The 7 Reasons Your Dad's Simple Will Won't Work for You

A Guide to Successful Estate Planning for Baby Boomers and Seniors

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National Elder Law Foundation under authorization
of the Pennsylvania Supreme Court

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Here's What's Inside…

Introduction

There's a story about a dairy farmer named Guy. Guy was a WWII veteran and had done pretty well for himself after taking over the family farm from his father. Guy earned enough money from the farm to be able to buy out the neighboring farm.

Everything was going well for Guy and his wife for a couple of decades. Then in 1997, Guy developed Alzheimer's Disease and entered a skilled nursing facility.

Did you know that the average cost of a nursing home today is currently over $10,000 a month? Back in 1997, it was probably around $7,000 a month.

So, Guy's wife began writing checks to the nursing home. Months went by. Years went by. Guy ended up living in the nursing home for 10 years, and his stay was completely privately paid. Guy and his wife lost a small fortune to Alzheimer's disease. This didn't have to happen.

Guy was my Grandfather. His story is the reason for this book.

When I started practicing law, I discovered this developing practice area called "Elder Law." I researched the laws and found that I could have saved my grandfather, Guy, at least several hundred thousand dollars on his long-term care costs.

When I realized that I could have helped my own family so much, I decided to make it my mission to educate people on these issues. I strongly feel that families need to know the information in this book.

I have built my law firm by advising aging clients (and their families) on issues like how to pay for a nursing home. Over the years, I have discovered that there are many other common shortfalls in traditional "simple" estate plans. I point out many of these shortfalls in this book.

I've seen first-hand what poor planning does, and I want to help other families' avoid those mistakes. This is what drives me.

At its core, estate planning is really just about answering some tough questions: Who's in control of my money, What would happen if I became incapacitated, What happens if my kids get a divorce, or, What happens if my kids become disabled?

The challenge with estate planning is that we need to answer those questions before clients ask them. We need to have a plan ahead for the what-ifs of life because after an accident or illness, it's too late to start thinking. The problem is that most people don't know what risks and options they have.

I want this book to educate you on your risks and estate planning options. At the conclusion of the book, you'll have a better understanding of documents like Wills and Trusts.

More importantly, you'll have a better understanding of how your legal documents interact with real life and how "simple" estate plans can create problems for you and your family. I want you to be well prepared for life's twists and turns. Preparation begins with education. This book is a great place to start.

To Your Success!

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Why Your Dad's Simple Will Won't Work for You

In many ways, the world is a different place than it used to be. Laws change. Technology changes. Politics and societal norms change. Modern estate plans need to reflect this reality.

For example, a generation or two ago, people thought differently. If you think back to how your grandparents were raised, the ideal scene was probably a nuclear family with a husband, a and three kids. The idea of retirement was to live off a company pension until age 80 and pass away one night during sleep. The kids would likely live close by to provide any needed senior care.

That's not the way the world works any longer. Life has changed. We live in a time where many children move away and elder parents can't count on their children for care. Although we live longer than generations before, we may need more years of long-term care assistance. Family dynamics have changed. For example, divorce rates are at an all-time high and many families are now blended. These issues can complicate estate planning and family care.

We now live in a digital age which brings to light a new era of security and property issues. We own digital assets which are emotionally and financially valuable and need to plan for them. Today's young adults have higher debt and lower job prospects than any other previous American generation. They may be more financially dependent on their parents than previous generations.

From a retirement perspective, it used to be much more common for people to have company pensions. Persons are dying out, which greatly affects estate planning. Now there are complicated tax-qualified accounts including IRA, 401(k), and 403(b) accounts, which older generations simply didn't have. Many Baby Boomers and Seniors have a significant portion of their nest egg in these types of accounts, but do not really understand how they work. There's a ton of confusion about what happens to the accounts after you've passed away.

Just as life has changed, the legal landscape has changed, and modern estate planning reflects these realities.

It's time to recognize that yesterday's tools won't help us with today's challenges.

Estate Planning for Baby Boomers and Seniors

In this book, I've identified seven areas in which the current estate planning environment is different from the environments of previous generations.

One of the crucial differences is that people don't just grow old and die nowadays; many spend time in the nursing home first. Even long-term care provided in your house, rather than a nursing home, is expensive.

Paying for long-term care is an issue previous generations simply didn't need to think about or plan for. In the past, a local daughter was counted on to care for an aging father. In today's world, the daughter is working, and her career may have moved her far away. She doesn't have the ability to care for Dad, so we now have to plan for the care we need.

I'm also going to discuss taxes, the probate system, and privacy issues in the age of the Internet.

In addition, you'll read about IRAs and 401(k)s and how those assets get transferred from generation to generation.

You'll learn about some hot-button issues like what happens if you leave your assets to your child, and your child goes through a divorce. Does your child lose your life savings because of his or her divorce?

At this moment in time, an ever increasing percentage of the population is disabled or on government needs-based benefits. Perhaps you have a disabled loved one or a family member who may face a disability in the future. You need to plan for those possibilities to ensure that your heirs continue to receive their government assistance.

I'm also going to discuss the pros and cons of the trend of beneficiary-designated accounts. Almost every financial account has the option to add a beneficiary. Should you name beneficiaries? We'll explore this issue.

Life is more complicated than it used to be. Therefore, so is estate planning.

This book will provide some clarity. I discuss each of the 7 issues at some length and then end each chapter with a short summary of why your Dad's "Simple" Will won't work for you.

The first issue I'll discuss is the biggest financial threat your family is likely to face – the need for long-term care.

Let's dive in.

1. You Need To Plan For The Nursing Home

Long-Term Care costs are soaring through the roof. In Pennsylvania, 2017, a semi-private room in a nursing home costs nearly $10,000 per month. That's $120,000 a year, and you still have a roommate! Unfortunately, the law provides that you need to pay privately for this type of care.

This is the biggest financial issue for middle-class Americans. Baby Boomers and seniors are being financially penalized based on their healthcare needs, and there is no end in sight to this problem.

As a country, our health care system provides a system to pay for *some* health issues, but not others. Your family's financial well-being may be entirely dependent on the type of health care problem you develop. Here's what I mean:

Let's assume Mr. Smith is 70 years old and on Medicare. If Mr. Smith has a heart attack, his wife calls 9-1-1. An ambulance comes to rush him to the hospital. The hospital doctors rush him to a cardiac surgeon. The cardiac surgeon does open heart surgery. Mr. Smith will recover from that surgery, and he'll get to go home. He and Mrs. Smith can live another decade or two together and be financially okay. Why?

The treatment of a heart attack is considered "acute care" and is covered by Medicare.
As a second example, consider Mr. Jones who is also 70 years old and on Medicare. Mr. Jones, unfortunately, falls over from a stroke. Mrs. Jones calls the ambulance, which takes him to the hospital, where he is stabilized. Three days later, the hospital wants to discharge Mr. Jones to a skilled nursing facility, where he will spend the rest of his life because of his debilitating stroke.

If he's in the nursing home for three years, his total bill may exceed $300,000. Medicare will only pay up to 100 days (with co-pays), depending on the progress of the care. After 100 days, Mrs. Jones must pay $100,000 per year with her own funds!

The long-term custodial care treatment of a stroke patient is not considered "acute care." Rather, it is considered custodial care, which is largely not covered by Medicare.

The conclusion to draw from these two examples is that our healthcare delivery system for seniors pays fully for heart attack treatment but doesn't pay fully for stroke treatment. Similarly, Medicare pays for the acute treatment typically needed for a cancer patient, but it doesn't pay for longer term Alzheimer's disease treatment.

So, unless you somehow know that there is a 0% chance of needing long-term care, you need to understand how you'll pay for these costs. Typically, a nursing home resident has to look toward another government benefit called Medicaid.

Medicaid is a federal program that provides health coverage for people with limited assets and incomes. It covers the cost of nursing home care for those who meet the program's economic requirements for eligibility, and can also pay for care in your home!

Though it's a federal program, Medicaid is administered by the states. Federal law empowers each state to enforce Medicaid eligibility rules according to its own interpretation. This means that application of these rules can vary significantly from state to state and, in some states, from county to county. Qualification for care in your home is also different for qualifying for care in a nursing home.

Your Elder Law Attorney can best help you determine how the rules apply to you in your specific locality. Before you get into the specifics, however, it's a good idea to familiarize yourself with the general federal guidelines for Medicaid qualification that apply everywhere.

ASSETS vs. INCOME

A first key distinction in understanding Medicaid eligibility is that Medicaid has certain limitations for both assets and income. Medicaid treats assets differently than it does income.

ASSETS

Generally speaking, assets fall into two categories: "countable" and "non-countable." To qualify for Medicaid benefits, a PA nursing home resident can have $2,400.00 in countable assets. Some applicants may keep up to $8,000.00. The healthy spouse of a nursing home resident, or "community spouse" can retain between a minimum of $24,180 and a maximum of $123,600 (2018) of the couple's joint countable assets. These amounts are adjusted annually for inflation. You may be able to keep more than $123,600 if you meet certain criteria.

Certain assets are not counted in arriving at this amount. They include:

- All or part of applicant's principal residence
- Personal possessions
- One motor vehicle
- Prepaid funeral plans
- Small Life insurance Policies

ALLOWABLE INCOME
How much income are you allowed under Medicaid law? There are different answers for the healthy "community spouse" and the individual who resides in a nursing home.

PA Nursing home residents can only keep up to $45 a month as a personal needs allowance - the rest of their income must go to help cover the cost of their care.

-If the resident is married, the community spouse can keep all of his or her own income. Depending on the family's monthly expenses, they can also sometimes keep some of the sick spouse's income, up to$3,090 a month (in 2018).

ESTATE RECOVERY
What happens to a Medicaid recipient's estate when he or she passes away? Like so much else, that depends on whether he or she has properly planned to protect his or her assets.

When a Medicaid recipient dies, the state must attempt to recover the benefits paid to that individual from his or her estate - that is a requirement under federal Medicaid law. The Estate Recovery Program seeks to take away those assets that the Medicaid recipient was allowed to keep when he or she initially became eligible. This is where families will often lose the family home. It was exempted when the person became eligible for benefits, but when he or she passes away, the state will force the executor to sell the house and refund the monies to the State.

In PA, this claim is limited to the probate estate. Some states have expanded the scope of assets from which they can recover the cost of a Medicaid recipient's care. Trusts are often used to protect your assets both during your life and after your death. A qualified Medicaid Planning Attorney can advise you on the many types of Trusts available.

THE 5 YEAR LOOK-BACK PERIOD

Medicaid's eligibility rules basically require you to go financially broke before you are eligible for benefits. Because of this rule, many families decide to give their homes and other assets to their children, with the intention of protecting these assets. This is very risky.

When you apply for Medicaid, you must disclose any transfers in the last 5 years (60 months). If you have given away your assets, Medicaid will deny eligibility for long-term care benefits for a period of time called a "Penalty Period." The length of this time is dependent on the amount of the gift.

The resulting situation is an ugly one for the person needing care, as well as his or her family members. During the *Penalty Period,* the nursing home bill continues to accrue, and there are little or no assets to pay the bill. Over the course of several months, the nursing home bill could amount to tens of thousands of dollars of liability. Oftentimes in Pennsylvania, nursing homes are left with no other option but to sue adult children under Pennsylvania's Filial Responsibility Law.

There are several exceptions to these harsh rules. For example, you can give assets to disabled children (or to a Trust for their benefit). There are also many other planning strategies available to you. Most of these strategies can only be implemented with the help of a qualified Elder Law Attorney.

WHY YOUR DAD'S SIMPLE WILL WON'T WORK:

Will-based estate plans don't do anything to protect assets from the costs of long-term care. With a *Will-based* plan, you own most of your assets individually. This makes them "available resources" under the Medicaid rules. So, unless you do more sophisticated planning, you could end up losing everything.

Another option for you to consider is the transfer of certain assets to a Medicaid Asset Protection Trust. These Trusts render your assets "unavailable" for Medicaid purposes. This should allow you to protect the assets for future generations.

If you are concerned about planning to protect assets, you should consult with a qualified Elder Law Attorney to learn more about whether a Medicaid Asset Protection Trust is right for you.

Your family doesn’t necessarily have to go broke, even if one parent is already in the nursing home. Of course, there is no one ideal solution for everyone. You will want to talk about how to best protect your family with an Elder Law Attorney to ensure you, your spouse, and your family are protected.

2. You Probably Don't Need to Plan for the Federal Estate Tax

For decades, death taxes have understandably been a primary driver of estate planning. Most people would agree that they can spend their money better than the government can, and everybody wants to save money on taxes.

The primary tax concern that has been an integral part of estate planning for decades is the Federal Estate Tax. This is a death tax that's imposed based on the value of the estate when someone passes away. Historically, if you died with significant assets, the government could take over a third of your estate.

Lawyers in the estate-planning field have always advised clients on how to best prepare for the estate tax. Attorneys help families avoid the tax with legal documents and tools. This was extremely common planning for decades.

Now, however, the legal landscape has changed with regard to the Federal Estate Tax, and the issue is no longer a priority to over 99% of the population.

Here's Why:

For a long time, the Estate Tax has been unified with the lifetime Gift Tax. Simply stated, if you give away too much money, either during life or at death, the government will tax you on these gifts. There are annual exclusions and lifetime exemptions to these taxes.

You may have heard that you can give away $10,000, $12,000, $14,000, or $15,000 (the 2018 figure) in any given year. This is the annual exclusion from the Unified Gift and Estate Tax.

Historically, you didn't want to gift over the annual exclusion, because if you gave too much away, then the extra gift would reduce your lifetime exemption of, let's say, $1 million. For example, if you gave away $20,000, then your lifetime exemption would be reduced from $1 million to $980,000. If you died with more than $980,000, you would be heavily taxed.

So, wealthy people concerned about the estate tax used to gift the annual exclusion amount to their kids every year because it wouldn't be taxed, and it wouldn't reduce the lifetime exemption.

Although it gets a lot of attention, most of my clients' number one issue is not estate taxes.

Since the 2nd Bush administration, the lifetime exemption has been over $5 million per person. In 2018, the exemption was increased to $11.18 million.

Now, if I gift over the annual exemption of $15,000, I technically need to file a Gift Tax Return and tell the IRS that I gave away the money, but my lifetime exemption is so large that it doesn't result in any tax. I can give away almost $11.2 million during my life or at my death, and so can my wife. Not many people have that kind of net worth.

Traditional estate planning has been concerned with estate taxes, but it just doesn't matter to most Americans in the current era.

The federal death tax has been more or less eliminated for middle-class Americans for almost a decade.

Here's how the annual exemption has changed over the years:

- In 1980, the exemption was $161,000.
- In the 1990s, it was changed to $600,000.
- In 2010, it was $5 million.
- In 2017, it was $5.49 million.
- In 2018, it was $11.2 million.

So, as you can see, death tax planning was a large concern for your grandfather. While there are still many mistakes to be made if you are approaching these limits, the tax really isn't an issue for most people.

Often, there are still state death taxes that need to be considered. Many states have matched their lifetime exemptions to the federal exemption. Some states have no death tax at all. Some states have an inheritance tax, which is the responsibility of the person who actually inherits the benefits.

In Pennsylvania, where I practice, there is an inheritance tax, and there are very low exemptions. Even very small estates are subject to the inheritance tax. That said, in my practice, the inheritance tax is usually not the primary concern of my clients, because the tax rates are relatively low.

While the Federal Estate Tax issue still gets a lot of attention and conversation, for Baby Boomers and seniors in today's current legal and tax environment, it is simply not an issue most need to be concerned about.

Before doing any planning, seek the advice of an Estate Planning Attorney in your state.

WHY YOUR DAD'S SIMPLE WILL WON'T WORK:
For the last several decades, estate planners have been planning to help families save money on the Federal Estate Tax.

This was typically done by creating an estate plan that created "Family" and "Marital" Trusts upon the death of the first spouse. These tools made perfect sense in the era of high death tax rates. Now, however, these types of plans can add unneeded complications during the estate administration process. They can also needlessly restrict the remaining spouse's access to money over his or her remaining years.

If you had your estate plan created years ago, there's a decent chance that the documents have this type of language. It is probably time to have these documents updated.

In conclusion, the biggest threat to your estate probably isn't taxes.

3. Planning To Avoid Probate

Probate has been an estate-planning concern for a long time. Attorneys have been talking to their clients about avoiding probate for decades, and we still are. The term *probate* is used to describe the post-death administration of an estate through the courthouse. When a person dies with a Will, it is necessary to probate the Will and administer the estate through the court system.

When the Estate ends up in the courthouse, it's the judge's job to interpret what the Will says and distribute it according to the testator's intent. Attorneys talk to people about avoiding probate for a couple of reasons.

First, the legal fees associated with probate can be high. It's not uncommon for lawyers to charge on a percentage basis to help administer the Estate. Somewhere between 2% and 6% of your Estate could be spent in legal fees, just to get your money and property to your kids.

Second, probate can be a lengthy process. Typically, it is six to nine months before anybody receives an inheritance through the probate process, and it could be a lot longer, especially if there are creditor issues or if the kids are fighting.

There are also privacy concerns. As probate is a court proceeding, there are documents that need to be filed. Often these documents then become public records and are searchable online by family, friends, nosy neighbors, and even scammers.

In the past, your loved-one would have to go down to the courthouse to look up your legal documents, but now many counties and states put things such as this on the Internet. Nosy neighbors don't even have to bother going down to the courthouse; they can easily find out your personal business online.

In today's digital information age, this is extremely concerning. You may or may not be that concerned about your next-door neighbor knowing what your kids inherited, but you might be worried about a hacker or scammer knowing what your kid possesses. For many reasons, people don't want that type of information to be accessible to the public.

Probate should also be avoided because if your kids are ever going to get into a fight, this is when it is likely to happen. Being in the courthouse means they're already in the boxing ring, so to speak.

For all these reasons, it's wise for people to think about avoiding probate. It is key to understand that a Will only governs things you own in your own name—a checking account, real estate, a car, etc. When you die, those things are passed on according to the terms of the Trust rather than through the probate system.

The best way to avoid probate is not to own the assets at the time of your death. This is best done by transferring ownership of your assets to a Trust. The Trust could be designed to benefit you for life and to pass the assets on to your family upon your death.

Rather than administering your Will in a courthouse with high costs, the lengthy process, privacy issues, and the kids fighting, Trusts are administered in a lawyer's conference room. It's a private setting, without a judge, without the newspaper, and without as many online filings.

WHY YOUR DAD'S SIMPLE WILL WON'T WORK:
Wills must be administered in the Courthouse. If you want to avoid all of the headache, the answer is simple. Use a Trust instead of a Will to keep your assets and family out of the Courthouse upon your demise.

4. Planning For Your Tax-Qualified Accounts

Seniors and Baby Boomers are some of the first people to pass away who own these tax-qualified accounts, like IRA, 401k and 403b accounts. Previous generations didn't have savings in these types of accounts.

These are great investment tools. They allow you to grow your money in a tax-deferred manner. Once you take money out of the account during retirement, you do have to pay income tax.

It's a great way to build higher net worth because you're getting tax-deferred, compounding growth. Another lesser-known advantage is that these accounts (or significant portions of them) can be protected from creditors in a bankruptcy proceeding. Hopefully you never have to go through bankruptcy, but if you do, this is a huge advantage.

With a traditional retirement account—a traditional IRA or a 401(k)—you're able to defer paying income taxes or taking distributions out of the account until the year after you turn seventy and-a-half (70½). Once you reach this age, the IRS makes you take required distributions out of the account every year based on the account value and your life expectancy.

These are called *Required Minimum Distributions*, or RMDs. When these dollars come out of your account, you have to pay ordinary income tax on those dollars.

When you pass away, things get complicated. If you leave the account to a spouse, your spouse gets to “roll over” the account into his or her own IRA. This allows your spouse to enjoy his or her own age for Required Minimum Distribution purposes.

However, if you leave qualified funds to other people, the rules change. If you leave the IRA to your kids, for example, then your kids get what is known as an “Inherited IRA.”

We joke with our clients that this is like hitting the mommy-and-daddy lottery because when you win the lottery, you get two options: You can have X dollars in a lump sum or you can have Y dollars over time. It works the same way with an inherited IRA.

Let's say my dad passes away and leaves me his IRA. I'll get a form in the mail from the financial institution that lays out my choices: I can have a lump sum, or I can take an inherited IRA. This is where the first mistake often is made: The majority of children check the “lump-sum” box.

With a lump sum, the IRS believes I earned an extra $200,000 of ordinary income this year. The account loses a third of its value because of ordinary income tax. Dad's $200,000 drops to $140,000 on day one.

It's wiser for me to check the "Inherited IRA" box. If I do so, I get an IRA. It is now tax-deferred money for me, but it works a little differently. Unlike my own IRA, with an "Inherited IRA," I don't wait until age seventy-and-a-half (70½). to take distributions. I have to take required distributions in the first year and every year thereafter, based on my life expectancy.

Taking the money as an inherited IRA is still a smart decision, because the money that remains invested is still allowed to grow tax-deferred.

For example, assume my Dad leaves me a $200,000 IRA, and it is well invested, earning 8%. In one year's time, the account value would grow to $216,000.

Let's also assume that my required distribution in Year 1 is $12,000. The account balance at the end of the year is $204,000 ($216,000 - $12,000). That extra $4,000 in growth now gets to grow, tax-deferred. The money still compounds over time, and the total distributions from the account over my life expectancy, depending on my age, could be a multiple between five and ten. It could be worth over a $1 million over time.

Now you can see why it's wise to take the inherited IRA, invest it, and just take the required distribution. However, to take advantage of that growth, I can only take the required distributions, and I have to let the remaining money stay invested for a long period of time. This is where the problems begin.

Let's say that my life expectancy when I inherit the IRA is 35 years. Thirty-five years is a long time. Issues like divorces, healthcare events, and lawsuits can pop up. What happens if I run into a creditor issue, like a divorce or a lawsuit?

Unlike a traditional IRA, which receives some protections through the bankruptcy rules, an inherited IRA is potentially subject to those creditor actions.

Accordingly, It might make sense for you to avoid leaving your IRA to your children outright. Instead, you can choose to leave your IRA to a Trust that benefits your kids, but protects the accounts from divorce or lawsuit creditors. If properly drafted, a Trust can preserve the stretch-out tax benefits of leaving IRA dollars, while protecting the money from creditors. This is typically done with a document called a *Standalone Retirement Trust*.

WHY YOUR DAD'S SIMPLE WILL WON''T WORK:
Your parents likely didn't have all of their money in IRAs, as these devices weren't around during the bulk of their high earning years. Instead, they had pensions to fund their retirements. The Baby Boomers will be the first generation to pass away with a bulk of their assets in these types of accounts.

A *Will-based* estate plan doesn't consider or control distributions from retirement accounts. If you have substantial tax-qualified accounts, you should consider all of your planning options, including the use of a *Standalone Retirement Trust*.

5. Planning For Kids and Divorce

I have a child named Jack. He's currently in first grade. Every once in a while, I leave the office early enough to pick Jack up from school. I've started to notice a trend when I go to his school: There's a cute little blonde girl who follows him around. She's cute and her parents seem nice, but I've noticed that she's always taking something out of Jack's hand—his marker, his snack, or his book.

Let's fast-forward 25 years and Jack is married to the little blonde girl. Assume I pass away and Jack receives an inheritance.

Jack is a smart kid. He uses some of the inheritance to pay off the little blonde girl's student loans because they don't like that interest rate. He might pay off the mortgage on their joint house or buy her a minivan for all of my little future grandbabies. Then Jack takes whatever is left of the inheritance and puts it into a joint account with the little blonde girl.

A couple years go by, and they're living a much better life because their debt is paid off, and they have this money in the bank. Then the little blonde girl wakes up one morning and realizes the romance in their relationship is gone.

She doesn't love Jack anymore. So, she divorces Jack and wants to take half their assets to travel and “find herself.” What happens to all the money I left to Jack?

The answer to this question is very state specific. Maybe he loses half the money. Maybe he loses some other amount. It’s up to the judge, really. But here’s the thing… I don’t like this question to begin with.

There are ways to leave our kids inheritances so they can access the money, but a creditor, such as a lawsuit or a divorce, cannot.

In this day and age, with divorce rates exceeding 50% and lawsuits being common, it makes a lot of sense to consider giving our kids their inheritances in an asset-protected manner.

This is typically done by leaving the money to an heir in a Trust, rather than outright. The terms of the Trust can allow your kids to access the money, but can protect the assets from your child’s divorce or lawsuit creditors.

WHY YOUR DAD'S SIMPLE WILL WON'T WORK:
Most simple Will plans are designed to leave inheritances outright to your heirs. Once they own the assets outright, the money is subject to their creditors, such as a divorce or lawsuit.

If you are concerned about your life savings being subject to your kids' divorce or other creditor, you should consider more advanced planning.

6. Our Heirs Are Different

With a traditional Will, it's common simply to leave children their inheritance outright. Simple Wills name an executor, and they direct to whom the money should be distributed. That's about all the document says.

You might not want your plan to be that simple because life is not that simple. What happens if your child or your grandchild is unable to manage his or her inheritance when he or she receives it?

Disabled Heirs
Approximately twenty percent of Americans are disabled. People with disabilities often receive help through Social Security, Medicare and Medicaid. Some of these benefits are needs-tested, which means your disabled heir essentially has to be broke to qualify.

Often times, well-meaning parents and grandparents leave an inheritance to the disabled person. When the child or grandchild inherits the money, he or she loses access to all of the programs that were helping him or her because now he or she has too much money.

It is wise to include provisions in your estate-planning documents that give your executor the ability to leave assets to *Special or Supplemental*

Needs Trusts, in the event that any of your heirs are or would become disabled.

With the inheritance in a well-drafted *Special Needs Trust*, the disabled heir can access the money over time (with limitations). However, he or she does not lose the benefits that he or she is dependent on.

If you already have a disabled heir, you can set up the Trust now so that you can understand how it's going to work for that heir later.

Young or Irresponsible Heirs
All states have rules that govern how an underage child can receive an inheritance. Many states' rules allow someone else to manage the money for the youngster until age 18. In some states, the age is 21. Once the child reaches this age, he or she has full control of the money.

Ask yourself: "If I had received a substantial inheritance at age 18 or 21, would I be in the same position that I'm in today?" I'm going to guess the answer is "No."

Knowing that one will receive an inheritance at age 18 or 21 leads people to think differently about the world. It may lead to a lack of motivation or to a party-hard lifestyle.

Typically, the goal of leaving an inheritance to a young person is not to help him buy beer and a sports car. Rather, the idea is to help him pay for his education and maybe a down payment on a home. The concern is that most 21-year-olds might not make those kinds of responsible decisions.

It may be wise to plan for potential young heirs not to receive inheritances until at least their twenty-fifth or thirtieth birthdays. This would have to be done with a *Testamentary Trust*, rather than an outright distribution.

This concept is essentially legacy planning. Your heirs are going to receive an inheritance, but you want to give it to them in a way that preserves strong values and gives them a chance to succeed in life.

WHY YOUR DAD'S SIMPLE WILL WON'T WORK:

Simple Wills provide for outright distributions. If the heirs are disabled, they could lose their benefits. If they are young, the state will give them their money too early. If they are irresponsible, having the inherited money may compound their problems.

Modern estate plans consider these issues and do more than just transfer money. They transfer the money in a way that promotes healthy choices and strong values in the recipient.

7. Beneficiary Designation Challenges

This book has discussed at least four different reasons to leave money to your heirs in Trusts rather than outright. These reasons include the threats of future disability, death, divorce and lawsuit creditors.

We can plan for all of these issues with a solid estate plan, but many families own their assets in accounts with beneficiary designations. A classic example is life insurance.

If there's an insurance contract on your life, you have designated the beneficiary to receive the money upon your death. When you die, the life insurance company doesn't care what your Will says; they're only going to follow those beneficiary designations stated on their forms.

A lot of people have beneficiary designations on Investment Accounts, on IRAs, and on Annuities. Baby Boomers and seniors tend to own a lot of assets in a beneficiary-designated manner.

These assets will skip the probate process, which is a great thing to do. BUT, what about all the other issues discussed in this book? If you plan to protect the inheritance from your child's future disability or divorce in your estate plan, what good does it do if they receive all of their inheritance outright through a beneficiary designation?

You have to coordinate the beneficiary designation on the life insurance contract with your estate planning documents so these dollars are also protected.

If it's important that your grandchildren don't get the money until they're 25, don't name them on a life insurance contract that would give them money at age 18. This has to be a coordinated effort between the lawyer and the financial advisors.

This is a level of planning that doesn't occur with simple Will plans. There is a big difference between having a legal document and having a coordinated estate plan. It takes some time and effort, but it's essential in a successful plan.

WHY YOUR DAD'S SIMPLE WILL WON'T WORK:
It isn't coordinated and comprehensive. Given that many of your assets are beneficiary designated, your attorney must take steps to make sure that the entire plan is coordinated. This type of planning simply isn't being accomplished with basic Wills.

How to Protect Your Family from Financial Threats

As stated in the introduction, the estate planning landscape is much different today than in years past. Relying on simple documents will leave you unprepared in this environment.

There is a difference between having a legal document, such as a Will, and having an estate plan. Legal documents only work as part of a coordinated plan that takes into account all of your assets and family concerns. You need to work with a qualified Estate Planning Attorney to make sure that all the various variables are considered.

If you are like most people, you put off doing an estate plan because you don't know all the issues and options to consider. You don't know the distinction between a Will and a Trust. You don't know what will happen if you end up needing a nursing home. Frankly, most people simply don't know what they're up against.

Here’s What To Do Now:

Many people have delayed doing an estate plan because they don’t know all the issues and options to consider. You may not know the distinction between a Will and a Trust. You may not understand what could happen if you end up needing a nursing home. Frankly, most people simply don’t know what they’re up against.

That’s where the Sechler Law Firm can advise. We help families just like yours understand their legal issues and planning options. We educate our clients first, free of charge. After you understand your options and goals, then we create custom estate plans to resolve your concerns.

Here’s how it works:

Step 1: READ THIS BOOK!

Step 2: Call our office at **(724) 841-1393** to attend one of our “Tough Questions” Workshops where we discuss the different estate planning issues like tax planning, probate avoidance, asset protection from the nursing home. We also discuss planning tools like Wills, Trusts and Powers of Attorney.

Step 3: Come to a complimentary one-hour initial consultation to discuss your family's specific concerns and potential solutions.

Many people leave their families vulnerable to financial threats because they don't know their options. Our process helps you understand your options based on your family's needs. To get started, call **(724) 841-1393** or visit **www.SechlerLawFirm.com**.