Proven steps to plan NOW for your family's FUTURE!

ESTATE PLANNING for Young Families

What you *NEED* to know!

A Guide to Creating
a Well Crafted Estate Plan
to Protect Your Family

By New York Estate Planning Attorney
and Saint John's University Professor
MATTHEW LENZA, ESQ.

Estate Planning For Young Families

What you NEED to know!

So you finished school, started working full time and decided to start a family. The American Dream is yours. You have put down your roots and now you are ready to sit back and enjoy spending time and growing old with your family. As a family member and a parent of a young child, planning for the possibility that one or both of you may not see your children grow up is something that surely is not on your short list of things to occupy your mind. However, by not at least considering this possibility, you risk leaving important decisions about the care of your children in the hands of others. By requesting and downloading this free e-booklet, you have taken an important first step; it proves that you are at least mindful of some important and often uncomfortable issues.

At its core, this e-book was drafted to **provide you with information** that will help you understand how to best provide for and protect your children should you and /or your significant other ever be unable to do so. This is an important concept to understand before reading any further. The information contained in this e-book has been carefully curated and the topics addressed are based on real-life questions asked during client consultations and their corresponding answers. This book was NOT written to "get you into my office" for a consultation. Many of you will read the information presented herein and never contact my office to discuss estate planning. That is not only expected but in some circumstances it is encouraged. It takes a certain emotional strength to even consider some of the issues necessary in preparing an estate plan. Only once you feel comfortable discussing these tough issues is it appropriate to move forward in doing so. I do recommend however that you speak with your significant other sooner than later so as to not wait too long. The whole point of an estate plan designed for a younger family is to do some planning before it becomes too late.

I will discuss how to plan for the death of both you and your significant other, the incapacitation of both you and your significant other, and the much more statistically likely possibility that something only happens to one of you. Again, I can and will provide you with some great information, but the motivation to actually take planning steps will have to come from you. Even if this e-booklet doesn't motivate you to immediately initiate any estate planning, if it helps you understand the options available and to open both an internal dialogue and one with your treasured family members, then I consider it a great success as it pertains to your experience reading it.

Our minds are occupied every day by things that we consider "important". Perhaps a car needs repair, a child is suffering from a terrible cold, you have an important deadline at work, or your favorite TV show has been cancelled. I'm not going to tell you that any of those things aren't "important", because in the context of that day they probably are. Estate planning stands on a different level of importance, something that I like to term "life important". Your car will get fixed, heck you will probably have 5 more in your life and you will fall in love with another TV show soon enough. In terms of estate planning, the difference between planning properly and not planning properly is the tremendous effect that proper action versus inaction will have on those – i.e., your children – who will be directly affected by your disability or death. Without hyperbole, I've personally witnessed situations where failure to plan has led to hundreds of thousands of dollars being taken from children who would otherwise have been entitled to it if proper planning steps had been taken.

WHEN THE UNTHINKABLE HAPPENS

Consider this: You and your significant other are preparing for a rare night out to celebrate an anniversary. You have decided to go alone without your young children. To ensure that your children are safe and cared for while you are out, you dropped off your children with a trusted relative (Pro tip- Grandparents LOVE to watch Grandchildren!). You carefully explained your

children's routine - from the foods they eat to their usual bedtime. You reminded your relative of your children's allergies and their pediatrician's information. Lastly, you instructed your relative on where you can be reached in case something happens to your children while you are away. You are a great parent and when you leave those children to go out you really do feel that you are "covered". With so much preparation, you leave your children behind with the peace of mind that your children are well taken care of this evening.

Isn't it amazing that many parents never consider what preparations are in effect if you never made it home that night? I firmly believe that such thinking is often against human nature. As our world has turned into one of instant gratification we very often fail to think past the immediate future. While the story I told above is understandably a very unpleasant scenario to consider, if you look at the big picture of life, it certainly does not make sense that we should take so much care in our plans to be away for an evening and leave no instructions for the care of our children in the event that we never return. Just as providing instructions to your babysitting relative will give you peace of mind during your evening out, planning for the security of your children in the event of your death will give you peace of mind **every day**. This is why it is my opinion that every parent with a young child needs to have an estate plan.

"But we don't have much of an estate." If this is what you are thinking, you are not alone. An estate is far more than what your monthly Savings Account statement balance reads. Perhaps you have a pension or other retirement plan, or a life insurance policy. Also it is imperative to remember that a properly executed estate plan will survive and grow with you until your death. One fact of life is that most of us will not get to choose when we pass on. So in one way your estate plan is not planning for the estate that you have today, but for your estate as it exists on that inevitable and often unexpected day when we all leave this world. Thus, most young families need to plan for a much larger estate than they originally thought they had. Now that you understand how important it is to make such plans, what do you need to do to put these plans in place?

WHO WILL CARE FOR MY CHILDREN IF MY SIGNIFICANT OTHER AND I ARE UNABLE TO DO SO?

Many people approach me with a commonly held misconception that they need to specifically designate a guardian for their children because, if they do not, their children will become wards of the state upon the death of both parents. The good news is that your child is probably not named Bruce Wayne (Batman) or Little Orphan Annie and this is very unlikely to happen. The reality is that every state in the union has passed laws which **require** the court to select a guardian if you have failed to designate one. The good news is that courts will usually seek to place your child(ren) in the care of a family member. The bad news is that "any person interested in the welfare" of your children may petition to become their guardian. The court obviously does not understand your family dynamics (and EVERY family has some dynamics), and if multiple family members petition to become your children's guardian, the court may choose a different person to raise them than you would have chosen. In addition, it is possible that both sides of their family will petition to become the guardian of your children that they end up in the middle of a lengthy and potentially contentious court battle between their family members. Believe me when I tell you that there aren't enough adjectives to adequately express the horror of such a situation. You can save your children and your family a lot of heartache if, in your estate planning documents, you and your spouse clearly indicate who you would want to raise your children should something happen to the both of you. I certainly recommend having a frank conversation with your requested guardian prior to the drafting of your estate documents. Oftentimes family members will not be receptive to the immense responsibility associated with the care of young children and should they refuse to be appointed as guardian you could be back to that nightmare situation described above. It is in this vein that I deem it vitally important to name a second guardian you would trust to raise your children in the event that your initial choice is unable or unwilling to do so.

Because this person will essentially step into your shoes to make the major parental decisions such as how your children are educated, where they live and what medical care they receive, it is

important to pick someone whom you think would make decisions similar to yours if you were alive. Some questions that may help you and your spouse determine your choice for guardian of your children are: Who do I trust to make the best life decisions for my children? Who would raise my children in a substantially similar manner as I would? Which choice would disrupt my children's lives the least (i.e., lives in the same school district or neighborhood, has a similar religion, etc.)?

HOW TO LEAVE PROPERTY TO MINOR CHILDREN

Under the law, minors cannot own property outright and, therefore, whatever you pass to your minor children upon your death must be managed by a "guardian of property". While in practice this is often the same person who I discussed above (the guardian of the person), it need not necessarily be so. Some people specifically will designate a different guardian for this purpose to set up some sort of a "checks and balances" type of situation. Without any estate planning, the guardian of the property may have to post a bond and will be responsible for filing an accounting of your children's property with the court. This accounting can be a lengthy process and must be repeated each year until your children reach 18 years of age. While one big downside to this situation is having a court involved in the upbringing of your child, the biggest problem is what happens to your children's inheritance when they reach 18 years of age. Without planning to the contrary, the guardian of property is only permitted to maintain your children's property until they reach 18, at which point they are required to hand over complete control to your children. Thus, at 18 years old, your children will have unencumbered access to a potentially substantial amount of money without anyone to guide them in the management of their new-found wealth. We say that it may be substantial wealth because their inheritance will include any life insurance proceeds they collected upon your death and any judgment awards from a successful claim that your estate may have pursued if your premature death was the result of some unlawful action. As a general rule, it is unwise to give an 18 year old that much control over a large amount of property or money as it may lead to irresponsible spending as well as a multitude of other issues such as gambling and drugs. I can honestly say that I have met plenty of 18 year olds who would

likely be wise and responsible with any inheritance received. I have also met an equal amount of 18 year olds who I wouldn't trust with $100.00. The good news is that, with the proper estate planning, you can protect your children's inheritance – from themselves and from others.

By leaving your children's inheritance to them in trust, you can designate someone – called a trustee – whom you know and respect, to manage your children's property without the necessity of court involvement. Furthermore, in the trust documents, you can guide this person on how to best use this property to provide for your children. If you leave your children's inheritance to them in trust, you can determine how old they must be before they are to manage the property on their own – you can keep the trust in tact until your child reaches the age of 21, 25, 30, or 35. Also, an important often unintended benefit to using a trust for this purpose is that any property in trust for your children will not be accessible to any of their creditors as long as they leave it in the trust. By planning for the possibility that you and your spouse will die before your children are grown, you can continue to protect your children from themselves and from others – just as you would do if you were alive to guide them into adulthood.

WHAT ABOUT LIFE INSURANCE? DO I NEED IT AND HOW MUCH DO I NEED?

First, let me be perfectly clear that I do not now nor have I ever worked as a life insurance salesman. There is a lot of good information and a lot of misinformation floating around about life insurance. Before I even get into my thoughts on how life insurance can fit into the context of an estate plan it is important for you know to know that I have no vested interest in the sale of any life insurance policy.

The question to ask yourself is this; if you and your spouse died tomorrow, would there be enough property in your estate to support your children until they are adults? For most of my clients, the answer to that question is a pretty solid "no." If you are in the minority of clients who do have liquid assets right now that you think would cover the upbringing costs of a minor child you CERTAINLY need an estate plan to protect those assets. The point is that once you are

gone, there will no longer be a paycheck each month to help support your children, and therefore what you have at this very moment will be what must provide for your children until they are adults. It is for this reason that now, as a young family, it is advisable for each family member to take out an insurance policy on their own life. Before I delve into the need for life insurance in further detail, let me explain the options available and allay your number one fear that I'm sure is running through your mind- "that sounds expensive". There are two main types of life insurance available, term life insurance and whole life insurance, both discussed in detail below.

Term Life Insurance

Term life insurance is written to provide a specific death benefit, and protects an individual for a specific period of time in return for the policyholder's payment of a premium. If the insured person is alive at the end of the contract period, the premium is lost. In layman's terms, it's often thought of as a "pay as you go" type of insurance with no accumulation of money as you pay your premiums. It's as simple as this- you pay a premium every month, and if something happens to you the insurance company pays out your policy. There is a set term involved and you will often hear policies referred to as "10 year term life insurance" or "20 year term life insurance". You receive the benefit of being locked into guaranteed coverage for the term of the policy and the insurance company through their actuaries (statisticians) bets on you surviving the term of the policy and not making any payments on the policy.

It is important to note that that when the contract period extends beyond one year, the insurance company adds the individual mortality rate for each year and calculates an average premium which the policyholder must pay each year. The premium is the same each year of coverage, priced higher than what the actual mortality risk would require in the earlier years, and less than the mortality risk in the late years would require.

Term insurance is particularly suitable to those purchasers who seek maximum coverage at the lowest possible cost for a specific period of time. Parents, for example, whose incomes are currently stretched to cover current living expense while trying to save for future liabilities (such as the college costs for children) may purchase term insurance until their children's education is complete. Term insurance is also ideal when a specific financial obligation will end at a certain future date, such as home mortgage payments. In terms of cost, the most recent available data (2015) suggests that the average cost of a 20 year term policy ($250,000.00) for a 30-35 year old non smoker is about $27.00 per month. That's not a typo, the cost is actually only about $27.00 per month. If you smoke you can expect to pay closer to $60.00 per month but the question that you need to ask yourself is whether $335.00 (non smoker) or $721.00 (smoker) per year is worth knowing that if something were to happen to you that your family would be entitled to a substantial chunk of money. You can of course take out $500k, $1 million, $2 million or greater policy as well, just be prepared to pay higher premiums. A popular strategy in using term insurance is to take out a policy that reflects the number of years needed until your child(ren) reach adulthood. If you have an infant and purchase a 20 year term policy, so long as you pay your premium each month your death benefit will exist until your child is 20 or 21 years old, at which time theoretically the child (who is now an adult) will be self sufficient and not reliant on your finances for their care and well–being.

Whole Life Insurance

Also sometimes referred to as permanent insurance, whole life insurance is simply an extended term insurance policy with an accumulating savings element. Like term insurance, so long as your premiums remain paid, the face amount of the policy is paid to the beneficiaries at the death of the insured. The difference is that your policy does not automatically expire at a certain term interval (10 years, 20 years, etc.) and part of your premium accumulates in the context of forced savings which becomes available to you once a certain portion is paid into the policy. Basically you pay premiums for the rest of your life, retain protection in the event that you pass on but still accumulate savings that can be withdrawn (sometimes with penalty) or borrowed against. While

whole life seems like a great idea (and for many people is), like everything else in life it comes with a cost, and in the context of a whole life policy the cost is the additional amount paid in premiums every month, which is usually quite substantial. There may be some additional tax benefits available at your death with a whole life policy but for most young families these aren't going to come into play at all.

So which type of insurance is right for me?

For almost all of my estate planning clients who are young families the answer is term insurance. I remember reading once a very wise way to think about determining what type of life insurance someone needs and I'll share it with you here;

Think of whether you are protecting a risk of **IF** you die or **WHEN** you die.

For example, **IF** you die before the mortgage is paid off, then you want to have the insurance proceeds to pay it off. **IF** you die before the kids start school you want to pay for tuition.

WHEN I die, my business needs to be sold. **WHEN** I die there will be estate taxes.

IFs are candidates for term insurance; **WHEN**s are candidates for whole life.

As you can imagine, it is never quite this simple, but I do think that IF or WHEN is a good place to start.

I've heard many financial planners discourage the purchase of whole life insurance, preferring to keep a client's savings and insurance elements separate. In my experience, a greater problem with whole life insurance is that younger people starting a family and incurring significant long-term debts (i.e. mortgages) are often under-insured, as the coverage they can afford for permanent insurance premiums is less than what is needed in their circumstances.

On the other hand, if you have a high income and problems saving – whether due to a lack of discipline, time to manage investments, or knowledge about investment opportunities – whole

life insurance may be perfect for you. The higher premiums of whole life include a forced savings element: the cash value of the policy which increases each year.

Another element to be considered is that whole life insurance might be ideal for people who have health issues or are worried that they might contract an illness that could lead to "un-insurability" as time goes by. A whole life policy can never be canceled as long as the premiums are paid as required by the contract.

Regardless as to the life insurance product that you purchase, the payout is likely to be a substantial amount of money. It is vitally important that you institute a plan for how your children will receive these benefits. Just as with their inheritance (as discussed above), your children will not be able to own the proceeds from this life insurance policy. Without an estate plan, the court will put any payments made by the life insurance company to your children under the care of the guardian of property appointed by the court. Your children will receive, outright, the remaining proceeds at age 18 – unprotected from creditors or their own irresponsible spending. Remember that as discussed above, a properly drafted estate plan can provide the necessary protection for your children to alleviate these concerns.

PLANNING FOR SPECIAL NEEDS CHILDREN

If you are the parent of a special needs child, there are additional precautions that you will need to take when preparing your estate plan. Planning for Special Needs Children is always centered on preventing the inadvertent disqualification of your child from public benefits that he or she would otherwise qualify for now or in the future. Many public benefit programs, such as **Medicaid**, require that a person applying for these benefits not have access to resources totaling over a very limited amount. If you and your spouse die and leave assets to your special needs child in the same manner as your other children, you can disqualify your child for public benefits if, as a result, they could access resources over the limited amount. Please understand that this does not mean that you need to disinherit your special needs child. Most parents with special needs children are specifically sensitive to the issue of the long term care of their special needs child.

Luckily, there are estate planning tools available that will allow you to leave assets to your child without the risk of disqualifying them for public benefits. One popular such tool that you may have heard of is referred to as a **Special Needs Trust**. In their simplest terms, instead of passing assets outright to your child, these trusts restrict your child's access to the property just enough so that the assets in the trust are not considered "available" to your special needs child for public benefit purposes. The trust does not completely restrict your child's access to the trust, but simply requires that the trust be used only to "supplement" any public benefits he or she receives. Of course this planning strategy is completely accepted by all public benefit programs (or I wouldn't be suggesting it here!) As you can well imagine issues regarding the drafting of a Special Needs trust are aplenty and each situation will require some distinct planning.

PLANNING FOR INCAPACITY OF A PARENT

Above I discussed the consequences of the unexpected passing of you and/or your significant other. However, what if you come back, but are temporarily or permanently incapacitated? Unfortunately life is not so simple as to exist only in the two absolutes of being alive or dead, so this becomes an important question to be addressed in the context of a well drafted estate plan. Who will care for your children if you are incapacitated? Who will make medical decisions for you if you cannot do so yourself? Who will handle your financial affairs for you and your children while you cannot? In these situations, it is important for you to be prepared so that others can take care of your responsibilities while you are unable to do so. Similar to what was discussed above in the context of death, it is wise to designate a guardian who will take care of your children in the event that you and your spouse cannot. Naming a guardian in a will or other end of life estate planning document is NOT ENOUGH! Because these documents do not take effect until after you have died, any guardian you have named in that document will not be relevant if you are incapacitated. As part of a well crafted and thorough estate plan, there are a series of documents that can be drafted so that others may handle your financial and healthcare decisions while you are incapacitated. These documents include but are not limited to: a durable

power of attorney (financial decisions); a health care proxy (health care decisions); and a living will (sometimes called an advanced directive). Let's talk about each of these documents in detail.

Durable Power of Attorney

A durable power of attorney is a document through which you authorize a close family member or friend to engage in financial transactions on your behalf. If you become incapacitated, this document permits this person to handle your finances as if he or she were you. This authority includes the ability to pay your bills and file your tax returns, and it also allows him or her to use your finances to care for your children. Within the durable power of attorney document, you can define the extent of the authority that you would like this person to have over your financial matters. Without a power of attorney, your loved ones will not be able to gain access to your funds or make financial decisions without first seeking court approval, an often lengthy and expensive process. Even in situations where accounts are held jointly there are situations where a spouse or other family member may not be able to gain immediate access to funds in an account. A power of attorney solves this issue. A worthwhile power of attorney will allow the person you designated to manage, buy and sell your property if necessary, and to handle your insurance issues and government benefits if you become eligible for them. Essentially, the durable power of attorney will allow for the person you choose to conduct all of your financial affairs just as if they were you. Be advised that there is a certain level of trust necessary to grant someone a durable power of attorney, because it does grant them access to your accounts and funds therein, so it is absolutely not advisable to execute a power of attorney without first understanding its purpose, use, and ramifications.

Health Care Proxy

A health care proxy is a document in which you authorize a close family member (often a spouse) or friend to make medical decisions on your behalf when you cannot. Without a health care power of attorney, New York law has a default order in which your relatives will have the

authority to make medical decisions for you. Because the law does not consider your personal family situation (a recurring theme in estate planning!), without a healthcare proxy, it is possible that you will have people whom you do not trust making important healthcare decisions for you should you and your significant other become incapacitated. Since the 2010 passage of the Family Health Care Decision Act in New York, the law orders those making health care decisions as follows: (1) your guardian, if one has been appointed by the court; (2) your spouse; (3) adult children; (4) parents; (5) adult siblings; and (6) a close friend or more distant relative. This is VITALY important in the context of a family whose members have not officially been married. By executing a health care power of attorney, in which you name a person and at least one alternate, you are able to override this default order. A prime example (and one that often arises) is if your spouse is also incapacitated, and you would prefer that your sibling make these decisions instead of your elderly parents, you can supersede your parents as decision-makers if you name your sibling in your health care power of attorney document. This person's authority will only extend as far as was granted to them in the document. However, to cover the most important decision-making possibilities, this authority should include the power to access and disclose your medical records and other personal information, the power to hire and fire your doctors and other health care professionals, and the power to give or withhold consent to medical treatment. Basically, to be most effective, this person's authority should be that of your own were you able to exercise it.

Living Will

A living will (sometimes called an advance directive) is a document where you can express your wishes about the level of treatment you would like to receive if you are found to be in one of three situations: you have a terminal condition; you are in a persistent vegetative state; or you have an end-stage condition. The law defines each of these three conditions and before a living will can be used, your doctors must certify that your situation falls into one of these three categories. In layman's terms and those that most understand, a living will is a document that explains your wishes about being kept alive on life support. The good news is that a well drafted

living will allows you to select which life sustaining measures you wish to utilize (if any). Several people wish to receive pain medication for example but not artificial nutrition or hydration.

In a living will, you can leave guidance to your health care proxy and doctors regarding the level of treatment you would like to receive should you ever be in one of these three situations. From an emotional standpoint, memorializing how you would like a family member to act in a tragic situation is often invaluable, as it allows said family member to make difficult decisions with a clear understanding of your own wishes. One final note about a living will, it is also a valuable tool to use in make specific directives as it pertains to organ donation.

WE DON'T NEED AN ESTATE PLAN, MY SIGNIFICANT OTHER AND I HOLD EVERYTHING JOINTLY.

If I had to think of THE top misconception about Estate Planning and securing the future of families it would be this statement. Above, I already discussed every parent's worst nightmare – the death of both parents which leaves a child(ren) without any natural parent to raise them. Statistically speaking, a much more likely possibility however is that something tragic happens to only one of you. Many young couples fail to plan for the death of only one spouse since they simply want to leave everything to the surviving spouse. The smarter couples will at least hold their assets jointly, which does help mitigate the work necessary once one party dies. Note that I said HELP MITIGATE, and not ELIMINATE the work necessary. I'm not going to tell you that you and your significant other shouldn't hold property jointly because that simply isn't true. You absolutely SHOULD hold major assets such as homes, cars and large accounts jointly. As a general rule you should also designate each other as beneficiaries on any life insurance or retirement benefits. While many young couples think holding assets jointly is the finish line of a good estate plan, the reality is that doing so is barely taking 2 steps out of the starting block. Here's why:

Remarriage

For young families, the #1 reason that leaving everything outright to your significant other may not be smart estate planning has nothing at all to do with complicated calculations and laws and everything to do with protecting your estate (and your children's inheritance) in the event that your spouse remarries after your death. Especially when it comes to young couples, the likelihood that a spouse will remarry if one of them dies is quite high. If you leave your estate to your spouse outright, your estate becomes part of your spouse's estate and your say in the matter comes to an end upon your death. At that point your partner can leave your property to whomever he or she wants. In the worst case (but still very realistic scenario), they can decide to leave it all to their new spouse, and this new spouse may decide to disinherit your children, leaving them without any inheritance from you OR your spouse. Your spouse may have additional children with their new spouse and decide to leave part of YOUR property to them. Or, your significant other may even decide to give it all away. In short, by leaving your estate outright to your spouse, you risk unintentionally disinheriting your children since you will no longer have control over where it should go upon your spouse's death. On the other hand, by doing some basic estate planning, you can specify how you want the assets to be used during your partners lifetime, and to whom you want the remainder of your assets to pass upon his or her death – i.e., your children. You can provide that your spouse should receive as much of the income and principal from your estate as he or she needs for health, education, maintenance, and support for life, but further specify that the assets will be distributed to your children at your spouse's death.

Avoiding Probate or Estate Administration

If someone were to die today having not done an ounce of Estate Planning, their estate would be subject to an *Administration Proceeding* in the Surrogate's Court, where the court would supervise the inventory and distribution of said person's liquid and non-liquid assets to their beneficiaries under a standard set of laws known as the INTESTACY laws of New York State. Basically if you die without any legally valid document with asset distribution instructions, the state has automatically determined who will receive the proceeds of your estate and in what share. A

common misconception is that if you die without any estate planning documents that all of your money will go to the government. In actual practice it is VERY unlikely that this will happen, as even people who don't have close family most likely have some traceable sibling, niece, nephew, cousin, etc. that would be entitled to the estate proceeds. I explain the concept of intestacy to my clients in a similar manner as to how I would explain to them the rules of a board game such as Monopoly. When you die, your token gets placed on the GO space and the game begins. Now we just start the process and follow the very clearly defined rules of the distribution game. The game ends when the money has all been allocated and distributed. The problem is that the rules, while clearly defined, are very complicated. To help understand the rules most people are going to retain the services of an attorney. Now while I would like to think that ALL of my brethren and I are very fair and accommodating in what is likely a time of loss, there is significant work involved in the administration of an estate and as such the legal fees for such work is not cheap.

What about the person who considered their demise and created a simple Will? Similarly to an Estate Administration, the distribution of assets must also be done under the supervision of the Surrogate's Court in what is called a *Probate Proceeding*. The difference between an Administration and a Probate proceeding is that in a Probate Proceeding the court will not be following the New York rules of Intestacy, as the deceased has specifically made bequests for the distribution of his or her property. Like an Administration proceeding, there is a large amount of work to be done to properly handle the distribution of the estate and the legal fees for such work can and does add up quickly, depriving your family of the full benefit of your estate assets.

While it is true that an asset held jointly MAY not be subject to distribution through court supervised methods, this isn't always the case and as I demonstrated above there are pitfalls associated with that type of arrangement.

The answer is that you can alleviate the entire issue of probate and/or administration by properly setting up your estate plan before it becomes too late. The cost to prepare the necessary documents is almost always less than the cost of an attorney to handle the probate or

administration proceeding, not to mention the peace of mind that your family will receive by having immediate and unencumbered access to your estate property and account funds.

Estate Taxes

For older and wealthier clients, the PRIMARY reason that leaving everything to your spouse may not be smart estate planning has to do with estate taxes. For younger families, considering the estate tax ramifications of the demise of a family member is typically not all that important. The reason is that the majority of younger families just do not have the net worth where estate taxes become a factor, although as you will see I bet you are a lot closer to having to consider it than you might think.

If your total estate upon your death exceeds a certain amount upon your death, federal and state estate taxes are imposed. These taxes can be severe – the federal government taxes at a rate of between 35% to 55%. As of 2016, any person who dies can leave up to $5.45 million dollars to their beneficiaries without being subject to *federal* estate taxes. In terms of *New York State* estate taxes, the number for 2016 is $3.125 million (those dying before March 31st) and $4.187 million dollars (those dying April 1st or later). Because the death benefit of any life insurance policy and the value of any retirement accounts you own will be considered to be part of your estate for tax purposes, for estate tax purposes you are probably worth a lot more than you think, and if you aren't now, if you take the sage advice in this booklet about obtaining life insurance, you will soon be. Your spouse can easily avoid any estate taxes at your death, due to an unlimited marital deduction. However, no such unlimited deduction is available to your children. This is an important distinction.

Let me be realistic and say that for the vast majority of those of you that are reading this, estate tax issues will not become important to you until you are in your golden years, if at all. It is however a concern that needs to be monitored as the legislation about the exemption numbers is always a very hotly debated topic and has changed a few times over the last few years. If you do have an estate that you think is close to the exemption limits listed above I do strongly urge you

to contact a trusted tax professional who can help you navigate any potential issues that may arise as what I have written is really just a short primer on the subject of estate tax. It is obviously a very complicated issue that requires expert guidance.

As you can see, planning for the death of one spouse is just as important as planning for the death of both of you. By failing to make use of advanced estate planning opportunities, through various ways you can inadvertently cost your children much, if not all, of their inheritance.

CAN'T I DO THIS MYSELF?

WHY DO I NEED AN ATTORNEY FOR ALL OF THIS?

Many people who read this booklet will eventually ask this question. I believe this to be human nature and a part of our culture. This is a country founded on Yankee ingenuity and why would anyone want to pay someone to do something that they can do themselves? Also, the thought process of many is that by saving their attorney fees they are maximizing the distribution that their families will receive.

For some, this thought process is especially true since it is easy to find simple forms on the internet or at office supply stores these days. LegalZoom and its myriad of competitors are quite frankly much better at television and internet marketing than they are at understanding estate planning concepts.

Let me preface this discussion with this; if your two choices are either doing no planning at all or downloading and executing the form from an online website or office supply store, use the form.

I can say with all sincerity that in reviewing the DIY forms that clients bring to me when they grow concerned about their contents that about 50% of them will work to accomplish *something* positive, although usually in *very limited circumstances*. The other 50% are literally useless, in that

many don't conform to statutory requirements (which are different in New York than some other states) or they are drafted to be so confusing and are written in such poor English that the documents become truly worthless.

The problems in using form documents is that "simple" documents do not necessarily achieve the result that is right for you – as what is "good" planning for one person's estate is not necessarily "good" for another. Allow me to put it to you this way; would you buy an amazing pair of designer jeans from the clearance rack if they were 5 sizes too small? I don't think that would do you too much good.

Day after day, I see "simple" online or DIY documents that create a disaster, and leave absolutely horrible situations for loved ones to clean up when you have passed. The unintended irony is that this is often worse than what you tried to prevent by preparing an estate plan in the first place. Because these documents are meant to help your loved ones carry out your wishes when you cannot do so yourself, whether because of incapacity or death, you want to be sure that your instructions can be understood and implemented as smoothly as possible.

One final practical note about online and DIY estate plans is this; when you die there is always a possibility that someone will challenge your estate documents in court. Part of my practice as an estate planning and elder law attorney is probate litigation. As we become an increasingly litigious society by what seems to be the day, this reality is becoming more and more prevalent. The reality of estate litigation is that a professionally prepared estate plan is much less likely to be challenged, or to take it a step further *successfully* challenged, than an online or DIY estate plan. So to extrapolate what was discussed above, allow the scenario to play out as follows:

You are a smart, successful and prudent member of a young family. You have decided (correctly) that you need to create an estate plan to prepare for all contingencies. In an effort to save money, you decide to utilize an online legal document service for a variety of estate planning documents. Tragically, one year after following the instructions to the letter on the downloaded documents, you are involved in a terrible automobile accident. Your significant other arrives at the hospital with your Health Care Proxy only to be told by the hospital staff that the document may not conform to the legal requirements in New York State, and they will not honor his or her wishes

with respect to your treatment. Your significant other produce a living will showing the hospital staff exactly what your wishes are should this situation occur (again- you are prepared right?) WRONG. Again the hospital staff (petrified about being held liable to a different family member should they do *anything* against the letter of the law) refuses to acknowledge the living will because it doesn't conform to NY requirements.

Unfortunately you eventually succumb to your injuries, and your significant other now finds your Will, and brings it to a local attorney to probate it. Another family member, not satisfied with the "professionalism" of your will document as it has not been prepared by an attorney, visits a separate attorney, who finds that the Will may not have been prepared according to all statutory requirements and that the will may be invalid.

So let's now take stock of what has happened. You have had a horrifying experience in the last days of your life which may be in *direct* conflict with your wishes, and your family is now fighting over your estate, spending all kinds of time and money and destroying the fabric of a healthy family structure.

While this scenario may seem farfetched, all of the above issues happen every single day. It is heartbreaking to see a family torn apart over issues that could have been completely avoided with some basic estate planning.

SUMMING IT ALL UP

If nothing else, I want you to take two main things from this booklet:

First, it is of utmost importance that you take *some* action with respect to the creation of an estate plan. The purpose of this booklet is to help you understand that by taking some steps now, you can prevent a lot of time, expense and heartache for your family in the future. My goal in writing it was only to provide you with the information. What you do with it is completely up to you.

Perhaps this booklet will serve to create a dialogue within your family about estate planning matters, and if it does nothing more than that I would term it a great success.

Second, that while parts of this booklet may seem complicated and difficult to digest, a basic estate plan for a young couple isn't typically going to be a voluminous stack of unintelligible legal jargon. The most successful estate plan is one that starts small and grows with you as you age, have children, near retirement and eventually pass on. It is an unwavering fact of life that as we get older, our sensibilities, responsibilities, and family dynamics will change, often several times. By creating and maintaining a sensible estate plan you can stay ahead of these changes, and be prepared to handle anything that life can throw your way.

Good Luck!

Matthew Leerza, Esq.