



PLANNING LOOKS GOOD ON YOU[®]

CREATE YOUR ESTATE PLAN, INFLUENCE YOUR LEGACY



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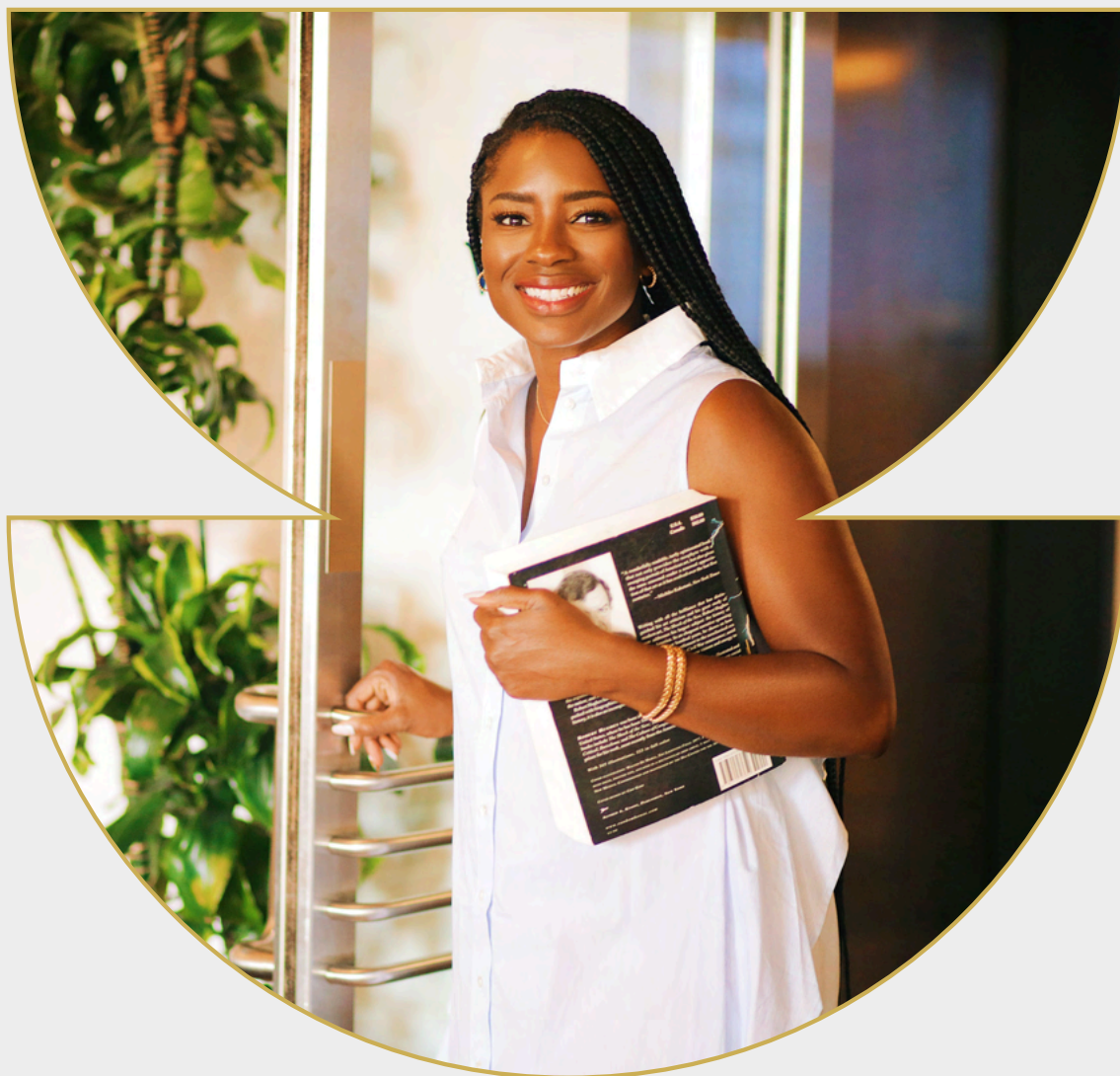
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Hi, I'm Lillie

We created this e-book for those who want to learn about the estate planning process. We've distilled the information so you can take action.

You've lived a bold and intentional life. Make a plan for what you've built.

Lillie Kenchor

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01

INTRODUCTION

Established in Brooklyn, NY, in 2018, Lillie N. Nkenchor, PC (LNN PC) is a boutique law firm specializing in tailored planning experiences. Lillie is an empowerment expert with over 15 years of experience in teaching others how to create a good life and legacy through planning.

My journey:

Estate planning found me in my last year of law school. Out of pure curiosity, I sat in on an estate planning course and was immediately enthralled. There, I learned that with the right advice and documents, anyone can create a plan that takes care of their family, properly passes on a business, or extends their legacy of influence.

I imagined my parents building their retirement home and passing it on to my siblings and me. I thought of the life that I was building and all that I could leave to my children and the stories we'd share about our family's legacy.

It was exciting to know that not only could I be deliberate and mindful in my life, I could also encourage others to have their say as well. Post-graduation, I worked in the financial services industry for 16 years, where I consulted on high-net-worth estate planning matters. This included wealth planning, continuing family values, managing investments, and legacy building. I felt armed with new information, but also concerned that too few had access to how money and family governance worked.

After years of applying my skills within the industry, I built a law firm where I could use my knowledge and experience of financial products, family management, and planning in order to help clients develop and implement their vision, without having to be wealthy.

We Have Four Guiding Principles:

We believe planning is for everyone.
You have the right to plan your future.
You have the power to influence your legacy.
Wealth is intentional.

When it's time to discuss legacy objectives, manage the affairs of a deceased loved one, or establish and grow a business, we provide legal services with guidance, style, and compassion.

We focus on Legacy Planning, Business Planning, and Estate Administration, and serve clients in New York, New Jersey, Maryland, Washington, D.C., and Georgia.





YOU HAVE THE POWER TO
INFLUENCE YOUR LEGACY

02 WHAT IS LEGACY/ ESTATE PLANNING AND WHO DOES IT BENEFIT?

What Is Estate/Legacy Planning?

Estate (Legacy) planning is the process of deciding who will raise your minor children, receive your assets, and when and how they will be received, as well as who will be in charge to ensure your desires are met.

Planning is an empowering process that allows you to create a safety net for tomorrow, influence your legacy and be intentional about your wishes. You are able to tell your story and leave a roadmap for others to tell their own.



Why Is Planning Important?

Our clients live empowered lives and make intentional decisions about their education, career, finances, and family. Choosing to plan continues that ethos. This includes deciding who raises their minor child(ren) who receives their assets, and how. Our clients get to tell their story and not be co-opted by others, including the court system.

Furthermore, without a plan, the burden rests on loved ones to assume intentions, incur out-of-pocket expenses, and can often cause exhaustion and discord. Without a written plan, an intentional, deliberate and beautiful life and story are left to chance.

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Who Should Engage In Estate Planning?

There is a misconception that Estate Planning is only for the very wealthy or elderly, when in fact, estate planning offers benefits to everyone. In addition to controlling the distribution of your assets, it provides the opportunity to designate someone you trust to make financial, legal or health decisions on your behalf in the event you become incapacitated.

I always tell people; “If you have people you care about and assets you care about, then that is estate planning - nothing more to it.”



You should engage in estate planning if you want to influence the assets and people you leave behind, and/or you've been intentional about your life and want to continue. Below are some additional reasons to plan:

- You're a business owner.
- You're a parent of a minor child(ren).
- You're in a second marriage.
- You're the guardian of a dependent with special needs.
- You're the owner of out-of-state or out-of-country assets.
- You need Medicaid-funded nursing home care.
- You're in a common-law marriage.
- You're receiving an inheritance.
- You have contentious or strained family relationships.

Who Are Your Estate Planning Partners And What Do They Do?

Attorney Professionals

Estate Planning Attorney: Your estate planning attorney is a licensed attorney with a thorough understanding of the state and federal laws that affect how your estate will be inventoried, valued, dispersed, and taxed after your death (if applicable). Your estate attorney will assist you in creating your estate plan, which will include a variety of legal documents that reflect your desires for your assets, your loved ones, and how you would like to be taken care of if you are incapacitated. It's important to choose an attorney who is licensed in your state, and most, if not all, of their practice focuses on estate planning.

Note: *If you have any assets or loved ones in other countries, it would be necessary to additionally consult with an attorney and/or tax professional who is licensed in that country.*

Business Law Attorney: Your business law attorney is a licensed attorney who assists in business formation, corporate dissolution, drafting and reviewing contracts, addressing complaints filed against your business, negotiating the sale of your company, and selling your company.



Elder Care/Medicare Attorney: An elder care/medicare attorney is a licensed attorney who specializes in drafting the appropriate documents that assist individuals, and their families, plan for Medicaid and Medicare coverage without depleting their assets.

Family Law Attorney: Your family law attorney is a licensed attorney who handles family-related issues such as divorce proceedings, alimony/spousal support, pre-and post-nuptial agreements, adoptions, child custody and support issues, and abuse and neglect.

Real Estate Attorney: Your real estate attorney is a licensed attorney who oversees the legal aspects of your real estate transactions. They are responsible for negotiating real estate deals, drafting and reviewing real estate contracts, ensuring that title is clear, and facilitating the transfer of funds.

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Why Partner With An Attorney Licensed In Your State vs. Using Online Software?

Online software services promise “good-enough” legal documents at a fraction of an attorney’s hourly or flat-fee rate. The process seems uncomplicated, affordable, and accessible. However, these services rely on your ability to know exactly what you need, how to get there, and to make appropriate selections on their platform; thus, your documents are only as good as the info you put into the system, and if they are properly executed. They are not tailored to your specific needs because you weren’t able to speak to a human about your goals, and family, or the nuances of your business. Keep in mind, all documents look good while you are alive, but whether they are good is tested after you pass away. The documents need to stand in court, make sense, and follow your intentions. It is not uncommon for online documents to be drafted too broadly to be effective, or include language that does not quite fit the rules of your specific jurisdiction. Working with a local attorney minimizes this occurrence. **Partnering with an attorney solves the following problems:**

1. **Probate.** Creating your document is only one part of the planning process. After you pass away, your document (Will) needs to stand up during the probate process. Having an attorney help you create these documents can make a great difference, especially since they can also probate the Will for the estate.
2. **Changes in the Law.** Working with an attorney means that you have someone who is always up-to-date with the law, and can advise you on any changes that affect your plan.
3. **Collaboration.** We do not believe that estate plans should be conducted in isolation. Family and/or advisor meetings allow you to discuss the main aspects of your plan with those who are responsible for helping you reach your goals. Working with an attorney who understands holistic planning, will facilitate that process.
4. **User Error.** Online programs provide various answers, but you must understand the questions and make the appropriate selection. In other words, you have to somehow know what you don’t know. We don’t believe that you should guess your way through your estate plan. Your decisions should be specific, intentional, and well-understood. This is your story, your opportunity to participate in your legacy. Do not leave it to chance.

Non-Attorney Professionals

An Accountant analyzes and interprets the past financial data of a company, or person, and prepares financial reports and tax returns.

A Certified Public Accountant (CPA) is someone who has met specific state and education licensing requirements, passed the CPA exam and helps individuals, businesses, and other organizations plan and reach their financial goals. All CPAs are accountants, however, not all accountants are CPAs. Your CPA can help you establish, plan, and execute your estate and business goals. Whereas, your accountant is usually someone who is completing and filing your tax return and is not necessarily involved in your estate planning strategy.

A Financial, Investment, or Life Insurance Advisor is a professional who provides financial services and products to clients with the intention of meeting short and long-term financial goals. Advisors range in focus areas. Examples include but are not limited to, advisors who focus on life insurance, bond portfolios, budget management, investments and retirement portfolios.

A Fiduciary is someone who was either personally chosen by you, or elected by the court, to manage your personal and/or financial affairs. Example: if you name a guardian for your minor children, that person is a fiduciary. Likewise, if your parent names you their Power of Attorney agent, then that makes them a fiduciary. In short, if a person is legally responsible for managing the affairs of another, that makes them a fiduciary. Once that fiduciary is appointed, they are legally required to manage assets or personal affairs.

Your **Banking Institution** is where your checking, certificates of deposit, investments, and savings accounts are located. These institutions will often have forms that allow you to add/remove beneficiaries, which is a crucial piece of estate planning.

A Funeral Home is a good partner if you choose to prepay/pre-plan your funeral arrangements.

A Title Company is a third party that works independently on behalf of either the lender or the buyer. You hire them to research and insure the title of the property you're buying. The title company is primarily responsible for verifying ownership, confirming that the seller has the right to transfer ownership of the property, and transferring the property rights from one owner to the next.



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Most Common Estate Planning Documents

A **Will** is a legal document that directs how your property, and other assets, will be transferred after your death. Usually, a licensed attorney prepares your Will, although there are software companies that offer online planning programs. The Will is drafted based on your expressed wishes and or online selections. If you are working with an attorney, you will likely have an estate intake call to discuss your wishes and name your beneficiaries and other key players. Your attorney will guide you on the best wording and methods to transfer your assets.

A Will covers the following:

- **Designates an Executor** — the person who carries out the instructions of your Will;
- **Designates Beneficiaries** — those who are inheriting your assets
- **Names Guardians** for any minor child(ren);
- **Covers the dissolution** of your business in the absence of other documents;
- Addresses the payment of your debts (debts don't disappear because you're not here).

A Will has certain key players in order to make it effective:

- **A Testator** is the person who decides to have a Will created for themselves. They either create the Will via an online service or hire an attorney. They provide the instructions and choose the beneficiaries who will inherit.
- **An Executor** (or Executrix) follows the Will instructions provided by the Testator. The Executor does not step into power until after the Testator passes away.
- **A Beneficiary** receives their gift from the Will. Most Testators name their spouse and/or children as beneficiaries, but anyone, including friends, can be a beneficiary. A beneficiary could also be an Executor. Example: It is Johanne's wish to leave all her assets to her sister Janice, and for her sister to manage Johanne's estate after she passes. It is acceptable for Janice to be both the Executor and Beneficiary of Johanne's estate.
- **A Guardian** is an adult who will be responsible for caring for a minor child(ren) in the event both of the child's parents pass away. If one parent passes away, then the other parent is the legal guardian. However, if both parents pass away, it is important to name an adult who can step in and raise the child.



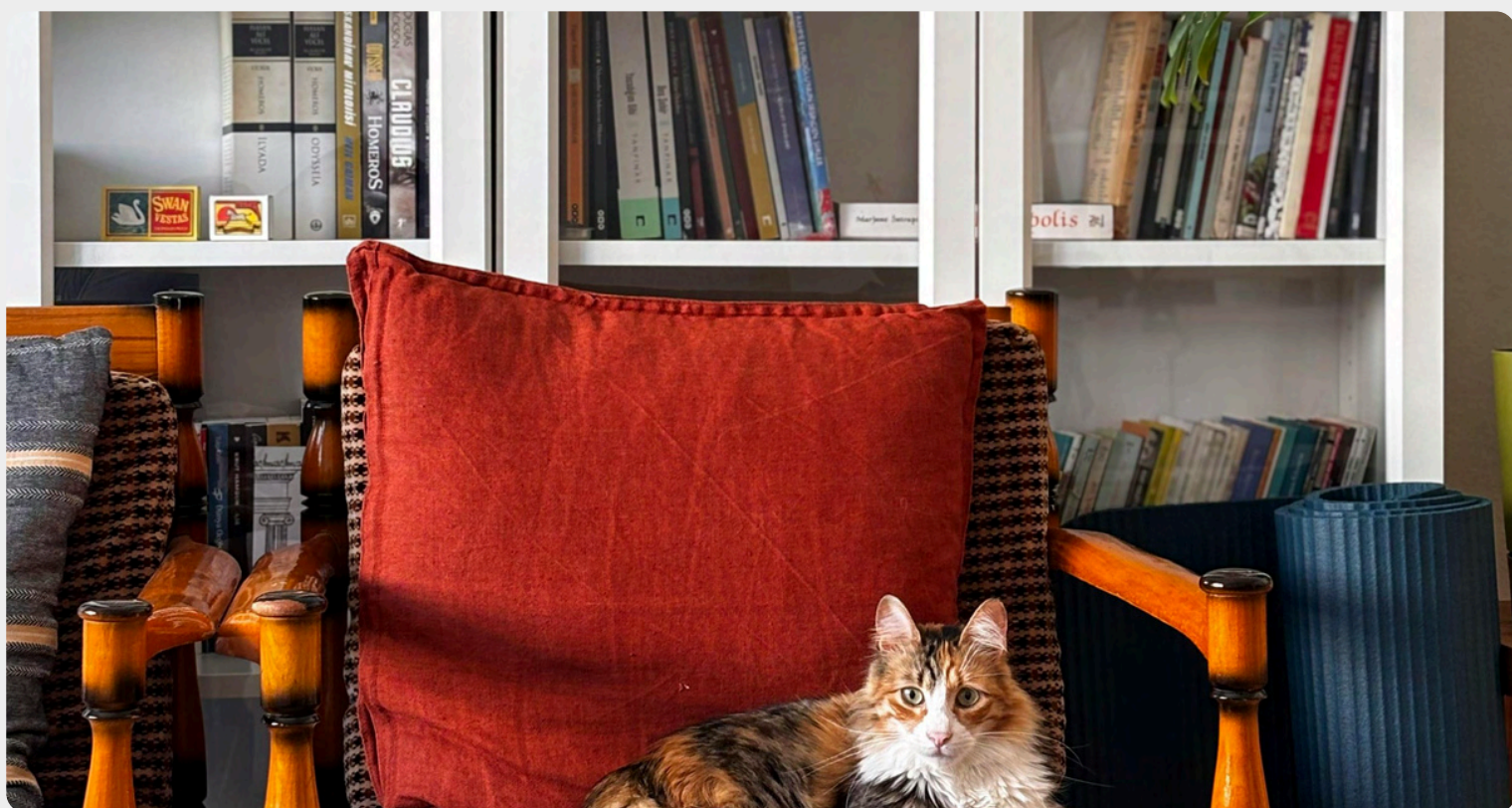
- **A Witness** serves during the signing process. In many jurisdictions, in order for the Will to be valid, it must be signed by (1) the Testator, (2) at least one witness, and (3) the notary. The witness and notary watch the Testator sign the Will to ensure they are of sound mind and not being coerced.
- **A Notary Public** is a professional who has passed their state's notary exam and who validates the identity of the signors by requiring proof of formal, current identification. The Notary watches the Testator and witnesses sign.

It is important to note that the Will does not avoid Probate. Many individuals want to skip Probate and believe that a Will accomplishes that goal. However, Probate does not have to be avoided at all costs. In fact, a Will makes the process easier. Keep in mind that the Will doesn't have power until after the Testator passes away. Also, note that the Executor named in the Will cannot perform their duties until the court has granted permission to act.

A Power of Attorney (POA) is a legal document that allows you (the Principal) to grant another person (the Agent) the authority to act on your behalf to manage legal, business, financial, and personal affairs in the event you become incapacitated and can no longer make decisions for yourself. The power may be limited to a particular activity and timeframe, or it may be general in its authority. If the POA is a Durable POA, then, unlike the Will, this document becomes effective and can be used, upon signing, thus, giving your agent immediate power. Once you pass, the Agent loses their power.

A Health Care Proxy is a document that allows you (the Principal) to grant another person (the Agent) the authority to express medical wishes and make healthcare decisions in the event you become incapacitated and can no longer make decisions for yourself. The agent can speak with your medical team and make decisions regarding treatment and surgeries. They may also change hospital or nursing home locations. The agent will have access to your medical records, which are normally protected under the Health Insurance Portability and Accountability Act (HIPAA). Once you pass, the Agent loses their power.

A Living Will (LW) is a written, legally binding document that informs your doctors of your preferences for medical care at the end of your life, should you become unable to communicate these wishes yourself. An LW is used when death is imminent (meaning happening soon). In that situation, you direct the life-sustaining measures that should be taken on your behalf, such as whether or not and when to resuscitate or use invasive procedures such as respiratory intubation. Unlike the Healthcare Proxy, you are not giving anyone authority to make the best decision on your behalf. Instead, with a LW you are articulating what you want to happen in the event of an end-of-life situation, and your medical team follows your instructions.





A Revocable Living Trust (RLT) is a legal document, created by you (the Grantor) during your lifetime, and is designed to transfer assets to your heirs over a period of time. The transfers are usually based on triggering events, such as age and milestones. Examples of triggering events include the following: the beneficiary must be at least age 25 before they receive their gift, the beneficiary must graduate from high school, or the inheritance must be used to buy a home or start a business. AN RLT can hold property that you wish to remain within the business or family for a longer period of time. An asset that is inside the trust skips the probate process (more on that later). While alive and competent, an RLT can be modified and even canceled at your convenience. With an RLT, you have the freedom to:

- Add or remove assets from the trust;
- Add or remove beneficiaries;
- Sell trust assets;
- Change the guidelines of the trust.

RLTs are also referred to as **Family Trusts**, **Revocable Family Trusts**, or **Living Trusts**; same strategy, different names.

An Irrevocable Trust, like the RLT, allows you the ability to design the transfer of your assets to your heirs over time. The major difference is that an irrevocable trust cannot be changed or canceled after its creation, without a court order, or the approval of all trust beneficiaries. Once assets are transferred into an Irrevocable Trust, you no longer have control. Why create a trust with such restrictions? Because irrevocable trusts provide the most benefits with respect to minimizing state and federal estate taxes and avoiding certain creditor claims. The RLT does not provide creditor or estate tax protection.

A Declaration of Burial Wishes is a document that lists your funeral and/or burial wishes. In this document, you may leave instructions/information regarding your funeral, such as any prepaid funeral plan, cemetery plot you may own, the type of burial you would like, and any personal desires you may have.

PREPARING FOR YOUR ESTATE PLANNING MEETING

Your attorney's job is to assist you in identifying and organizing your wishes, so don't feel as though you need a perfect roadmap before your meeting.

The goal is not to complete the planning process as quickly as possible, but to be accurate and honest. There are some steps that you can take before you meet your attorney that will help with organization and efficiency.

Estate Planning:

Before you meet with an attorney to discuss estate planning, consider the following:

- What is your vision for your family or assets?
- Do you want to make a one-time gift? Do you want to leave gifts that are given over several years, or a lifetime?
- Do you want to make gifts while you are alive, only after you pass away, or both?
- Who are the people who will receive your gifts when you are not here? It can be any person, anywhere. The only person who must receive a minimum amount of assets is your spouse. You are not obligated to leave anything to anyone else, including your children.
- If you are married, do you have your original marriage certificate?
- If you are divorced, do you have your original divorce decree?
- If you have adopted a dependent, do you have the original adoption paperwork?
- If you own property or land, do you have the original deed?



- If you expect to inherit assets from someone else, do you have a copy of their document which outlines what, when, and how you will receive?
- If you have a pre or postnup, do you have the original paperwork?
- If you own a business, do you have the registration paperwork, EIN, and Operating Agreements?
- If you have debts, do you know the creditors and the approximate amounts? **Example:** mortgage, credit card, personal loans, education loans, loan sharks.
- If you have debts, do you co-own those debts with anyone else, such as a spouse or a parent? If so, provide their contact information.
- If you have debts, then what is your repayment strategy? Will you (1) repay before you pass away, (2) not pay it off anytime soon, (3) have funds set aside to repay the debt at your death (assuming you have not fully repaid while alive)?
- Do you have dependents with special needs, who may also receive government benefits?
 - i. Will they need supervision and care for an extended period, or the rest of their life?
 - ii. If so, who will be their primary caretaker after you pass away? Which funds will be set aside for their care?
- Have a tentative list of your assets: home, retirement accounts, checking/savings accounts, business interests, timeshares, co-owned assets, etc.
- Are you concerned with Medicaid planning because you think you may need access to a Medicaid nursing home? Address that with your attorney.
- Any assets outside of the US? Address that with your attorney.
- You, spouse, or child are not a US citizen? Address that with your attorney.
- If you ever become incapacitated (Ex: Alzheimer's, dementia, mental illness, substance abuse, etc.) who would be a good person to step in and act on your behalf?
- Guardianship: In the event you have a minor child, and you and the other child's parent pass away while your child is still a minor, who would step in and care for that child?
- Will the guardian be a single person or a married couple? If it's a couple, and they later divorce, who will be the guardian at that time?



I SEE YOU AVOIDING
MAKING YOUR PLAN
WE'RE HERE TO HELP



03

AFTER YOUR PLAN IS COMPLETE

WHAT TO DO WITH YOUR ESTATE PLANNING DOCUMENTS?

Keep Originals: It is important to keep the most recent original so the court is not confused about which document is the most accurate.

Courts prefer to probate original planning documents and not copies, unless an exception can be met. Furthermore, DO NOT un-staple, or unbind your original Will. When this happens, pages tend to go missing, causing confusion and could invalidate the entire Will.

Even though copies could create issues, some clients prefer to make copies of their Will in order to share with certain key players. As mentioned in the Common Estate Documents section, for a Will, the key players will be the Executor and Guardian. If you do make copies, then it's important to understand that your Executor will have to submit the original Will.

You are able to tell the difference between an original and a copy because a copy will not have the raised notary seal (or original ink stamp) and will not have ink signatures.

Keep Your Original Documents in a Safe Place: Your estate planning documents should be stored in a safe, secure location that is accessible to you and your Executor. Potential places for storage of estate planning documents include:

- A water and fireproof safe, or filing cabinet in your home or office.
- A Safe deposit box. Keep in mind that if no one else has access to the safe deposit box, they will need court authority to get into the box. If you decide to store documents in a safe deposit box, you should consider naming a family member or your Executor as a joint holder of the box.
- Attorney's office (if they offer that option),
- Some Surrogate Courts allow you to file your original Will with the court and keep them on file. For a small fee, the Court can store your Will for safekeeping. Check with your Surrogate court to learn if that is an option. Discuss the cost and procedure with your attorney if you want to remove/replace the document(s) on file.



Inform key players of the existence and location of your Will, along with the contact information of the professional services you used to help you prepare it. It is not uncommon for family members to be unaware of whether estate planning documents exist or their location. If your loved ones cannot locate your documents, then the documents are of no use. Sharing that the documents exist and where they can be found at your passing, makes for an easier administration process.

Give an Original Power of Attorney and Health Care Proxy to Your Agents. If your agent has your POA and Health Care Proxy, then they can quickly produce proof of their authority and can begin making decisions on your behalf. Otherwise, it will be challenging in situations where time is of the essence.

Know When to Update Your Estate Planning Documents: It's a good idea to update documents every five to seven years. Otherwise, you should update your estate plan if the following key life events occur:

- Marriage, or Divorce;
- Children, by birth, adoption, or marriage;
- Change in assets, including due to Divorce
- Relocation to a different state;
- Death of a spouse/child;
- If there have been changes to your beneficiaries, guardians, trustees, or executors;
- Changes in tax or estate laws.





MY ESTATE PLAN IS DONE, NOW WHAT?

Estate planning is only one stage of a larger process. There is also after-care; this includes regular reviews and other actions that clients should take after the documents are created.

Review Beneficiaries on Checking and Savings Accounts:

During planning, or afterward, we encourage clients to review their accounts and decide which accounts should have which beneficiaries. For example: if there is no co-owner, when you pass away, your checking/savings accounts are locked. No one has access until an Executor/Administrator has been named by the court, which can take months, or even years if the estate is particularly complex, or there is family disagreement. This means the monies in those accounts cannot be utilized. Lack of access poses a problem if bills, such as a mortgage, property tax, utilities, etc. still need to be paid. Loved ones will likely use their personal resources (assuming they are able) to cover such expenses.

To minimize that issue, we suggest naming a beneficiary on appropriate accounts. Your beneficiary does not have access to your account while you are alive. However, after your passing, they can access your funds. Choose wisely; at your passing, this person will have full access to your account and could technically take the money for themselves. You are choosing a beneficiary who will use the funds to care for your estate, not enrich their lifestyle.

A Lill' Tip: Contact your bank to learn if it is possible to add a beneficiary to your account. Ask for the maximum number of beneficiaries that can be named on an account. Make it clear that your goal is for the person(s) to have access to your account after you pass away (if you want this person to have access while you're alive, then name them as a joint owner of the account). Ask the bank if the beneficiary needs to sign a form or present a valid ID. Lastly, inform your beneficiary that they have been tasked with this responsibility and provide them with the relevant information.

Be aware: Some banks only allow people to be named as beneficiaries, not trusts or entities. Contact your institution to learn more.

Review Beneficiaries of Life Insurance and Retirement Accounts:

Reviewing the beneficiaries of your life insurance and retirement account(s) is important to ensure that your assets go to the intended recipients and avoid Probate.

You should review those accounts in the event of any major life changes such as marriage, divorce, death of a beneficiary, or birth of a child.

Change Property Ownership Via Deed:

Some estate plans involve moving, or retitling real property. This means changing ownership from one person to another person, trust or entity. Changing ownership of real property, or land, will require a deed change.

Example: Mark and his attorney have created a Family Trust. One of the goals is for that Trust to own rental property. The rental property is currently owned by Mark and his partner. In order for the Trust to own the property, Mark and his partner need to contact their local deed office to change the names on the deed. The new deed will state that the new owner is the Trust, and no longer the individuals. Without a deed change, the Trust will not currently own the property.

A Lill' Tip: If the property has a mortgage, then Mark and his partner should first contact their lender to inform them of the change in ownership. If the Trust is Irrevocable, then many lenders require the mortgage to be paid in full, or refinanced before ownership can be changed. If the Trust is Revocable, then a federal law, The Garn St. Germain Act allows you to transfer property to a Revocable Trust without paying the note in full or refinancing.



**Retitle Accounts:**

If you have an existing account that you would like to give to another person, or move into a trust, then you will need to retitle that account by changing ownership of the account from yourself to that person, or trust.

Example: You own a checking account at Bank ABC. You've created a Trust and now wish for your checking account monies to exist inside your Trust and be distributed as per your Trust instructions. In order to do so, you must contact Bank ABC and ask them how to remove your name from the checking account and replace it with the name of your new trust.

A Lill' Tip: Contact your bank to learn what forms you must complete in order to retitle an account.

Be aware: Some banks do not allow you to retitle existing accounts. Instead, they prefer that you open a new account with the new owner(s) listed at the outset. Contact your institution to learn their rules.

Family Meeting:

Don't keep your plan a secret. Though your plan is your story, it involves other people. As such, it's important to involve your key family and planning members so they know that you're creating a plan, the vision you have for that plan, and can consent to any expectations or obligations placed on them. They should have the name and contact information of all your advisors, know where your documents are located and how to access them, and be aware of your assets and liabilities. Your beneficiaries do not have to know exactly what they are inheriting, nor does your family need to know your exact instructions, but they should have enough information to feel informed of your desires and know that you made these decisions with a clear mind. This is important, especially if your instructions could be interpreted as "out-of-character".

Review The Aftercare List Provided By Attorney:

Your attorney may have created a list of steps to take after your documents have been drafted. Amongst other tasks, this list may include your next review meeting and a method to list your assets and liabilities. If your attorney does not provide a list, you may still ask him or her questions related to your after-care such as:

1. Does the attorney keep the original planning documents or a copy?
2. What are the fees associated with updating planning documents in the future?
3. Does your attorney assist with retitling deeds?

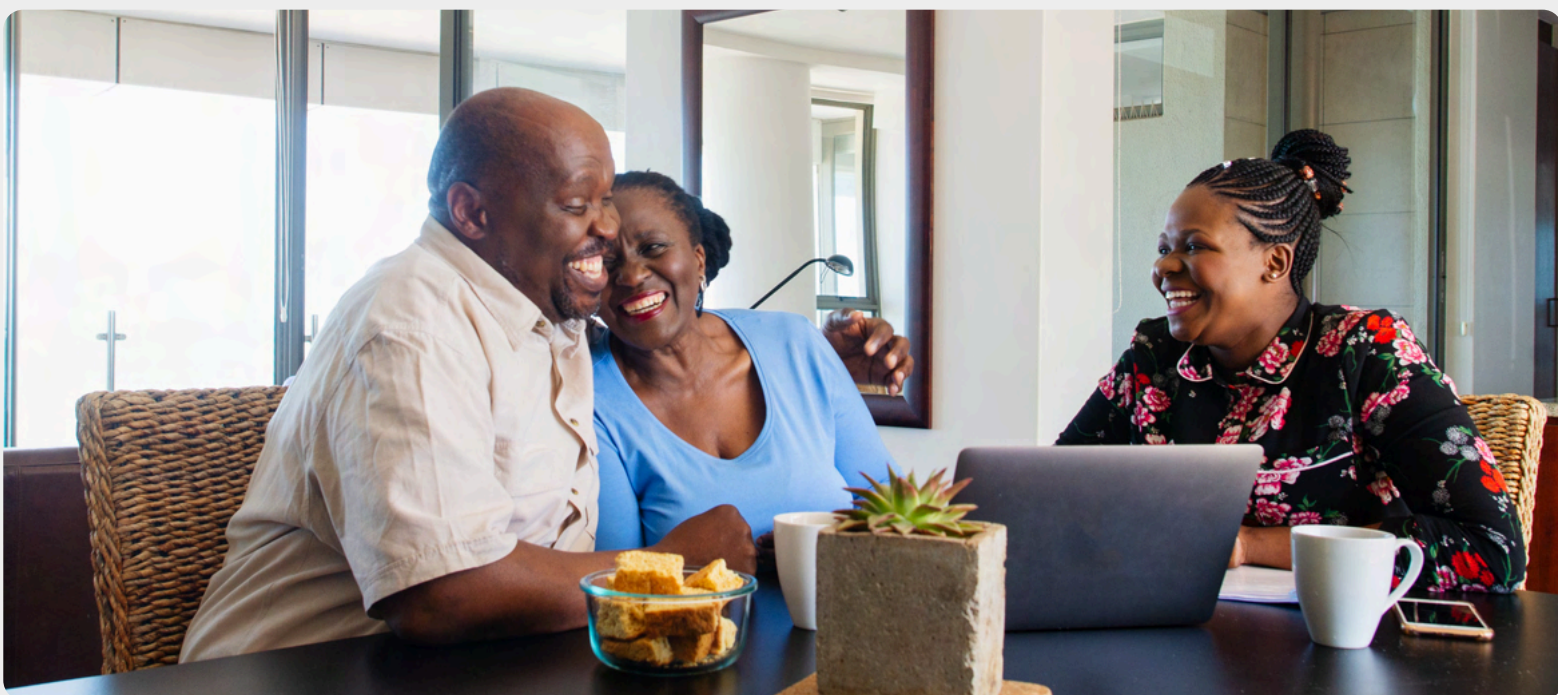
MAKE IT EASY FOR YOUR FAMILY

Now that your estate plan has been created, ensure that your loved ones have access to it.

Make a list of all of your accounts. This can be all of your accounts related to checking, savings, investment, retirement, and social media. You can list these accounts inside your Will. If it's not in your Will, make sure it is somewhere and share it with your Fiduciaries. Also, provide usernames and passwords to ensure that your fiduciaries can access your accounts without needing a court order.

Provide the contact information of your professionals. Keeping a list of the professionals you have been working with will make it easier for your loved ones to know who to contact when you pass away. List of professionals:

- Attorneys
- Real Estate Agent
- CPA
- Accountant
- Financial/Investment/Life Insurance Advisors
- Banking Institutions
- Bookkeeper
- Business Manager
- Business Partners
- Title Company
- Doctors
- Key players
- Funeral Home



DEATH AND MONEY CHANGE FAMILY DYNAMICS



04

YOUR LOVED ONE HAS PASSED AWAY, NOW WHAT?

WHAT TO DO WHEN A LOVED ONE PASSES AWAY

Estate Administration:

A loved one has passed away, and it is time to conduct the probate or administration process. Before you meet with an attorney to discuss, consider the following:

- **Family Dynamics.** Is the family in agreement, or do you foresee arguments/disagreements? If there is friction, what can be done to find a resolution? Family meetings help in ironing out who will take the lead and the expectations. Your attorney can help facilitate this meeting.
- **General Location of Assets.** Do you have the decedent's (the person who passed away) information regarding assets, banking, property, etc.? Do you know where the decedent banked? Their employer?
- **If the decedent was married or divorced,** do you have original documentation?
- **Children.** If a child was not born within a marriage, then is the deceased parent listed on that child's birth certificate? This is important because courts assume that children from marriages belong to the married couple, but for out-of-wedlock children (legal term), the court will need proof that the child is related to the decedent.
- **Estranged Heirs.** Without a Will, all legal heirs are entitled to an inheritance. Thus, it is important to know the location of all entitled heirs. If an heir hasn't been seen or spoken to in years, now is the time to connect. The court will want their full name, address, relationship to the decedent, and proof of relationship.

Example: Your father passes away and he has a home that needs to be transferred to his heirs. He did not leave a Will, so his assets pass according to state law. Only you and your sister survive your father. He has no spouse or other children. You and your sister had a falling out several years ago and you have not spoken to her since. She is still entitled to half of your father's home. She must be notified of the administration process, and the court will require her contact information. If you don't know where she is, then your attorney will use resources to try to find her. This may include hiring a Private Investigator.

A Lill' Tip: You don't have to like your family, but you should know (1) where they live/work (2) their spouse/children/friends, and (3) how they can be located.



Part 1. The Documents

Death Certificates: The Surrogate's Court will require Original Death Certificates of the decedent and Original Death Certificates of the decedent's next of kin, if they have also passed away

Marriage Certificates: You will need to provide a marriage certificate to show proof of marriage if the decedent was married.

Deeds: Property deeds to prove that the decedent owned or co-owned a property.

Original Will: (Not unstapled) The Surrogate's Court will want the Original Will.

Waivers and Consent From Beneficiaries/Heirs: The Surrogate's Court will require the Executor/Administrator to notify the beneficiaries/heirs of the probate/administration proceeding by having them sign a Waiver and Consent. By signing the Waiver and Consent, they are stating that they relinquish their right to act as Administrator and consent to allow the person applying to become the Administrator/Executor of the Estate.

Paid Funeral Bill and Receipt of Bill: The Surrogate's Court will require the receipt of the paid funeral bill. If the funeral bill was not paid, the Surrogate's Court will require the Executor/Administrator to first pay the funeral bill before any assets are distributed to beneficiaries or heirs, or before any other debt is paid.

List of Debts and Liabilities: Take note of any unpaid bills or debts the decedent may have. In most cases, the Executor/Administrator will need to pay off these debts and liabilities using the funds of the Estate. This could include outstanding utility bills, rent, mortgage payments, taxes, medical/nursing facility bills, credit card bills etc.

Proof of Relationship: If the Administrator is neither a blood relative or direct next of kin, then the court will require proof of relationship: Ex: relationships established by marriage.

Proof of Business Ownership: If the decedent was a business owner, then the court will require proof of ownership such as entity registration, Operating Agreements, and Articles of Incorporation.



Part 2. The Probate/Administration Process

Length of process: The Probate process can take weeks, months or years. It all depends upon how well the petition is organized, the complexity of the case, whether the family is in agreement, whether all necessary parties can be located, the speed of the court, and the number of cases the court is handling at any given time.

The documents above will be used to create a petition which will then be submitted to the court in the county where the decedent lived.

Many counties can manage this process with minimal court visits. Once all accurate documentation is provided, the court reviews the paperwork, and unless something causes a delay or discrepancy, issues Letters of Administration or Probate. At that point, the work of distributing assets can begin.

Be aware of the following scenarios that may cause delays in the administration/probate process.

1. **Missing family members/beneficiaries:** The person applying to become the Administrator has to give notice of an Administration proceeding to all family members/heirs. All family members/heirs must be located because they will be required to sign a Waiver and Consent or be cited if the waiver is not signed. If there are missing family members, then the person applying to become the Administrator is obligated to act with due diligence by reasonably attempting to locate and contact them. Not only will this delay the probate process, but it can become costly to look for a missing family member/heir.
2. **Heirs with disabilities:** If there is an heir with a disability, the court will most likely ask for a Guardian of Property to be appointed over that person before they're able to receive their share, or sometimes even before an Administrator is appointed.
3. **Heirs who have pre-or post-deceased:** Original Death Certificate is needed. If an heir is post-deceased, then a fiduciary must be appointed for their estate so their estate can inherit.

Example: Your father passed away in 2019 without a Will and your brother passed away in 2021 without a Will. It is 2023, and you are applying to be the Administrator of your father's estate. Although you are trying to administer your father's estate, the court will require you to locate all heirs, or present the original death certificates of all deceased heirs, including your deceased brother. Because your brother is an heir, someone needs to be the representative of his estate in order for his estate to receive the inheritance from your father. This means you may have to apply to be the administrator of both your father's and brother's estates.



4. Out-of-state assets: For out-of-state assets, an Ancillary (Secondary) Petition in the state where the asset is located must be filed in order to distribute those assets.

Example: Your father passed away without a Will in the state of New York. Although he was a resident of New York, he owned a vacation home in Florida. You become the administrator of your father's New York estate and can distribute his New York assets according to New York State Law. What happens to the vacation home in Florida? You must file an Ancillary Petition in the State of Florida to gain legal jurisdiction over the asset in Florida. The administration authority you have in New York doesn't automatically give you the right to manage the assets in Florida or in any other state.

5. Birth certificates without the parents' names listed: In order to show proof of kinship, the parents' names must be listed. Please contact the respective county to order a Long Version of the Birth Certificate, which should have the parents' names.

6. Absence of legal separation or signed divorce decree: In order to prove that a divorce or separation has been granted by the court, you will need the original divorce or separation decree. Without it, the court will consider the parties legally married (unless an exception exists, such as 'abandonment') and the estate laws will apply as if the parties are married.



PLANNING LOOKS GOOD ON YOU



THE FOOTWORK: POST-ADMINISTRATION TASKS

Your loved one has passed away, and you've been named the Executor. You are unsure of where to begin and how to properly perform your duties. Administration includes being named the Executor or Administrator by the court, and then gathering the assets and distributing them to those who are named in the Will, or in the absence of a Will, to the legal heirs identified by your state law.

First Steps: What to Do After Being the Executor or Administrator

1. Gather the Assets. Perhaps your loved one owned a car, art, a checking account, furniture, jewelry, or special items. Those assets should be organized as best as possible and be prepared for distribution or sale.

2. Pay Debts. Debts do not disappear once a person passes away; creditors still require payment. Examples of debts include: mortgage, car loans, personal loans, student loans, business loans, credit cards, department store debts, etc. Before gifts can be made, the debts must be paid first. The Executor or Administrator is charged with using the assets/cash of the estate to pay those debts. If there is not enough money in the estate to pay the debt, then negotiate with the creditor and reach a new, lower debt amount. The Executor or Administrator is not personally liable unless they are a cosigner on the debt. However, s/he must make a good faith effort to use estate funds and pay the bills. Keep in mind that there are instances where estate debts are so large that after payment, there is not enough remaining to give gifts to the heirs/beneficiaries.

Question: My loved one passed with a mortgage on their home. I'm the named Executor in the Will, but I have not yet been given the right to act from the court, and so I don't have access to my loved one's money. The mortgage has not been paid in a while. Should I pay the mortgage using my own money? I don't want the house to be foreclosed.

Answer: You are not required to use your own funds to cover the mortgage, but if keeping the home is important, then we recommend paying the mortgage so as not to lose it to the bank/lender. Keep track of your payments because as an Executor, you are entitled to reimbursement for your out-of-pocket expenses. Also, contact the bank/lender, explain the situation and find a solution. Perhaps foreclosure proceedings can be paused until you become the Executor.

A Lill' Tip: Leave money that does not pass through the probate or administration process. Example: life insurance, or accounts with beneficiaries or co-owners; those assets can be easily accessed after death and used to cover bills. Assets that do not have co-owners or beneficiaries are locked until the Executor or Administrator is given their authority through the court. Remember, your bills do not pass away with you. If you don't leave money to care for your debts, then you are asking your loved ones, and/or fiduciaries, to use their money, or risk losing the asset(s). If your assets are part of your legacy plan, then also have a plan to cover the debt.

3. Gather the Beneficiaries. If the Will names the beneficiaries, then those are the persons who will inherit. Locate them and maintain contact. If no Will, then the heirs are those identified by your state laws. This is why it is important to keep track of your loved ones, because there may come a day when you need to find them in order to distribute an inheritance.

Second Steps: Distributing Assets and Closing Accounts

1. Distribute the assets and have beneficiaries sign letters indicating that they have received their inheritance.
2. Close all accounts in the name of the decedent. Closing accounts minimizes the chances of others fraudulently opening accounts in the name of the decedent. It also means bills and interest payments can stop accruing

FAQ: How can I learn about the accounts my loved one owned?

Answer: (1) check their mail (2) contact the three federal credit bureau agencies to learn what accounts were open in their name (3) ask loved ones who may have known of accounts, (4) contact their CPA, bookkeeper or accountant; they may have the most recent tax return, which shows interest-bearing accounts. If they did not work with these professionals, secure a copy of their last tax return by contacting the IRS, (5) hire an estate administration service that may be able to track down accounts using the decedent's Social Security Number. **Be aware:** You can only use this service after the probate/administration process is complete.

Third Steps: Accounting

1. Provide an accounting to the court. Some courts want you to gather the assets, provide a written accounting and then distribute after the court approves. Others will allow you to perform your duties to the fullest extent of the law and then report with a written inventory after all has been distributed. And some courts do not ask for any follow-up. Contact your attorney Surrogate or probate court for direction.

POST-ADMINISTRATION FAQ

Question 1: I started the process but in reading this book, I realize that I did not follow all of the steps, or follow them properly. How do I correct this?

Answer: It's ok. Retrace your steps, find the gaps and perform the tasks now that you know. Some items may be time-sensitive, meaning the window to get them done may have expired, but still try because courts and departments can be lenient. You can also hire an attorney, or administrative service, to finish what you did not complete. If mistakes were made that affect the beneficiaries, notify them, and explain and discuss your next course of action. Most people understand that being an Executor or Administrator can be challenging, and most of us are doing it for the very first time without any notes or guidance.

Question 2: What happens if I do not want to be the Executor or Administrator?

Answer: This work is voluntary. No requirement forces anyone to serve as Executor or Administrator. If you are already acting as the executor or administrator and no longer want to perform the duties, notify the court of your desire to resign from your position. If you are named the Executor in a Will, but you do not want to serve, ask the court to remove you and instead give authority to the successor (or back-up) Executor named in the Will. If there is no successor, then as the named Executor, you should try to find your replacement and nominate that person to the court (with their permission of course). The replacement should be related to the decedent; otherwise, the courts are likely to deny the request (unless you can prove that the decedent had no other living relatives or that there are living relatives but they do not want to serve). If you were not named the Executor, but instead applied to be the Administrator, and later changed your mind, then again, you need to ask the court for permission to resign. You should secure your replacement beforehand.

Question 3: The beneficiaries are anxious and want me to provide their inheritance now, but I can't yet. How do I manage them?

Answer: Family Meetings. Meet with an attorney to discuss the issues and ask him or her to serve as the mediator for a family meeting. In our experience, when an estate attorney attends the meetings and explains the process, as well as the next steps, family members tend to understand and allow the Executor or Administrator to perform his or her duties.

Question 4: I do not have enough funds to pay for out-of-pocket expenses. What do I do?

Answer: Ask family members to contribute. If there is a shared goal for maintaining assets, then the family, if able, should pool resources so as not to lose those assets. Example: If it is important to keep a home in the family, and not lose it to foreclosure, ask family members, especially those who stand to benefit, to contribute what they can.

Negotiate the Time Table. Some expenses can be paused during the probate or administration process, meaning that the full amount will be paid later. The creditor can pause the current payment and wait until administration is complete in order to be paid from the estate. Call and negotiate, or hire an attorney to do so on your behalf.

Negotiate the Payment Amount. Ask yourself, “What can I pay out-of-pocket right now?” Take that amount to the creditor and negotiate. Sample Language: “I’m applying to be the Executor or Administrator of this estate, and I don’t yet have access to estate funds. However, I can pay x amount out of my pocket, right now. If you accept, then I will pay that amount, and we will close this debt.” *It's important to know that you are not financially responsible for the debt of the decedent; you do not have to use your money. If you agree to this arrangement, make sure it is in writing that paying with your money does not legally turn the decedent's debt into your debt.* Or, you can wait until the estate is complete and gain access to money in the estate, assuming there is enough in the estate. **Be aware:** Make sure this agreement is written and includes language that you are not personally liable for the decedent’s debt. If they share that you will become personally liable, then do not agree

Question 5: The decedent has assets out-of-state (or maybe out of the country). How do I manage those assets?

Answer: Ancillary Probate. Ancillary (or secondary) probate is typically a shortened process of becoming the Executor or Administrator in the state where the decedent did not live, but owned assets. This would require the full Probate or Administration to be completed in the primary state first, and using the Administration/Executorship letters from the home state to complete the ancillary probate in the secondary state.

Example: Mrs. Connor lived and died in Florida, where most of her assets were located. However, Mrs. Conner also had land in Texas. The probate/administration will take place in Florida because that is where she lived. Once complete, an ancillary (or secondary) probate can be conducted in Texas. This process is supposed to move faster and be less expensive since the main probate/administration was already completed in Florida. The ancillary probate allows for control of the asset in Texas. Note: If you are hiring an attorney, then you will need an attorney who is licensed in the resident and ancillary state.

Question 6: I went through this same process years ago, and made it to the finish line. It was stressful. How do I ensure my loved ones do not go through what I endured?

Answer: Plan. Do not let anyone tell you that your estate is “too small” or “not complex enough” to require planning. You have a right to plan what happens to the assets and people that matter to you. Planning has levels; thus, even if you do not require a complicated plan, you should engage in some form of planning that makes the transition of your assets easier. This ranges from adding beneficiaries to your checking/savings accounts (which you can do on our own) to a Will or Trust (which should be drafted by an estate planning attorney.)

Question 7: I've been named the Executor, but I don't think I want that responsibility. Can I tell my loved one to remove my name from the process?

Answer: Yes. You are not legally required to accept the position of Executor, even if you are named in the Will. Once you forfeit the role, the person named as the Successor Executor will be appointed as the Executor, if they choose to fulfill this role. If the Testator of the Will is still alive, then ask them to remove you as Executor. If they have passed away, then you must contact the court and ask to be relieved.

Question 8: I live very far from the decedent and have been named the person responsible for managing their estate. How do I do this when I don't live close?

Answer: If you live far from the state where the decedent resided, you can hire an attorney who is licensed to practice in their state and meet with them virtually. Some estates have electronic filing systems that allow attorneys to upload court documents to the Surrogate's Court without having to physically appear in court.

I still have questions. How do I contact you to gain additional clarity? You can visit our website at www.lillienkenchor.com and schedule a consultation.

Question 9: I want to hire your team to help me through the Probate/Administration process. Can you help? If yes, then what are your fees?

Answer: We can help you through this process. However, though we are licensed in 5 states, we currently only manage probate or administration cases in New York and New Jersey (but we draft documents in all 5 states). The fees associated with the process depend upon the complexity of your case. Please schedule a consultation to discuss (See FAQ 9).

Question 10: I hired another attorney to help me with the Administration, but now I don't want to work with them, can I hire you instead?

Answer: Yes. You should speak to your previous attorney and inform them that you will no longer retain their services. Most attorneys have a disengagement letter for situations where services are completed or either party wishes to end the relationship. We will ask you to sign that letter. After being retained by you, we will submit a *Notice of Appearance* on your behalf to inform the court that you are being represented by LNN, PC.

THANK YOU FOR READING!

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This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins or other markings on the paper.

