GOOD PLANS CAN GO WRONG

Sample Only (not for distribution)

To avoid probate after she died, Edith, an elderly widow, decided to give her home to her daughter Susan. They had always gotten along very well, and Susan assured her mother she would be able to live in the house for the rest of her life. She even stated so in her will, just in case anything happened to her first. Unfortunately, Susan did die in a car accident. Not long after, Edith was shocked when she received an eviction notice. As it turned out, Susan had made her husband joint owner of the house with her, and when Susan died he became sole owner. He had never cared about Edith and decided to sell. Susan's will didn't make any difference, because her share had transferred to her husband immediately upon her death.

Over the years, John and his wife Eleanor had planned carefully, saved and invested wisely for their retirement. They made sure their wills, which left everything to each other, were always up to date. They even had trusts in their wills for extra protection. Unfortunately, John developed Alzheimer's Disease. As his condition worsened, Eleanor needed to sell some of their investments. But John was no longer able to conduct business, and Eleanor soon learned she couldn't sign for him—only a *court appointee* could sign for him. It was hard enough dealing with John's situation, but now Eleanor also had to deal with the court. She didn't know the court would *stay* involved to "protect" John's share of the proceeds. She had to keep detailed records of everything—the court insisted upon approving all expenses *and* the sale of their jointly owned assets. When John died several years later, Eleanor found herself back in court again—this time to probate his will.

Claire was very lonely after Fred, her husband of 40 years, died. To fill her time, she started taking ballroom dancing lessons. Her instructor, a much younger "gentleman," was very quick to provide her with the companionship she was missing. And Claire, with a new sense of self-esteem, soon fell head over heels in love. Fred's and Claire's children were shocked when their mother announced she had married her instructor. But the real shock came seven months later when Claire died—and the children learned their mother had placed everything in joint ownership with her new husband. As the new sole owner, he decided to sell everything and leave town. Because their mother had made her new husband joint owner, the children had been completely disinherited. And everything Fred and Claire had built over the years was gone.

When George and Betty moved to Florida, they gave their home in New York to their daughter Anne, a divorced mother of three. Anne later remarried and, as a wedding present to her new husband, she changed the title on the house from her name to both their names, as husband and wife. Not long after, Anne suddenly became ill and died. Her husband, now the sole owner, promptly booted the children (all teenagers) out of the house. George and Betty will undoubtedly have many sleepless nights—and regrets—over this situation.

Sample Only (not for distribution)

Louise only had one child, a grown son named David, and to make things easier for him when she eventually died, Louise added his name on the title of her house. David was very good to his mother, but he was irresponsible when it came to money. Eventually, he got so far behind in payments to his creditors that they sued him. Louise was shocked when she was forced to sell her home to pay his debts.

When Edward and Beth married, they both had children and assets from previous marriages. They had new wills prepared, with each leaving their separate assets to their own children. When Edward died ten years later, Beth's attorney advised her that, as a surviving spouse in that state, she was entitled to a percentage of all of Edward's assets—including the 300-acre farm that had been in his family for generations. Although she knew Edward had wanted the farm to go only to his children, she felt that she and her children had a right to

part of it. She decided to claim her share, prompting a bitter battle within the family. Eventually Beth won. But the farm ended up being sold to pay the expenses—and the closeness the family had developed during Edward's lifetime had been destroyed.

Mary was a widow with no children or immediate family. In her will, she left everything in equal shares to three institutions which had been a big part of her life—to her husband's university for scholarships in his memory, to her neighborhood church, and to a children's hospital, where her only child had been treated for a terminal illness many years earlier.

When Mary died, her will had to be probated before her assets could be given to the institutions. As required by law, a notice of her death was published in the newspaper and a list of her assets was made public. Some distant relatives Mary barely knew saw the notice in the paper, hired an attorney, and contested the will. The institutions had to hire attorneys to try and uphold Mary's will, and Mary's estate also had to be represented by an attorney. A nasty and expensive legal battle began. Finally, more than four years later, the institutions agreed to give Mary's relatives half of her estate, just to end the fight. This was obviously not what Mary had wanted.

Sample Only (not for distribution)

Betty, recently divorced, had a 3 year old daughter named Sarah. She had heard she should have a will (especially since she had a child), and when she saw an advertisement for a will kit, she ordered one through the mail. In her will, she left everything directly to Sarah. She didn't have that much in assets, so she increased her life insurance and listed Sarah as beneficiary. She named her sister Linda as Sarah's guardian, thinking Linda would be able to use the insurance money to raise Sarah if something happened to her.

A few years later, Betty died unexpectedly and her will went through probate. Because Sarah was a minor, the court had to establish a guardianship for her. The court did allow Linda to be Sarah's guardian, but the court kept control of the inheritance—everything Betty left Sarah in her will *and* the money from the insurance company. When Sarah turned 18, the legal age in that state, the court guardianship, by law, ended. And Sarah received her entire inheritance in one lump sum, which she quickly spent in just one year of expensive living.

Dorothy, a widow, put all of her property, including her house, into joint ownership with her married son. She did this thinking that, when she died, her property would automatically go to her son without the need for probate. Several years later, her son and his wife separated and Dorothy decided to sell her house so she could move in with her son. But she soon discovered she could not sell it without her *daughter-in-law's* signature on the deed.

The daughter-in-law was still legally married to her son and was entitled by law to a "marital interest" in the property. The title company would not insure clear title to the buyer without the daughter-in-law's signature because it wasn't clear what her "interest" would be—and she refused to sign unless she got part of the money when the house was sold. Dorothy was stuck—she didn't know that joint ownership with a married person can include *that person's spouse*. And because Dorothy had placed her house in joint ownership, she lost control of her own home.

On the advice of a neighbor, Frank and Elizabeth, an elderly couple, put everything they owned, including their home and stocks, in their adult daughter's name. They believed this would avoid probate and that all their assets would pass directly to their daughter—their only child—when they were both gone. A year later, Frank died of a heart attack. Several months after that, their daughter died in a car accident.

Elizabeth *never* thought she would survive both her husband and daughter. To add to her distress, Elizabeth now owned nothing in her own name—everything was in her daughter's name. She was forced to probate her daughter's estate to get back her own property. During this long process she had to rely on the court to grant her living expenses. Sometimes the court would approve them, sometimes not. And during a declining stock market, she helplessly watched the value of her stocks fall to only a fraction of their previous value—because the court could not react in time for them to be sold quickly enough. Elizabeth lost her financial independence plus a substantial portion of her assets to probate—just trying to get back what was hers in the first place.

Sample Only (not for distribution)

John and Ellen had each been married before and had young children from their first marriages. When they married, they considered it a fresh start and one family. They put all of their assets in both their names (joint ownership), with the intention that when they died, all the children would receive an equal share. They didn't have wills because they thought joint ownership would serve the same purpose.

When John died, everything went to Ellen and she continued to raise and care for all the children. When Ellen died many years later, her assets went through probate. But because she did not have a will, under the probate laws of that state Ellen's property could only be distributed to *her surviving blood children*. Since John's children had never been legally adopted by Ellen, they received nothing. Even though John and Ellen thought of all the children as being their own, the probate laws did not. Because they relied on joint ownership, they unknowingly disinherited John's children.

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Doris and Bob owned a family-style restaurant. They had been moderately successful for years, and put everything they made back into the business. When Bob died, one of their competitors went down to the probate court and looked up his file. In it he found much of Bob and Doris' financial information, a competitor's dream. He also saw in the file that Doris had requested a living allowance from the court, indicating she was short on cash. He offered to buy Doris out—at 50% of what he knew the restaurant was worth. To his amazement, she accepted, without any negotiation. This competitor had "inside information"—courtesy of the probate files.

Marie, an elderly widow, had a will which left everything in equal shares to her five grown children. When she learned she had cancer, she put everything she owned into joint ownership with her oldest son, thinking this would avoid probate and make things easier for her family when she died. She discussed it with her son and was sure that he would carry out her wishes and divide everything equally among the five children.

When she died, ownership did immediately go to her son. But he died suddenly in a construction accident a few weeks later, *before* the property could be

A living trust would have prevented these situations

distributed. His wife, only recently married to Marie's son, claimed everything as his surviving spouse, and she decided to keep it all herself! Marie's will (which, remember, left everything in equal shares to her children) could do nothing, because as soon as she died *she no longer owned anything*. Marie's joint ownership plan did avoid probate, but it also disinherited her children!

Stella, recently divorced, added her 12-year-old son as joint owner on the deed to her house, thinking it would automatically become his if something should happen to her. A year later, she needed to sell the house. But she couldn't, because her 13-year-old son (her joint owner) could not legally sign the papers. She had to put her own son in a court guardianship and the court insisted on approving the sale. By that time, the buyers were long gone—but the court was still there. Eventually she was able to find another buyer, and this time the sale went through. But the court kept control over her son's share of the proceeds until he turned 18—at which time he promptly spent it all on a sports car, a motorcycle and "good times." In the meantime, Stella couldn't afford to buy another house with just her share. She found out the hard way that joint ownership with a minor does not work.

Olivia wanted to make sure her daughter Jill and her new granddaughter would be provided for if something happened to her, so she purchased a new insurance policy and named her daughter Jill as the beneficiary. Not long after, Olivia suddenly became ill and died. The insurance proceeds were paid directly to Jill, who deposited the check into her joint checking account. A few days later, Jill's husband withdrew all the money and left town—leaving Jill and her baby with nothing.

A living trust would have prevented these good plans from going wrong.

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Part One

WHY GOOD "PLANS" CAN GO WRONG

Sample Only
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Part One —

WHY GOOD "PLANS" CAN GO WRONG

Sample Only
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People want to do the right thing for themselves and their families. But, as you've just seen, all too often their good intentions have tragic results. The really sad part is the unhappy endings are often *avoidable*. If they had just *known* what could happen, chances are many people would have done things differently.

What we're talking about is called *estate planning*. It's not just for "wealthy" or "old" people (whatever those are). It's something we *all* need to do—regardless of age, marital status, or wealth—if we want to keep control of our assets (our estates) when something happens to us. And it's important to plan now, while we can. Because with estate planning, no one gets a second chance.

In this section, we'll look at five basic ways most people "plan" their estates. (You're probably already using at least one of them now, even if you think you haven't done any estate planning.)

We'll explain how you can easily lose control of your assets while you are living, if you become incapacitated, and after you die when you use one of these "plans." Then, in Part Two, we'll show you how one plan—the revocable living trust—gives you far more control than the others.

And we'll explain it all in clear, conversational English—*so you can understand it*. Because we want *your* good intentions to have a happy ending.

1 LOSING CONTROL WITH A WILL

A will is one of the most widely used legal documents and is probably what first comes to mind when you think about how to plan your estate and transfer your assets to your loved ones. (After all, we've been told for years that we should have a will.)

In a will, of course, you name whom you want to receive your assets when you die and whom you want to handle your final affairs for you (often called an executor or administrator).

But contrary to what you've probably heard (and been led to believe), a will may not be the best plan for you and your family. That's because a will:

- Does not avoid probate when you die;
- Does not prevent the court from taking control of your assets if you become physically or mentally incapacitated; and
- Probably does not give you the control you think it does if you have minor children or grandchildren.

Let's see how much control you really have with a will in each of these situations.

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A Will Does Not Avoid Probate When You Die

A will is simply an expression of your wishes—what you want to happen to your assets after you die. All wills must go through some kind of probate court process before they can go into effect. How complicated that process will be will depend on the laws in your state.

You've probably heard of probate, read about it, or perhaps even experienced it when a relative died. Let's take a brief look at it now.

What Is Probate?

Probate is the legal process through which the court makes sure that, after you die, your will is legally valid, your debts are paid, and your assets are distributed according to the instructions in your will.

A will does not avoid probate

Probate has existed in one form or another for hundreds of years. It was created with the best of intentions to protect your creditors, assets, and your family by providing an orderly method of paying bills and transferring ownership of your assets after you die—all under direct supervision of the court system.

Why Do We Have To Go Through Probate?

You may be wondering why you can't just appoint someone to pay your bills and distribute your assets after you die—*without* involving the probate court. (If you have a living trust, you *can*, as we'll explain in Part Two.)

Well, very simply, if your name is on the title of an asset and you die, probate is the *only legal way* to take your name off the title of an asset and put the new owner's name on.

In most states, a will by itself is not enough authority to retitle assets or release account balances—a court order is required to do this. So, after you die, your family will not be able to change titles on assets that are titled in your name without a court order—and that can only be done through the probate court.

Also, your will must be validated as being authentic before ownership of your assets can be transferred to your heirs—and the probate court is the only way this can be done.

What Assets Go Through Probate?

Not everything you own will automatically go through probate. For example, jointly owned assets that transfer to the surviving owner generally do not go through probate. Nor do assets that have a valid beneficiary designation (like an insurance policy). But there can be some significant problems with both, causing you to lose control of your assets, even while you are living. You'll want to finish reading this section if you currently rely on these.

Assets in a trust also avoid probate, as we'll explain in Part Two. However, if you have a trust *in your will* (called a testamentary trust), it does *not* avoid probate. The will has to go through probate *before* the trust can go into effect.

What Happens In Probate?

Probate doesn't happen automatically. Someone, usually a relative or the executor you name in your will, must petition the court for probate proceedings to begin—for example, when checks need to be written, or when an asset needs to be sold or transferred to a new owner.

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Probate procedures will vary slightly from state to state, and even from court to court. A traditional "formal" probate will usually include the following general process.

When probate proceedings begin, the probate court takes control of your estate, supervising payment of your debts and distribution of your assets. In most states, the court will require that a notice of your death appear in local newspapers, giving your creditors and anyone else who feels he/she has a right to part of your estate a certain length of time (several weeks or months) to present their claims.

At the first hearing, the judge will make sure your will is valid—that it is the correct one (if you had more than one will), that you were competent when you signed it, and that it is properly signed and witnessed. Otherwise, the judge will declare that you died without a will (see "Losing Control by Doing Nothing" later in this section). The judge will then officially appoint your executor and open a file on your estate.

You may have named an attorney in your will. If not, your family or executor can usually choose one. Although having an attorney is not always a legal requirement, the paperwork can be complicated. Also, most judges prefer to deal with someone who is already familiar with the process.

Your executor will compile an inventory of your assets (with formal appraisals of valuable assets) and pay your final bills. These are then submitted to the court for approval. Your executor also applies for and collects any death benefits to which your estate is entitled, and has your final tax returns prepared.

A second notice is usually given for a final hearing to settle your estate. At this hearing, the judge will review the paperwork and order your debts paid (including all probate expenses). If there is not enough cash in your estate to pay your expenses, the judge may order some of your assets sold. Your remaining assets will then be distributed according to the terms in your will.

If there are any disputes, the judge will make the final decisions, holding additional hearings if necessary. Finally, your executor will be released from his/her duties and your file will be closed.

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