Personal Representative and the attorney representing the estate.

On the surface, a will may appear to be less expensive than the alternatives, but is it? When crafting a will, it's important to realize that setting up the will is only half the process, probating the will (which is required by law) is the other, and without question, the more expensive of the two processes.

That's something your attorney might not want you to know or even discuss with you when initially setting up a will, so be sure to ask! Rarely, if ever, would an attorney include the cost of probating a will when initially setting it up. The true cost of a will can only be known after it has been probated. This means that the person who set it up will likely never know the total cost.

Nationwide, the average cost of probate ranges from 3-8% of the gross value of the estate, including legal fees. That means that if a person's probate estate was valued at $300,000, it wouldn't necessarily be out of line to expect the total of attorney's fees, court costs and other expenses to range between $9,000 and $24,000.

What determines the difference in these costs depends largely on a variety of circumstances. In other words, did the person die with or without a will, did anyone contest the estate, how large was the estate or even what was negotiated between the Personal Representative and the attorney probating the estate?

Again, there is no way to know the exact cost of probate until after it's complete, and there are an infinite number of potential outcomes that could affect the cost. The only certainty about the cost of probate is that if you can find a way to avoid it, there is no cost.

Reason #2: Delay

Another disadvantage to probate is the delay. State statutes dealing with that issue vary dramatically. For example, certain states require that the earliest time in which probate can be completed is 60 days, while others require as much as six months. This gives creditors ample time to file and prove claims against the estate. And, rarely, is probate ever completed within the statutory minimum time frame.

Frequently, the overall probate process will take between one and two years. The actual time it takes to complete probate depends on several variables. The distribution of the estate's assets cannot be completed until the probate process is completed.

This means that even if you pass leaving a will which specifically states who you want to receive your property, that property cannot be released to

them until after all creditors and other claimants have had the opportunity to file claims against the estate and receive payment. This includes all court costs and attorney fees. Only then can the remaining funds (the net estate) be released to your beneficiaries.

Reason #3: Publicity

Another common concern related to probate is publicity. It's not unusual for certain information such as your driving record, credit score and other information to be publicly available. That information is widely used for marketing purposes by retailers, insurers and other marketers.

However, how would it make you feel knowing that anyone who wanted access to vital information related to your estate, such as its value, the names of your beneficiaries, or even how much those beneficiaries received, was sometimes readily available to anyone who sought that information?

Believe it not, for probably less than $5, it may be possible to get that information from the county Probate Court. In the wrong hands, that can make your beneficiaries an easy target for a would-be financial predator or identity thief. (Many states have significantly reduced the amount of information in probate files in response to identify theft concerns.)

Reason #4: Lack of Control

While the cost, delay and publicity can all be concerns related to the probate process, none is quite as concerning as the overall lack of control and general hassle which must be endured by your Personal Representative.

Even though you may have named your son or daughter as Personal Representative under your will, if they have to file a formal petition to be granted that authority, which they do, either with the court or even with the beneficiaries in certain instances before being able to take action, is that really control?

Most would say "no." And, a petition is merely a request, not a guarantee that the person you selected to serve as Personal Representative will ultimately be the one appointed by the Probate

Judge. Although it's likely that a Probate Judge will honor the decedent's request, they are not bound to do so if they feel the person you chose is unfit or if someone contests the petition.

For example, a disgruntled sibling, heir or other interested party may feel they are more qualified to serve. Ultimately, the sole discretion as to who will act as Personal Representative is that of the Probate Judge, no one else.

Here's something to consider before subjecting the control of your estate to a court. Do you know the Probate Judge in your county? Do they know you? Do they know your family or family dynamic?

Not likely. Yet this Judge will have absolute control over your estate during the process of probate, through their ability to apply or interpret the law. This can include on some level their own personal opinions or other views which could impact the outcome of your estate.

Reason #5: Hassle

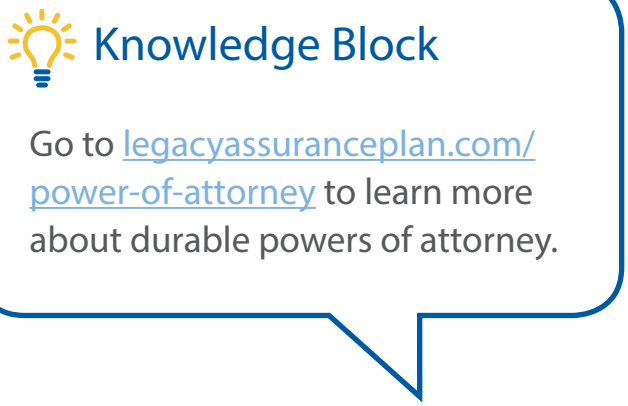
In considering the cost, delay, publicity and lack of control associated with probate, many people view it as a hassle. You may even consider it a voluntary lawsuit, because your will invites the process. Think about it, where else would you have to hire an attorney, petition the court, go before a Judge, have your every action supervised and possibly face an opponent (creditors or claimants) in litigation. Sound similar to a lawsuit?

Is My Will Enough to Protect Me?

No! While most people are under the impression that once they execute a will, their affairs are "in order," nothing could be further from the truth. A will should simply be considered one component of an overall larger plan, including planning for one's incapacity. As stated repeatedly, your will is not valid until it's been proven through the process of probate. Nor does it have any real use or effect until after death.

A will does not "protect" you from anything. A will is merely a letter of instruction about how you want your estate to be distributed after death. It also acts to designate the person you want to carry out those instructions. It has no effect during your lifetime, none.

What's more, a will has no effect at incapacity. Should you be unable to manage your personal affairs for any reason (accident, Alzheimer's, dementia, stroke, etc.) you will need a separate legal document known as a durable power of attorney. There are two types of durable powers of attorney, one for health care and another for financial matters.



These documents allow someone to act on your behalf, legally, should you be unable to act yourself. Each of these documents is intended to complement your will. In addition, it's wise to have a living will (also known as an advance directive in certain states). This document lays out your intent should you become ill enough to require life support.

Collectively, these documents, along with others, form what can truly be defined as an "estate plan." None of these documents, independently, including a will, should be considered an estate plan. Instead, each of these documents serve a purpose, which could arise from a variety of different life events.

Where one document fails to protect your interest, the other serves to protect it. Therefore, it is the collective total of these documents working together that acts to provide you with an overall comprehensive estate plan.

Can Probate Be Avoided?

"Yes" is the short answer. Arguably, probate can be viewed as voluntary. That's because, with proper planning, it can be avoided. While this type of planning can take some effort, that effort can yield tremendous benefits to you and your family, both emotionally and financially.

What Are the Alternatives to Wills and Probate?

While having a will is certainly better than the alternative (dying intestate), it is by no means a fix-all solution to estate planning, nor should you believe that by having a will, you are "all set." As stated earlier, a will is one part of an overall more comprehensive plan, which should include such documents as powers of attorney, both for health care and financial matters, along with a living will/advance directive and possibly other legal documents.

Some of the alternatives to probate are beneficiary designations, transfer-on-death and payable-on-death designations, trusts and even certain insurance products. Each of these instruments can play a significant role in estate planning. There is simply no one-size-fits-all approach to estate planning. By no means is a will or probate good or bad for everyone, any more than a living trust good or bad is for everyone. What's best for you is based on your individual circumstances, goals or objectives and should include a plan for incapacity.

Can a Nursing Home Really Take Everything I Own?

Not exactly. However, you can still lose everything you own. That's because Medicaid will not pay for your nursing home care until virtually all your assets have been "spent down" to pay for that care. So, while your assets are not "taken," you may be forced to liquidate them until they are almost completely gone.

At that point, Medicaid will pay for your care. Additionally, the state can place a lien on your home for the cost of your care which it paid; the lien is then satisfied when the home is sold after your death through the probate process.

Although a nursing home cannot literally take everything you own, your assets can still be exhausted by forcing you to liquidate them to pay for your own care, prior to Medicaid stepping in to pay. Your estate must then repay the state for any benefit you received while confined.

If you are concerned with this issue, there are a variety of ways in which you can protect your assets. However, each of these options requires careful, and more importantly, advance planning to determine if they may be suitable for your situation.

Is My Estate Large Enough to Worry About Estate Planning?

Yes, everyone's estate is large enough to worry about estate planning, regardless of its size. Too often, people avoid estate planning because they believe (falsely) that only wealthy people need an estate plan. Estate planning includes much more than just planning for how to distribute assets.

It also includes planning for who will manage both your physical person and your assets should you become incapacitated. The truth is, estate planning isn't only for the rich, it's for everyone. And, it does not have to be complicated.

Best of all, taking the time to plan your estate benefits both you and your family in more ways than you probably know. Imagine someone you love and care about becoming incapacitated or even dying with no clear instructions about what they would want to happen in either circumstance.

Not only is it a difficult and emotional time in your life, but now you are left with no clear instructions about what that person wanted or any legal way to enforce what you "think" they may have wanted you to do. You are also left wide open to the risk of losing both choice and control should someone try to contest your attempted actions.

> *"Estate planning isn't an option, it's a responsibility – not only to yourself but also to those you love and care about. It's not something to procrastinate about."*

Who Can I Trust to Help?

Few attorneys really focus their practice exclusively around estate planning. A will is simply what many attorneys default to when asked about estate planning, often without considering the consequences that go with a will (i.e., probate).

Although attorneys have a duty to put their clients' interests ahead of their own, when it comes to wills and probate, they also have an undeniable dilemma. That's because in creating a will for you, they potentially stand to benefit from the fees associated with probating that will later. Some view that by simply recommending a will, the attorney has established a "vested interest" in the outcome of your estate (the probate fee).

Knowledge Block

Go to legacyassuranceplan.com/dangers-diy-kits to learn why DIY Estate Plan Kits are another estate planning method to be wary of.

Conversely, by using alternatives that avoid probate, the attorney denies themself the financial benefit that may come from probating your estate later. For this reason, it's important that you work with an attorney who focuses their practice in the area of estate planning, if not exclusively, almost exclusively.

In doing so, it's likely that you will be working with someone who not only has more estate planning experience than the average attorney, but also one who likely has a more objective perspective of things and who will truly look out for your best interests, and not their own. And, both you and your family will end up with a much more cost-effective, efficient plan.

When considering the best plan for you, be open-minded and listen carefully to all your options. Be sure to select someone who is experienced and puts your interests first. It could save you and your family, time, money and a lot of heartache.

"A good plan today is better than a perfect plan tomorrow."
~ General George S. Patton

What is the Best Way to Protect Myself and My Family?

The best way to protect you and your family is to educate yourself about estate planning issues. Start with understanding the consequences of dying without a will, becoming incapacitated without having powers of attorney in place, both for health care and financial matters. Understand the purpose of probate and decide whether the advantages outweigh the disadvantages.

These are all important factors. However, the most important factor is to "act." To quote the famous General George S. Patton, "a good plan today is better than a perfect plan tomorrow." The best-laid intentions are worthless if not followed up by action, and once you have lost your capacity or died, it's simply too late!

Educate yourself, understand your options, and finally, act to get your plan in place. Not only will you feel better knowing these issues are taken care of, but during the process you will have provided clear instruction about how you want things to be handled and who you want to handle them in the case of a life event. You will not only have protected yourself, but insured the protection of those you care about most, your family!

Knowledge Block

Go to legacyassuranceplan.com/estate-planning-reasons to learn more about ways to protect yourself and your family.

About Legacy Assurance Plan

Legacy Assurance Plan is a member-based estate planning services provider. Our goal is to help our members achieve their estate planning objectives by providing them with necessary education and resources needed to make creating their own estate plan a reality.

Not only do we help our members to understand the various challenges that they or their loved ones may face resulting from certain life-events, we can also assist by providing access to a network of experienced estate planning attorneys.

These and other industry professionals can help you to create a comprehensive plan designed to resolve those issues before they arise. In the process, not only will you protect your future, but you will also be protecting the future of those who you care about the most.

Advantages of Probate

- May limit time for creditors to file claim
- Creates a public forum to resolve any creditor disputes
- Can establish guardian for minor or disabled children

Disadvantages of Probate

- Cost – 3-8% of the estate value
- Time delay – Typically 1-2 years
- Public record – Anyone can see what you have and who got what
- Lack of control – Wills must be proven through probate
- Hassle – Attorneys, courts, hearings, laws, frustration, etc.

Deciding What's Best

Wills Must be Probated

Probate = "Uncertainty"

Know your options – choose what you think is best for you, not what someone else thinks is best.

We thank you for taking time to review this booklet and look forward to helping you resolve your estate planning concerns. To find out more about Legacy Assurance Plan, please visit our website at legacyassuranceplan.com or visit us on Facebook at facebook.com/legacyassuranceplan.

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