

## Chapter 1. Common Questions

We will start by answering some common Estate Planning questions.

### Do I Already Have An Estate Plan?

Everyone has an Estate Plan. The real question is whether your Estate Plan will accomplish what is needed for you and your family.

Most people already have one of the following Estate Plans:

- **A Government Estate Plan** - When you have no Will or Trust, the State statutes control what happens to you upon disability or death and who will receive your Estate. This is known as intestacy.
- **A Simple Will Estate Plan** - This typically leaves your Estate to your spouse and then directly to your children. It requires Probate Court intervention and can waste one of your Estate Tax Exemptions. It also results in distribution to children and grandchildren before they are financially responsible.
- **A Joint Tenancy Estate Plan** - This is when your assets are titled in “joint tenants with rights of survivorship.” This means upon your death, your Estate goes to the survivor (generally your spouse). Typically, this results in Probate on the second death and can waste one of your Estate Tax Exemptions. It also doesn’t deal with distributions to children and grandchildren after the death of both spouses. This is sometimes used together with a Government Estate Plan or a Simple Will Estate Plan.
- **A Living Trust Estate Plan** - This is the most effective solution being used today. The main feature is a Living Trust (also known as a Revocable Trust), which can be used, among other things, to protect your assets upon your death for your spouse, children and grandchildren, to avoid Probate Court and to obtain the full benefit of both Estate Tax Exemptions.

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### **What Is Estate Planning?**

Estate Planning means fixing your present Estate Plan to help ensure that:

1. You and your spouse keep control while alive and well;
2. You, your spouse, your children and your grandchildren are protected if you are disabled;
3. You and your spouse have protected your retirement income;
4. Upon your death your spouse, children and grandchildren are provided for and protected;
5. Upon both of your deaths, your property goes to who you want, when you want and how you want; and
6. All of this occurs at the lowest possible tax and other cost to you and your family.

### **Why Be Concerned With Estate Planning?**

It's up to you to have an Estate Plan that protects you, your spouse, your family and your life savings. The failure to do the correct Estate Plan can end up costing a family thousands of dollars in extra probate costs, unnecessary estate taxes, wasted exemptions, investment mismanagement, family disputes, creditor claims and/or child misspending of inheritance funds.

### **Do I Have An Estate?**

You have an Estate if you own any property. Whether your Estate is large or small, it is your Estate. It's up to you to see that whatever amount you have worked to save can be best preserved for your spouse and your family.

### **What's Included In My Estate?**

Your Estate includes the full fair market value of everything you own, such as your:

Home	Life Insurance
Bank Accounts	Real Estate
Household Items	Family Business
Personal Possessions	Family Farm
Stocks & Bonds	Automobiles
Retirement Plans (IRAs, 401(k), etc.)	All Other Assets

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## When Are My Assets Distributed To My Spouse After My Death?

If you have a Government Estate Plan or a Simple Will Estate Plan, your assets need to go through Death Probate before being distributed to your spouse. Interim distributions for living expenses can be allowed by the Court.

With a Living Trust Estate Plan, distributions can be made immediately after your death. In addition, typically your spouse is named as the trustee, so that control is maintained.

One of the objectives of Estate Planning is to help your surviving spouse protect your Estate so your resources are available for his or her continued lifetime support.

Unlike a Simple Will, a Living Trust also provides an opportunity to protect funds left to a spouse from the risk of uninsured or underinsured accident claims.

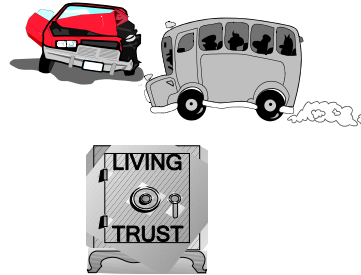
### SIMPLE WILL

- Property Received from Husband's Estate Can Be Taken From Wife in Accident Claim



### LIVING TRUST

- Property Received from Husband's Estate Can Be Protected From Accident Claims by Spendthrift Provisions of Living Trust



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## When Are Our Assets Distributed To Our Children After My Death?

If you have a Government Estate Plan or a Simple Will Estate Plan, then after both of your deaths, and after Death Probate is completed, your assets would be held by a Court-appointed conservator to be used for your minor children (typically until age 21). Children age 21 or older would receive their share, without restrictions, immediately after the Probate, whether or not they are financially responsible.

With a Living Trust, the person you appointed as Successor Trustee (typically a trusted family member or a financial institution) would hold and use your assets for your minor and young adult children to pay for living and education expenses. Final distributions are then typically paid out to them 1/3 at ages 25, 30 and 35 (or whichever ages you choose), when they are more financially responsible (with similar provisions for your grandchildren in case your child has passed away).

Most of my clients agree they don't want their Estates distributed right away in total to their young adult children. Their concern is not only loss or wasting of funds, but also the negative impact that too much money too soon can have on a child. The Simple Will offers no means to solve this. The Living Trust does.

### SIMPLE WILL

- No Protection for Children or Grandchildren Inheritance
- Risk Loss Due to Misspending, Creditors, Marital Disputes, Divorce
- Less Appreciation for What They've Received

### LIVING TRUST

- Children and Grandchildren Inheritance Protected
- Distributed Over Time
- Investments Professionally Managed
- Children and Grandchildren Learn to Appreciate What They've Received
- You've Left Instructions That Will Benefit Your Children and Grandchildren Long After You've Gone



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### What Is A Disability Probate?

If you become disabled and you don't have Financial and Health Care Powers of Attorney, then your family goes to Probate Court, and the following happens.



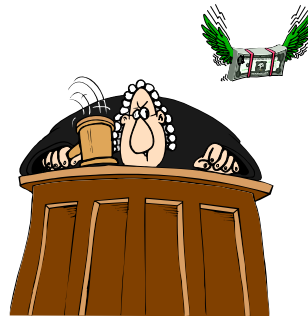
1. The **Court picks** a person to act as your Conservator to handle your financial matters and a person to act as your Guardian to handle your medical matters.
2. The **Court supervises** this Disability Probate for as long as you are disabled.

There is a cost involved to set this up and then annually report back to the Court for as long as you are disabled.

This can be estimated as follows:

#### Cost Estimate

Average Legal Costs To Set Up	\$ 3,000
Average Annual Costs (\$1,200/Year Estimate)	<u>7,200</u>
6 Year Illustration	<u>\$10,200</u>



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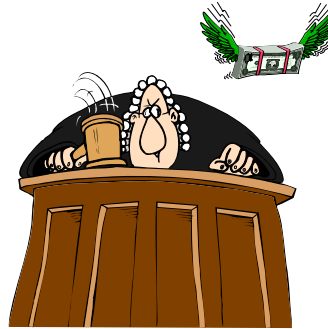
## What Is Death Probate?

Death Probate is a public court process your family goes through upon your death of proving your Will, paying your creditors and distributing to your heirs the assets titled in your name at death. It typically takes 1-2 years.

The cost of going through this depends on the complexity of your Estate and the State in which you are a resident.

A national study found the average cost to be as follows:

Estate Size	Probate Cost
\$ 100,000	\$ 5,000
200,000	9,900
300,000	14,700
400,000	19,600
500,000	22,500
600,000	26,880
700,000	31,220
800,000	35,520
900,000	39,780
1,000,000	44,000
1,500,000	65,250
2,000,000	86,000
3,000,000	126,000
4,000,000	164,000
5,000,000	200,000



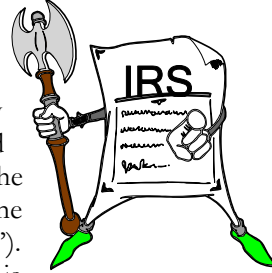
**SOURCE:** National Underwriter Field Guide,  
based on actual government studies

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## What Is The Federal Estate Tax?

The Federal Estate Tax is explained in more detail in The New Federal Estate Tax chapter. The Federal Estate Tax is a tax -- usually paid on the death of the surviving spouse -- based on the value of all assets in your Estate. Under the Federal tax laws, each parent is eligible for a Lifetime Exemption (something I refer to as a “coupon”). Under this the first \$5,000,000 of your Estate is exempt. This means that a married couple can exempt \$10,000,000 of their Estate if their Estate Plan is properly set up to receive both exemptions (i.e. both coupons). (This \$5,000,000 is adjusted annually for inflation. By 2015 this amount was \$5.43 million).



## What Is Joint Tenancy?

- Joint Tenancy is joint-ownership of an asset.
- Upon death, the asset goes 100% to the survivor.



## Joint Tenancy Can Be A Poor Alternative:

- | <b>Between Spouses</b>                                                                                                                                                                                                                                                                                                      | <b>Between Parent &amp; Child</b>                                                                                                                                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Does Not Eliminate Probate on 2<sup>nd</sup> Death.</li><li>• Doesn't Allow for Specified Distribution to Children and Charities.</li><li>• Could Forfeit All or Part of the Benefit of One of the Federal Estate Tax Lifetime Exemptions (your tax exemption “coupons”).</li></ul> | <ul style="list-style-type: none"><li>• Could Lose Your Assets To Child's Creditors or Ex-Spouse.</li><li>• Survivor Takes All – May Conflict with Equal Shares to all Children.</li></ul> |