The Top
Estate Planning Mistakes

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ATTORNEY PHOTO

About Me/Our Firm

- Practiced law in the state of [Michigan] for [10] years after graduating from [University of Michigan Law School]
- Affiliated with [Group Name(s)]
- My firm has [20] employees and has served [600]+ clients over the past [10] years
- [Insert photo of staff, building, etc.]
- [Insert PR placements]

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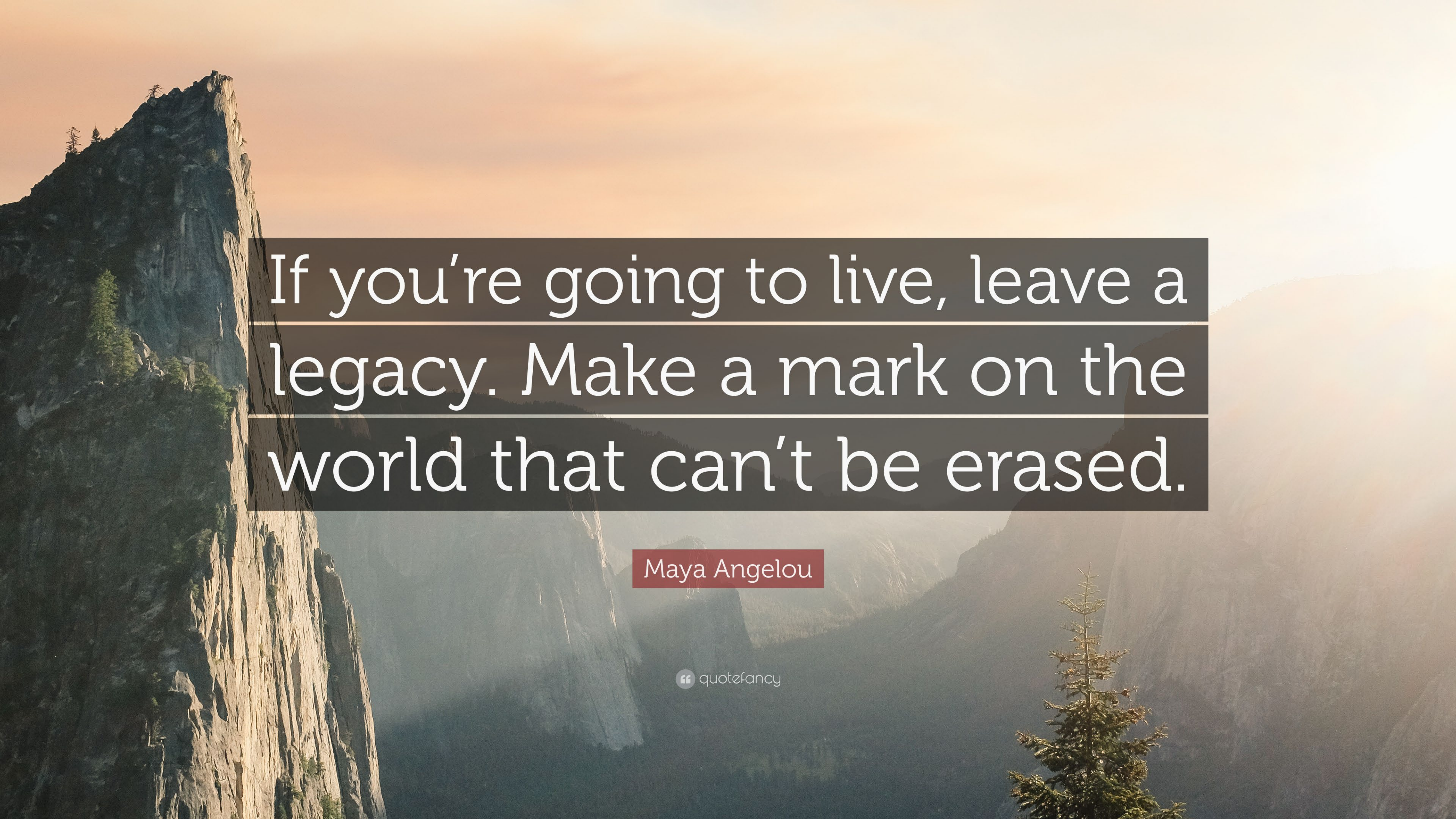
Every Family Will Face The Same Things

Incapacitation
Healthcare Issues
Divorce

New Family Members
Taxes
Death

Everyone Here Either….

Does Not Have An Estate Plan	**Has Faced Major Life Changes (births, deaths, divorce, etc.)**
Has An Estate Plan From *X* Time Ago	**“Do-It Yourselfer” (i.e., LegalZoom.com)**


If you're going to live, leave a legacy. Make a mark on the world that can't be erased.
Maya Angelou
quotefancy

101: What is Estate Planning?

Estate Planning is the process of an attorney helping you prepare your future and by:

- Facilitating who will control your estate upon incapacity or death
- Making sure your assets are distributed the way you want
- Avoiding taxes and probate
- Eliminating issues and conflicts between heirs
- Protecting assets against creditors, predators, divorce, taxes, financial risk, etc.
- Establishing guardianship(s) for minor children and/or special-needs adults
- Ensuring *what* you want to happen actually happens, by *who* you want to make it happen, at the exact time *when* you want it what to happen

What Consists An Estate?

- One’s estate consist of all of one’s assets
  - Real Estate
  - Vehicles
  - Cash
  - Investments
  - Insurance Policies
  - Personal Items
  - “*Chattel*”

Assets at Death

Death → 3 possible destinations for your assets….

- **Estate:** Assets without a beneficiary designation titled only in the descendant's name; go through the Probate process
- **Operation of Law:** Jointly titled assets, beneficiary designations, payable on death ("POD"), or transfer on death ("TOD")
- **Trust:** Trust named as the Beneficiary of your assets

What is Probate?

The legal process of administering the estate of a deceased person to both resolve all claims and to distribute the decedent's estate which occurs in the absence of a properly prepared and funded Estate Plan.

Objectives of Probate

- Appoints individuals to manage your affairs
- Resolves disputes
- Pays creditors
- Formally inventories your assets
- Appraises assets
- Changes titles of your assets
- Distributes one's estate

4 Reasons To Avoid Probate

1. Creates avoidable, unnecessary problems
   - Contests by potentials heirs or creditors
2. Lengthy
   - Typically takes months to years to complete
3. Expensive
   - Legal fees, court costs, probate fees, etc.
4. Public
   - Makes your estate, finances, and heirs public to the world

Most Common Estate Plans

- Die Intestate (i.e., without a will)
- Last Will & Testament
- Spend Everything
- Joint Ownership Titles
- Revocable Living Trust

Top Estate Planning Mistakes To Avoid

Having no plan at all	Incorrect beneficiary designations
Using Internet or form documents	Unintentionally disinherit heirs
Not having the *correct* people selected who also have the *correct* powers if/when you become incapacitated	Failing to protect your assets from the IRS, creditors, predators, bankruptcy, divorce, family issues, etc.
Giving minors or spendthrifts inheritances without any parameters	Ensuring your heirs do, in fact, go through the probate process

The “Ideal” Family Estate Plan

- Financial Durable Power of Attorney
- Living Will
- Healthcare Patient Advocate
- HIPPA Authorization
- Last Will & Testament
- Deed (Ladybird vs. Quitclaim vs. Enhanced Life Estate Deed)
- Revocable Living Trust

Durable Power of Attorney

- Gives a designated person the authority to make legal/financial decisions on behalf of that person
- *“Why does this matter to me!?”*
  - Without having one, family and friends will not be allowed to:
    - Make many important financial decisions
    - Pay your bills for you
    - Manage investment/financial accounts

Living Will

- Instructs care-providers of your desire for medical treatment and end-of-care decisions if you become incapacitated
  - Examples: Breathing assistance, tube feeding, comfort/pain care, bodily donations, autopsy decisions, cremation vs. burial
- Prevents loved ones from having to make difficult choices about your care and reduces the chances of confusion or arguments over what's in your best interest
- A health care power of attorney can be included as part of your living will, or it can be its own separate documen

Healthcare Patient Advocate

- Gives a designated person the authority to make healthcare decisions on your behalf
- Focuses exclusively on your needs and to help you resolve concerns about the quality of your care, get the care you need, and ensure that your voice is heard in any decision-making.
- HIPPA Authorization grants access to your protected health information and medical records

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PROBATE INFORMATION

Guardianship—Acting for the Disabled Adult
- Appointing a Guardian
- Compensation
- Powers & Duties
- Modify or Terminate
- Legal Assistance

Conservatorship—Acting for the Disabled Adult
- Appointing a Conservator
- Compensation
- Powers & Duties
- Modify or Terminate
- Legal Assistance

Durable Power of Attorney
Frequently Asked Questions

Probate Information
Patient Advocate Designation—Designating Someone to Make Medical Decisions

Provided by the Probate & Estate Planning Section of the State Bar of Michigan

Patient Advocate Designation FAQs

What is a Patient Advocate Designation?

You have the legal right to make your own medical treatment decisions. But, suppose something happens that makes you unable to make your own medical treatment decisions? Who will speak to the doctors for you? You can choose a person to make these decisions for you by signing a legal document called a "patient advocate designation." This legal document gives the person you choose (the patient advocate) authority to make decisions for your care, custody, and medical treatment when you cannot.

What if I Don't Have a Patient Advocate Designation?

If you become unable to make your own decisions and you don't have a patient advocate designation, the probate court may be asked to appoint a guardian to make decisions for your care, custody, and medical treatment.

It may be necessary for a court to appoint a legal Guardian or Conservator for adults….

- Who have a physical or mental illness or disability that prevents them from taking care of their own basic needs;
- Who, as a result of their incapacity, are in danger of substantial harm; or
- Who have no person who is already legally authorized to assume responsibility for their personal affairs

Guardian vs. Conservator

- Guardian
  - Has the power make decisions affecting your well-being and personal needs
- Conservator
  - Has the power to handle an individual’s property and financial affairs

- How To Avoid Needing Either = Patient Advocate & Power of Attorney

Quitclaim Deed
vs.
Ladybird Deed
vs.
Enhanced Life Estate Deed

Deeds Compared

- **Quitclaim Deed**
  - Immediate transfer of ownership
  - Creates Medicaid and tax issues
- **Ladybird Deed**
  - Transfer ownership upon death
  - Creates control and tax issues
- **Enhanced Life Estate Deed**
  - Transfers ownership upon death
  - Avoids Michigan’s Recovery Act

Beneficiary Designations

Beneficiary Designations

- Avoiding Probate
  - Pay on Death (“P.O.D.”)
  - Transfer on Death (“T.O.D.”)
  - Joint Tenancy with Right of Survivorship (“JTWROS”)
- Problems if done incorrectly
  - Wrong heir can inherit
  - Probate if beneficiary dies
  - Deferred if trust is not properly funded

Beneficiary Designations

- If you do not have a beneficiary named, that asset will enter the probate process. Probate will determine who it will belong to:
  - If your beneficiary predeceases you….
    - If a contingent beneficiary is (a) named and (b) alive, then the property will pass to that beneficiary.
    - If no contingent beneficary is named, then the property goes to probate.

NY Post 1/31/05

Pension pickle

Broke widower loses $1M to in-law

By ZACH HABERMAN

A Brooklyn man says he was left destitute when his late wife's pension, worth nearly $1 million, was awarded to his sister-in-law on a technicality — and is hoping the state's highest court will hear his case.

"I lost the best thing that ever happened to me," said Bruce Friedman, 61, of his late wife, Anne.

"I had no idea there was a question I wasn't the beneficiary."

The Friedmans were happily married for nearly 20 years when Anne, a former city school principal, died suddenly of a massive heart attack in September 2001.

Friedman said he never doubted he'd be entitled to the lump-sum payment of $900,362 because the Teachers' Retirement System sent out annual statements that indicated his wife had named no beneficiary.

This would make him, as her closest relative, the beneficiary.

DILEMMA: Bruce Friedman wasn't wife Anne's beneficiary because she didn't update her files when they wed.

But after she died, officials found a form which had been filled out 27 years ago, four years before the couple met on a 1978 blind date.

It indicated Anne's mother, uncle and sister should collect.

Anne's mother and uncle died, so the money was awarded to the sister, Virginia McLaughlin — and Friedman complains that she won't give him a cent.

"I think Anne would just be shocked," said Friedman, adding that he's just making ends meet.

"[Virginia] won't sit down with me or my attorney. I'm just baffled."

McLaughlin declined to comment.

A Manhattan Supreme Court ruling held that Anne's intention of making her husband the beneficiary could not be assumed and that the paperwork on file was clear, said Joseph Harbeson of the Corporation Counsel's office, which is representing the retirement system.

"We feel we're complying with the law as it stands."

The Supreme Court decision was upheld by the Appellate Division in December.

Friedman said he wants to go to the Court of Appeals because, "all I know is it's my last chance."

Friedman's lawyer, Sanford Young, described last month's decision as "sobering," and added had some advice for all couples:

"Make sure you update your pension beneficiary forms. If you don't, your spouse and family may wind up with nothing."

PENSION PICKLE – BROKE WIDOWER LOSES $1M TO IN-LAW

By Zach Haberman

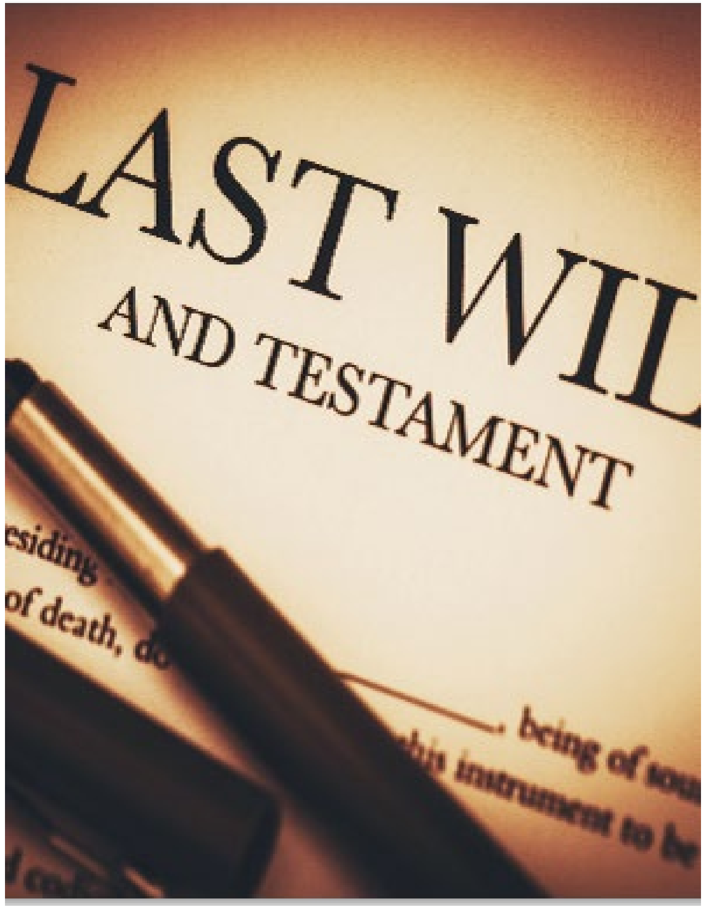
January 31, 2005 | 5:00am

Last Will & Testament

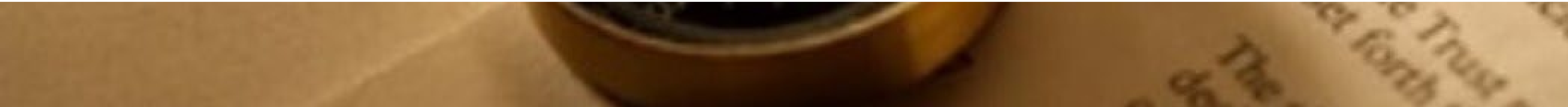
Last Will & Testament

- What is a Will?
  - Roadmap of instructions to the probate court of who you want to receive what from your estate
  - A Personal Representative/Executor is named who carries these instructions out

- If you pass away with or without a will, your heirs will still have to go through the probate process
  - Only having a will is ticket to probate



Trusts



What is a Trust?

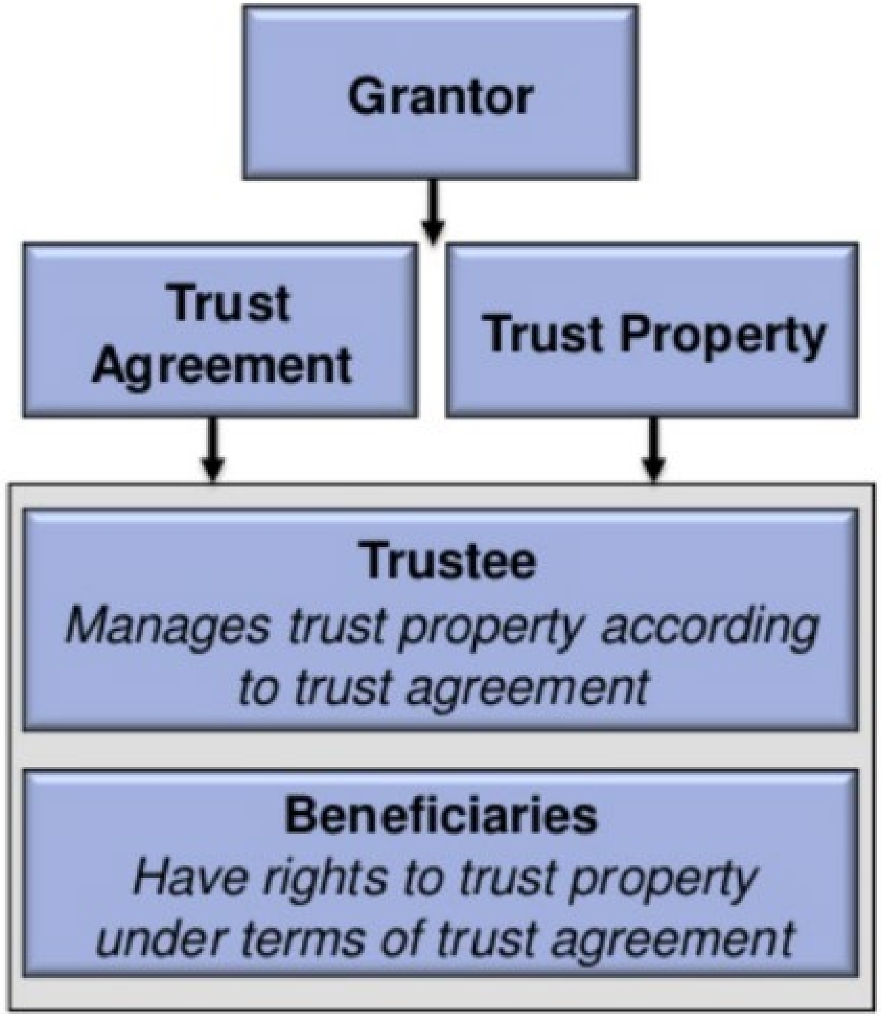
A Trust is a legal document created by you, the grantor, during your lifetime to bypass the cost and time consumption of probate and to enable your Trustee to carry out your wishes.

Elements of a Trust

- Grantor
- Trustee
- Corpus
- Terms
- Beneficiaries

Revocable Living Trust

- Established by the Grantor to protect and simplify the management & distribution of assets
- Grantor owns the assets within the Trust and typically is also the Trustee (i.e., still controls and manages the assets within the Trust)
- The Terms of the Trust provide that the Trust's asset are for the Grantor's benefit during his/her lifetime(s)
- Becomes irrevocable at Grantor's death



Benefits of a Trust

1. Avoids cost and publicity of probate
2. Protects assets from creditors, predators, divorces, etc.
3. *The Dead Hand*: You control the who, what, when, and how relating to distributions to beneficiaries
4. Ensures proper contingencies are established and honored
5. Capable of mitigating taxes

Your “Safe”

- Who do you want having the combination to control it?
- What do you want to put in the safe?
- Who/What/When/How: Do you want to inherit what’s in the safe?

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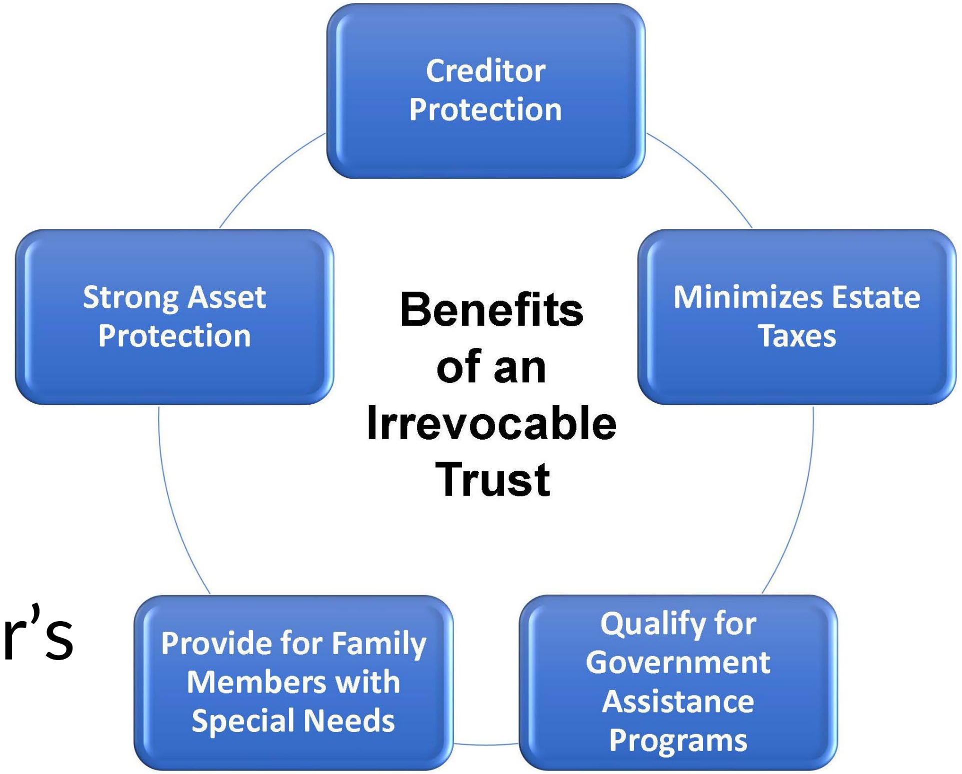
Taxes Payable at Death

- Capital Gains Taxes (unless you take advantage of the Trust set up)
- Federal Estate Tax (imposed on individuals whose estate is worth more than $11.58MM; $23.16MM per married couple)
  - Could change under Democrats' proposals?
- Income Taxes (mitigated through proper planning)
- Effects of the 2019 SECURE Act
- Upcoming SECURE Act 2.0 just passed in House of Representatives

Irrevocable Trust

- The Grantor establish a trust with irrevocable terms that cannot be amended, revised, or terminated
- The Trustee manages and controls the Trust’s assets/property for the benefit of the Trust’s beneficiaries
- The Assets are not included within the Grantor’s estate
- Used for tax avoidance, Medicaid planning, etc.



"I already have a plan."

NOW IS THE TIME TO REVIEW!

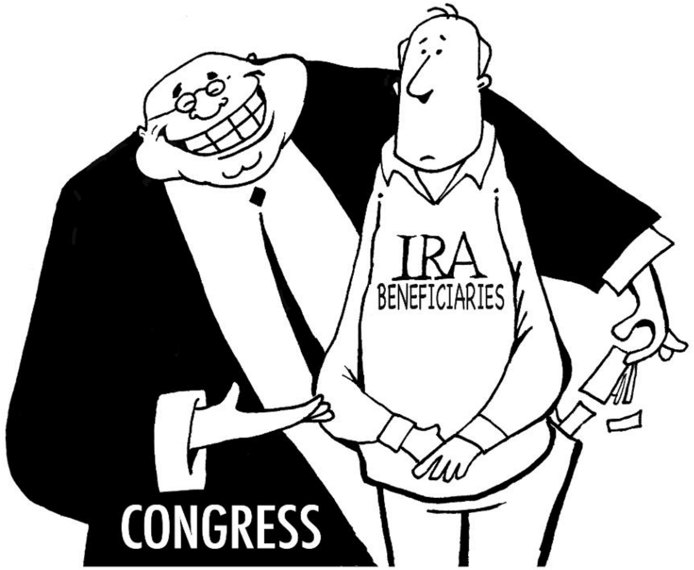
WHY?

Changes In Life, Health, & Property

- Have new beneficiaries recently been born (i.e., kids, grandchildren)?
  - Is your Trust language written Per Stirpes or Per Capita?
- Have current beneficiaries' lives changed (e.g., child's divorce?
- Do you have new assets, property, or real estate to consider?
- Have your relationships changed with your Trustee, Power of Attorney, Patient Advocate, etc.? Is someone else now more appealing?
- Has your health changed?
- SECURE Act and upcoming SECURE Act 2.0

SECURE Act Changes

- Goodbye, Stretch IRA – Hello, 10-Year Rule
  - Are you going to increase your kids, grandkids, heirs', etc. tax burden?
- Before SECURE: Stretch IRA concept
  - RMDs were generally be paid by these beneficiaries beginning by the end of the year after the owner's death.
  - The beneficiary would then be permitted to take the minimum amount out of an inherited IRA each year that was required by law.
  - This meant less income tax burden while maximizing tax deferral
  - **Less taxes and more money**
- After SECURE: Most non-spouse beneficiaries will have a new 10-year rule of forced account liquidation



Time To Execute!

We Are Not Your Typical Estate Planning Firm

- Focus: Estate & Wealth Protection
- We Consider:
  - Tax Planning/Horizon
  - Life Insurance
  - Retirement Goals
  - Financial Risk
  - Long-Term Care
- Our Goal = Legacy **Coordination**

Planning^{+} = Legacy Coordination

DEFINITIONS plan

verb (used with object), **planned, plan·ning.**

8 to arrange a method or scheme beforehand for

to plan a new recreation center.

9 to make plans for:

to plan one's vacation.

DEFINITIONS coordinate

verb (used with object), **co·or·di·nat·ed, co·or·di·nat·ing.**

8 to place or class in the same order, rank, division, etc.

9 to place or arrange in proper order or position.

10 to combine in harmonious relation or action.

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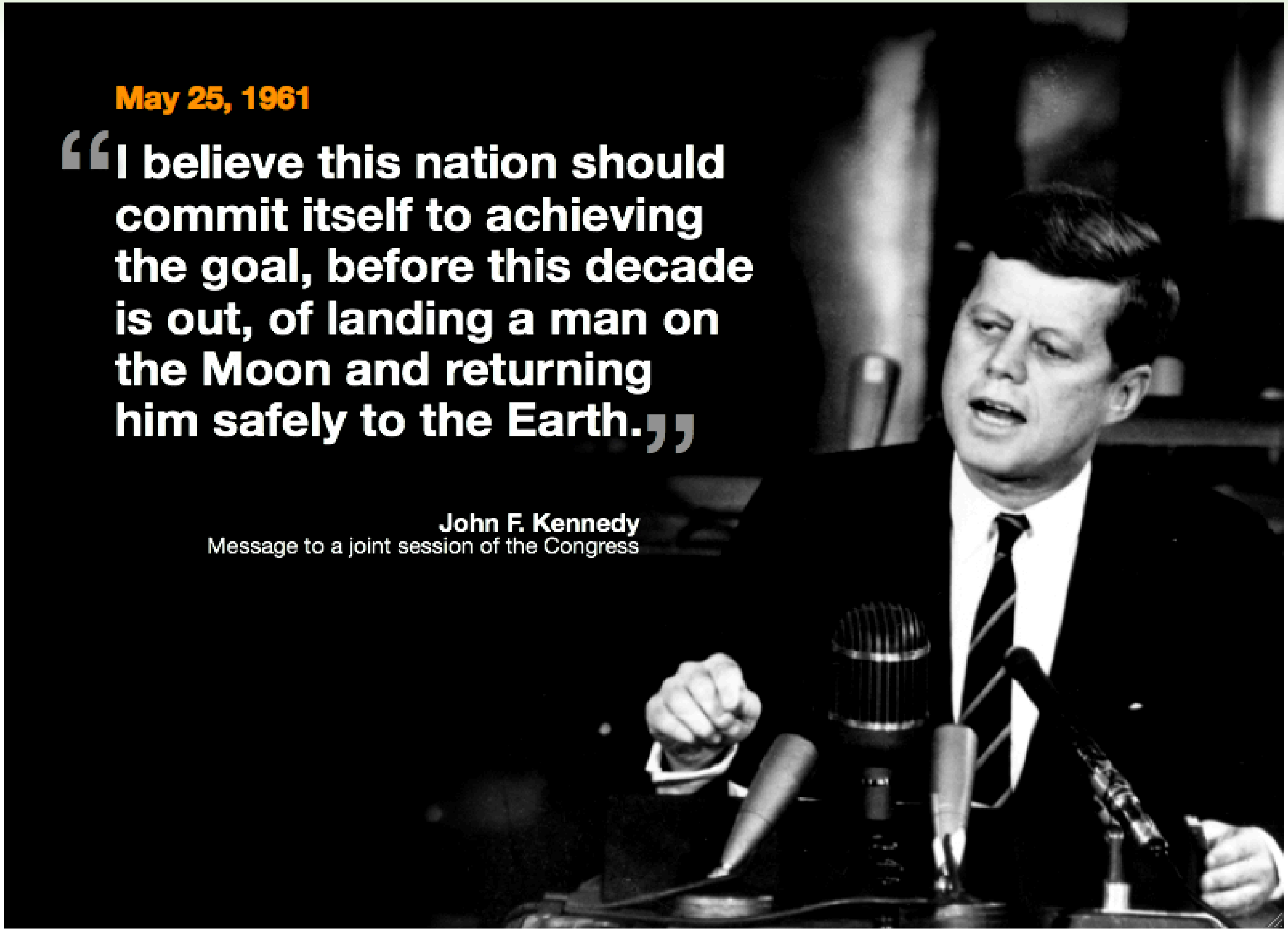
Remember, Everyone Here Either….

Does Not Have An Estate Plan	**Has Had Major Life Changes (births, deaths, divorce, etc.)**
Has An Estate Plan From *X* Years Ago	**“Do-It Yourselfer” (i.e., LegalZoom.com)**

How Does Legacy Coordination Occur?

Step #1: Exit Comfort Zone

Step #2: Sense of Urgency



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"What's This Going To Cost Me?"

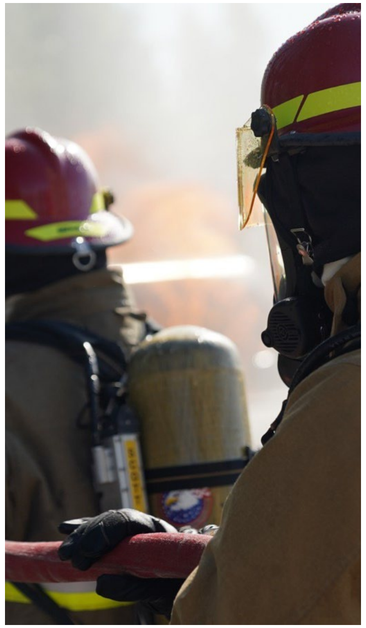
- No billable hours
- Fixed, 1x fee based on your particular situation
- Typically, $1,000 - $3,000

Free Advice…

Avoid cheap and generic when purchasing the following:

- Scuba Gear
- Parachutes
- Shark Diving Cages
- Bungee Cords
- Estate Plans

- How are these purchases similar?
  - Answer: By the time you realize the product is defective it is too late to fix and the results are disastrous
- World-famous fire fighter, Red Adair:
  - “If you think the cost of a professional is high, wait until you hire an amateur.”



Next Steps

1. No cost, no obligation, initial consultation
2. Estate Plan Design
3. Individual Custom Drafting
4. Estate Plan Execution
5. Proper Trust Funding
6. Lifetime Relationship

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What's It Look Like?

- Initial Complimentary Consultation
  - Getting to know you, your story, your family, your goals, and needs over a cup of coffee and a cookie
  - Recommendations for estate planning, asset protection, and tax planning

- If you decide to move forward, 2nd visit:
  - Review drafts
  - Asset protection and tax planning review
- 3rd visit:
  - Delivery of your custom Estate & Legacy Coordination Plan
  - Properly funding your trust

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RESPONSE SHEET

NAME____ BIRTHDATE___________

SPOUSE____ BIRTHDATE____________

ADDRESS____

CITY________________________________ STATE_______ ZIP__________________

PHONE 1 (cell or home)_____________________ PHONE 2 (cell or home)___________________

EMAIL 1 ____________________________ EMAIL SPOUSE___________________________

REFERRED BY: MAILER TV CLIENT RADIO SOCIAL OTHER________________

☒ **YES**, I WOULD LIKE A NO-OBLIGATION MEETING

Thank You!