

Chapter 11

PLANNING NOW TO MAKE THINGS EASIER FOR YOUR FAMILY

You'll want to minimize your relative's distress during the trying months after your departure. First, we'll discuss what actions you can take now to ease the burden on the family after you die. Then we'll take a brief look at probate to help you decide whether probate avoidance or minimization should be one of your goals.

YOUR FINAL INSTRUCTIONS

You can make your survivors' task easier by leaving a letter containing burial instructions and your other last wishes in a place where your family can find it.

The most important decision is what to spend on a funeral. The average funeral cost these days runs between \$4,000 and \$6,000, one of the largest single expenses a family incurs. Unfortunately, a grieving family may be pressured by the funeral director to spend more than it can really afford "to show how much you loved the departed."

To protect your estate and survivors from this sort of pressure, set a limit on funeral expenses, and arrange the service while you're alive (through a funeral home) with the help of someone you trust, like your spouse, executor, or religious leader. Funeral homes are legally required to send you a written price list; use it to comparison shop. The options range from basic cremation to elaborate memorial ceremonies. (See sidebar.) If you get a prepaid or "pre-need" plan (see below), make sure you sign a "fixed-price contract": if you don't, your family could be surprised by charges above the amount you've already paid.

Warning: if your body will have to be transported out of the state in which you die, a permit may be required. The funeral home or health department can advise your survivors. Most states have laws concerning embalming, cremation and so on. Occasionally, an unscrupulous funeral director will falsely tell survivors that the law requires certain procedures (such as purchase of a casket before cremation). So it's a good idea for you or your lawyer to research these requirements before you die and make sure your survivors know them.

Remember, oral or written instructions about burial aren't legally binding on your family or executor. The spouse or next of kin is entitled to handle burial arrangements; if no one comes forward to do so, state law takes over.

The instructions should list

- what you want done with your body--buried, cremated, donated to science; funeral arrangements--information about any funeral plan you've bought or account you've set up to pay burial expenses; location of cemetery and burial plot, location of services, clergy person or others you wish to speak, music, flowers, etc.
- name of any charity or cause to which you wish contributions sent in your name
- location of your will and the identity and phone number of the executor and lawyer
- location of your safe deposit box, the key to it, and any important records not located in it, such as birth certificate, marriage, divorce, and prenuptial documents, important business, insurance and financial records, pension and benefit agreements
- inventory of assets (like the one printed in appendix) including documents of debts owed and loans outstanding, credit card and car information, post office box and key, information on any investments, deed to home, household contents, IRA, pension, and bank accounts, list of expected

death benefits, etc.

- important information: names, addresses, dates and places of birth for you and your spouse and family members (including ex-spouses, if any), social security numbers for you and your spouse and dependent children (and location of social security card), policy numbers and phone numbers and addresses of insurance companies and agencies that control your death benefits (employer, union, Veterans Affairs office, etc.)
- name and address of your lawyer, executor, and employers
- information you want included in your obituary

Where should you keep these instructions? Not with your will; sometimes wills aren't read until after the funeral. And not in a safe deposit box, because that might be sealed pending reading of the will. You should keep a copy with your will, give another to your lawyer, to the executor of your will, your spouse and any other close family members or beneficiaries. The main thing is that it be accessible and that everyone who needs it will know in advance where to find it.

Cushioning the Blow

Many people are as concerned with sparing their survivors grief and stress as they are about dying themselves. Especially in families where one spouse is the primary wage earner, the loss of income from that spouse's death can be as devastating financially as it is emotionally. For that reason, your estate planning should include some provision for an emergency fund for your survivors, to tide them over the period immediately following your death. As discussed in chapter two, life insurance is one method for doing this, but there are others. A joint bank account, Totten trust or marital trust (chapter four) will provide your spouse with income on your death. And some states have "pay-on-death"

accounts that can accomplish the purpose ([chapter two](#)).

Finally, you might locate now the name of a counselor or psychiatrist to help your family cope with grief. They don't have to call, but at least they'll know that help is there. You might also put the names of local or national support groups for the newly bereaved in your list of final instructions; if you can't find one in the phone book or from friends, contact the American Association of Retired Persons.

Sidebar

FUNERAL SERVICES

These are some of the options funeral homes offer. Find out how much each funeral home charges for each service, pick the ones that fit your needs and budget, and purchase a plan that provides them. It will save your loved ones needless turmoil and expense. You can join a memorial society now that will help you plan your own funeral and burial options. Some offer "pre-need" plans (oh, the euphemisms for the D-word) that allow you to pre-pay funeral costs.

- Burial, cremation or gift of body for science
- Transporting the body to the funeral home
- Embalming and other preparation of the body
- Selecting flowers
- Selecting headstone, plaque, or tomb
- Providing a hearse for the body and limousines for the family
- Renting facilities for viewing the body

- Memorial cards and guest book
- Transporting the body to the cemetery
- Tents and chairs for the funeral
- Copies of the death certificate
- Assistance in notifying insurance companies, newspapers, organizations the deceased belonged to

Other choices you'll have to make:

- Open or closed casket?
- Indoor memorial service or graveside service (or both)?
- Elaborate or simple service?
- Who conducts the service: family member, religious leader, funeral home?
- Who speaks at the service?
- Should music be played? If so, what music?

Other considerations

Note to husbands: Widows sometimes find it hard to obtain credit after a husband dies, especially if they've been homemakers all their lives. Therefore, before you die add her name to any credit cards currently held in your name only. After you die, your widow should notify credit card companies of your death, and change all cards held in your joint names to her name alone. After your death, she should pay any debts that are owed jointly by you and herself (e.g. mortgage, utility bills), to shore up her credit rating.

Insurance policies demand special attention. If you were covered through a health plan provided by your employer, your spouse and dependent children may be entitled to continue that coverage for up to three years; check with your employer and leave written instructions. They may need to buy more insurance, or to reduce the amount of life insurance needed now that you're gone. They will need to change beneficiaries of their policies if you were one of the beneficiaries.

Sidebar

GETTING PERSONAL WITH PERSONAL PROPERTY

Families can fight over things as trivial as a favorite lamp or wedding dress, as well as valuable antiques or jewelry. That's why, as much trouble as it seems now, you'll be doing everyone a favor if you make a list (sometimes called a **precatory list** because it's not necessarily legally binding but is easily changeable) of personal property items that are too inexpensive (and change too often) to put in the will. Out to the side, put the name of the person whom you want to inherit each item--who gets what. (See also the discussion of tangible personal property memoranda in chapter nine.)

You might also need to think about what will happen to personal or business items that will outlive you. The widow of Sir Richard Francis Burton, the great explorer and translator of the Arabian Nights, burned all his unpublished manuscripts--to the anguish of scholars and adventure lovers ever since. Franz Kafka's dying injunction to his friend to burn his manuscripts was fortunately ignored; that's the only reason his legacy has come down through history. One of the sons of Johann Sebastian Bach sold many of his father's irreplaceable manuscripts to support his drinking; a descendant of Thomas Jefferson used some of Jefferson's private papers for kindling.

Few of us will reach the exalted status of these men. But you might want to consider whether a local university, library, museum or other institution would be interested in your stamp collection, private correspondence with Vanna White, or other items of potential historical import. Your heirs and executors may not appreciate their value to posterity. So be sure to spell out what you want to happen to such items. (end sidebar)

PROBATE

Probate (i.e., "probate of the will" or "admitting the will to probate") is the court-supervised legal procedure that determines the validity of your will.

The word "probate" is also used to mean "probating your estate." In this sense, probate is the process by which assets are gathered, applied to pay debts, taxes, and expenses of administration, and distributed to those designated as beneficiaries in the will. The purpose of probate, put bluntly, is to take the ownership of your assets out of your dead hands and put them into those of a living person or institution.

We can't discuss the process in detail--there are books on the subject, and the court in your area may provide guidance to your executor. Instead, this discussion will center on how probate affects you now, in your estate planning.

Thanks to the title of one of the most popular books ever written--How to Avoid Probate--the only thing many people think about probate is that it should be shunned if at all possible. But times have changed, and so has the probate process in most states--so much that it's seldom the expensive, time-consuming beast it once was. For some people, probate avoidance should be the primary goal of their

estate plan, and this book provides advice on how to do that where appropriate. But for many other families, especially those of moderate means, it can actually be more trouble to avoid probate than to go through it.

Even more than other aspects of estate planning, the details of probate vary by state. Ask your lawyer if probate avoidance should be one of your principal estate-planning goals.

Supervised or unsupervised?

There are now essentially two kinds of estate administration in many states: supervised (for contested estates) and unsupervised (for uncontested estates) (for variations, see sidebar below). A supervised administration requires court approval for some of the major steps in settling the estate. Unsupervised administration allows the executor to take most of those steps without court permission. In some states, for example, unsupervised administration, called "independent administration," irrespective of the size of the estate, requires one court appearance on admission of a will to probate and issuance of letters of office and--unless a contest develops over the will, allowance of a claim against the estate or the accounting of the representative--a final report and discharge of the representative.

Some states allow unsupervised administration if requested in the will; if your state is one and you trust your executor, be sure to provide for it in your will. The threshold for unsupervised administration in states that allow it varies. In some states, it is available to estates of all sizes, as long as the executor is the only beneficiary. In other states there is a tight dollar limit, such as a dollar cap of \$20,000. In one state, the estate can be no larger than \$60,000; if it's larger, or contains more than \$10,000 of real estate, the court must supervise. Obviously, these limits exclude most estates from the easy unsupervised procedures.

Still, supervised administration, while time-consuming, seldom requires a lawyer's expertise, at least for moderate-sized estates. The executor just has to be sure to complete the various forms, appraisals, and inventories required, and get court approval before selling or distributing certain assets or paying debts.

In independent (unsupervised) administration, once the will is admitted to probate the executor still has to complete the basic tasks of administration; he or she just doesn't have to report to the probate court. In some states the executor must have the written consent of all interested parties to undertake an unsupervised administration, and must file these forms with the application to open the estate. Once the letters testamentary have been issued, the executor can settle and close the estate without further intervention from the court. The final inventory and accounting must be sent to the beneficiaries, not the court.

Sidebar

IF YOU DON'T HAVE A WILL

You can't avoid probate by not having a will. Even if you don't write a will (i.e., if you die **intestate**), you'll still have one--the one the state writes for you. The court will appoint a personal representative--the administrator. The administrator's job is essentially the same as the executor's; the only difference is that he or she is appointed by the court instead of being selected by you in your will. Probate will take place, but will cost more and take more time because you didn't leave instructions.

(end sidebar)

Sidebar

IS A LAWYER NECESSARY FOR PROBATE?

In states without unsupervised probate, and in most larger estates anywhere, a lawyer might be needed. Most probate proceedings are relatively routine, about as exciting as filing a tax return. If your estate is relatively modest, your probate court is accommodating and your state laws congenial, a level-headed relative can probably handle the probate. This is something that ought to be determined (preferably with the help of your estate planning lawyer) before you die.

And there is good news if you're in one of the categories of people who can profit from probate avoidance techniques like living trusts or other non-probate transfers of property, such as joint tenancy or life insurance. Even though you still need a will, it will likely be so simple and dispose of so little property (most of your assets will be distributed through your living trust or joint tenancy) that the cost and time it takes to see it through probate can be minimal, even with a lawyer's assistance. (end sidebar)

Consumer tip

HOW TO SAVE MONEY IN PROBATE

For most people, it's seldom necessary to use a lawyer as a the sole executor. Instead, the preferred course is to allow the non-lawyer (usually family member) executor to do most of the work, which is gathering information and records. The family member files the required forms, figures and pays the taxes and distributes the estate assets. If he has any questions, he can consult the lawyer. He may also pay her to review final documents for legal accuracy or to do a few specific tasks that she can do

best.

For some estates, this will take no more than a few hours of a lawyer's time. It's the single best way to save money in probate, but it does mean a tradeoff for the executor: his time for your estate's money. Only you and your executor can decide whether the trade-off is worth it under the circumstances.

If you live in a state that assesses probate fees based on the value of the estate, it may be to your advantage to get property out of your estate, by use of a living trust, joint tenancy, gifts, and so on. This, along with setting your own financial affairs in order before you die, will also reduce the billable hours an attorney for the estate will have to charge. Prepare your own inventory before you die. After you die, have your executor (if he's a family member who's waived a fee) do as much of the work as possible, such as preparing an inventory and notifying creditors. (end sidebar)

AVOIDING PROBATE

It's no accident that for years the best selling nonfiction book was How to Avoid Probate. But the need to avoid probate has been lessened in recent years, as simplified procedures (such as the independent executor provisions) of some states have reduced or eliminated many of the hassles and charges. Though delays are possible, the average estate completes the probate process in six to nine months, depending on state law. And the reformed probate procedures in many states now make it possible for your spouse, minor children and disabled children to obtain the money they need to live on almost immediately, without waiting for the entire estate to clear probate.

Despite its sometimes cumbersome nature, probate does help assure that those--and only

those--entitled to take part of your estate do so, even if it takes them a year to get their share. It reduces the time for creditors to present claims against the estate. While it's a public proceeding, how many of us are really worried about someone's going through our estate records? Probate privacy, though highly touted by living will salespersons, is usually the concern of celebrities and the ultra-rich, not the rest of us.

Our advice is, ask your lawyer to advise you about the probate system in your state (and in any other state in which you may own property). For most people, the complexity of the probate procedures of the state you live in is probably the single most important factor in deciding whether to use probate avoidance techniques. Probate isn't all bad, but if you can minimize the court's involvement, you should, especially if you live in a state that doesn't have alternative or simplified procedures, or your estate doesn't qualify for them.

If you do intend to save money by avoiding probate, be sure to use one of the methods outlined in this book. That probably means seeing a lawyer. Please don't make the mistake so many people eager to avoid probate have--using one-size-fits-all-estates forms from a book or computer program that doesn't take into account all your estate planning needs (such as providing for your family) and the peculiarities of your individual situation.

Sidebar

KINDS OF PROBATE

- **Supervised:** The most formal and expensive method. The court plays an active role in approving each transaction. In states where it's optional, supervised administration is used for contested estates, when an interested party requests it, or when the executor's ability is questioned.
- **Unsupervised or independent:** A simpler, cheaper method in which the number of duties and procedures is reduced and the court's role is diminished or eliminated. It's used for estates that exceed the asset limit for small-estate administration (see below) but don't require heavy court supervision. It often requires consent of all beneficiaries, unless the will specifically requests unsupervised administration.
- **Small estate:** The simplest and fastest probate, it's not available in every state and where it is only for small estates, ranging from \$1,000 to \$100,000, depending on state law. Property is often transferred by affidavit. Small estate administration often lasts only a few weeks.

Sidebar

PROPERTY THAT AVOIDS PROBATE

- Property in a trust
- Property that's jointly held (but not community property)
- Death benefits from insurance policies, the government, and employers and other benefits controlled by contract
- Property given away by gift before you die
- Money in a pay-on-death account

Sidebar

DOES PROBATE FREEZE ALL ASSETS?

It depends on the state. Even jointly held bank accounts are sometimes frozen until state tax authorities can assess their value. Some state laws allow the spouse to receive some or all of the funds within a few days of death, but some do not. Lesson: When planning your estate, find out your state's law, and make sure your survivors have some freeze-proof method of getting hold of money during whatever the period of delay is in your state.

Sidebar

TEN FACTORS THAT REDUCE THE COST OF PROBATE

The more of these questions answered yes, the less probate should cost.

1. Has the estate been planned as indicated in this book?
2. Is the will up to date, properly prepared (see sample will) with bequests made in a clear, simple, predictable manner, and self-proving?
3. Have you prepared an inventory of all your assets for your executor?
4. Is the fair market value of all the probate assets below \$675,000?
5. Is there only one beneficiary of the will?
6. If there is a surviving spouse, are all the children also the children of the surviving spouse?
7. If your state has simplified (small-estate or unsupervised) probate procedures, does the fair market value of the estate fall below the ceiling for those procedures?
8. Is the probate estate free of real estate in another state, or a family business?
9. Was the estate plan discussed with the family and other beneficiaries before death?
10. Can the estate debts and taxes be resolved without delay or controversy?

Sidebar

WHICH LAW APPLIES?

If you have a second home, or winter home, your will will be probated in the state of your primary residence. But any real estate you own in another state must go through probate in that state,

unless it's jointly owned. In that case, the property passes immediately to the co-owner, avoiding probate entirely.

Since real property must go through probate in the state in which it's located (even if you didn't live in that state), you should make sure your will meets the requirements of that state. If it doesn't, the real estate may pass as though you'd died without a will.

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