

THE INHERITANCE TRAP

*Common Estate Planning Mistakes
and How to Avoid Them*

By Gerald D. Eidelman J.D., LL.M.

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INTRODUCTION: ALL THE PRETTY PAPERS

I'll never forget the little old lady who at the age of 80 couldn't buy herself a plane ticket. She had been sold a kind of investment vehicle that wouldn't allow her to access her money until she was 96 years old. She was sold this contract without understanding that she wouldn't be able to access her money.

Then there was the mother who set up a special needs trust for her 30-year-old disabled daughter. The trust provided her daughter with the little things that make life better—things like music, clothes, and trips to the city. Without this trust, the young lady was restricted to a miserable existence in a group home. When the Medicaid benefit law was changed, however, the young lady discovered that because of the trust, her benefits were suddenly denied. Unfortunately, because of the way the trust was set up, it couldn't give her any money, either. Suddenly she found herself unable to pay for anything.

These were the stories that first introduced me to the importance of estate planning and how it directly impacts people's

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lives. These stories aren't that unusual. At the large law firm that was first responsible for bringing me to the state of Kansas, I was given the assignment of reviewing cases where financial professionals were suspected of taking advantage of their clients. One of these cases was the little old lady who at 80 was trying to set up an inheritance for her child. Instead, she wound up without any money to spend because she was advised to invest all her savings in an annuity that wouldn't start paying out until she was 90! When I reviewed her case and looked at all the information, it was clear she had been bamboozled. I also worked with other attorneys on the disabled young lady's behalf to change the Medicaid law because she had no access to funds until we got it overturned.

I've been an attorney since 2004, and I regularly see people come into my office because of a problem or a situation where they did not get competent advice. Like the retired couple who almost spent several thousands of dollars on a trust they didn't even need. Or the new grandparents who needed a trust and got one, but after their death it was discovered that their attorney never actually transferred the assets to the trust, so their heirs endured unnecessary

delays and the legal costs of probate.

Then there are the stories of people who try to figure it out all by themselves. Take, for example, the husband who went into a nursing home without long-term care planning and ended up spending the IRA he had intended to leave his wife on the cost of nursing home care.

Recently, I had a smart woman who owned her own business come into my office. When I asked her if she'd done her estate planning, she said, "Why yes, I've filled out all the paperwork." These were documents that she'd ordered from a software company online. They were printed on high-quality paper with gold-foil embossing and classy-looking fonts. It was an impressive assortment of stationery, but unfortunately none of the signatures had been notarized, so the papers she had paid for had no authority to do anything whatsoever.

We live in the information age where easy-to-access estate planning kits—wills, documents, and living trusts—can be ordered online. Yes, it's true: for only five easy installments of \$19.95, you too can become the owner of meaningless paperwork that oftentimes does a person more harm than good. Just ask the good-intentioned grandfather who

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purchased a do-it-yourself kit for a trust that gave him a headache and a \$400,000 tax bill—because he unwisely transferred all his qualified assets into the trust.

These are some of the stories I hear from people I encounter; the facts, circumstances, and names have been changed to protect attorney-client privilege. What I describe can happen to anyone. These are what I call inheritance traps.

Obviously, it's unfair that people with the best of intentions—people who do good things for their loved ones—still get caught in these traps. But estate planning is a tricky area of law; it involves finances, tax regulations, and personal choices that will affect you and your family. Really the only way to get it right is to design a customized plan. Yet, that's what's so vexing about these stories, because many people who do spend money on professional help end up not getting an integrated plan.

An integrated plan considers the type of assets you have, your intentions, and life circumstances. It also considers all the choices available and what effect those choices will have—not only after you die, but in the here and now.

So that's why I'm writing this book. I want

to help you get this planning right by showing you how easily it can go terribly wrong. It is my hope that by reading these stories, you can learn what steps to take—and what steps to avoid. Ultimately, I want to protect you from the inheritance traps that can hurt your family, the traps you might unintentionally set for yourself.

PLAN TO LIVE A GOOD LIFE TODAY

Originally, I got into law because I knew that if I did, my mother wouldn't have to worry about my financial well-being. She moved me from Argentina to Maryland when I was 16 years old, and I graduated with a J.D. and an LL.M. degree in taxation from the Georgetown University Law Center in Washington, D.C. After moving to Kansas and seeing cases like the little old lady and the disabled young woman, however, I changed my direction. I now focus on estate planning because I believe it's a process that, when done correctly, can do real good to help and improve people's lives.

There's a lot of confusion out there about what a will is, what a trust can do, and who needs what. There may also be legal avenues

available to you that you've never even heard of, and tools that can help you achieve your goals for less money with greater efficiency and speed. This book will cover what documents you might need, what they do and what they don't do, and when you might need something else. You'll also have an opportunity to start on the design of your own customized plan. At the end of each chapter, you'll find a workbook section where I cover the kinds of questions I typically ask my clients.

A lot of people, when I ask them about this type of planning, tell me they don't want to think about the end of their life. And I tell them this:

***Estate planning isn't about death planning;
it's about LIFE planning.***

Anybody who is alive today can benefit from taking the time to get the correct documents in order, regardless of what life stage they happen to be at. An estate plan encompasses more than what happens to your assets tomorrow; it's about gaining peace of

mind and control over your life today. It can also give you the ability to gift and control assets from the beyond.

Ultimately, I want you to come away from reading this better informed about your options. I want you to understand what your estate plan should look like so that you can begin taking steps today, without the fear of stepping into a trap tomorrow.

So, here's to getting more than just pretty paperwork; here's to getting an estate plan that serves you, your life, and the people you love.

~ Gerald D. Eidelman

A little note about how to use this book:

I have tried to make this book welcoming without it being tedious. **Terms** that are in bold are defined on the page or the glossary at the end of the book. I've also included **Stats**, **Tips**, and **Traps** for quick facts, insights, and warnings to help you become more informed.

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CHAPTER ONE: FAILING TO TAKE ADVANTAGE OF YOUR FULL POWERS

“Nearly all men can stand adversity, but if you want to test a man’s character, give him power.”

~ Abraham Lincoln

Marie was a widow in her early 80s with an account worth \$200,000 that was connected to her credit card. When her husband died, she used his IRA to pay off all her credit card debt. She then worked with a financial advisor to set up her account to automatically pay off her credit card bill every month so there would be no future interest charges.

Marie lived a simple life in the house she and her husband had worked to pay off. She enjoyed doing light gardening and volunteering at her granddaughter’s school. At night she played Words with Friends on her iPad, or if

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her daughter was visiting, she watched ChuChu videos on YouTube with her grandson. One day she noticed her memory was starting to slip.

It began with small things, like not being able to recall what she'd eaten for breakfast. She commented on her daughter's new haircut, not remembering that she'd seen it the week before. Her doctor did several tests and diagnosed her with the early signs of Alzheimer's.

Because they caught it early, Marie had the chance to make informed decisions concerning several issues. Her first appointment after the doctor was with her financial advisor.

"I need to get my affairs in order," she explained. "I don't want anyone deciding anything for me once my memory goes."

Her advisor did a review of all her accounts and noticed something else was disappearing: her money.

"There's something funny going on with your account," he told her. "Unless you've been making large withdrawals for some major purchases that we don't know about."

Marie got scared. "No," she said. "I don't think so." She lived a simple life, yet in the last four months over \$80,000 had been taken from her account. She didn't remember spending any of

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that money. What was going on?

“Don’t worry,” her advisor told her. “We’ll look into this. Meanwhile, I’m going to send you down the hall to talk with an attorney who specializes in this kind of planning so you can make full use of your powers.”

Marie didn’t understand what he meant by her “powers,” but her daughter walked her down the hall to meet with me. I went over the steps Marie needed to take in order to protect her interests. We talked about what she wanted for herself should her mental capacity continue to decline, including whom she trusted and where she wanted to live. We drew up the correct paperwork and had it notarized so that her daughter could write checks and help Marie keep up with her financial obligations. Marie felt better, knowing that no matter what happened, her wishes would still be honored, and things would still be done as she liked.

Meanwhile, her financial advisors discovered that her son, who lived out of state and had been in trouble with the law, was making huge purchases using Marie’s credit cards. He had been granted account access when his father died, and he had started making these purchases and spending his mother’s retirement funds without

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Marie's permission!

Working with me as her legal counsel alongside her financial advisor, we were able to put a stop to this, and take further steps to protect Marie's assets from those who did not have her best interest in mind.

Sometimes I meet with people who tell me, "I don't care what happens to me once I die; when I'm dead, I'm dead." And that's fine. I understand if that's your attitude. Maybe it's your goal to spend all your money while you are alive, so you're not planning to leave any assets behind. Good for you. But what I want you to understand about **estate planning** is that the first order of business isn't about what happens to your stuff after you die; it's about what happens to YOU while you're still ALIVE.

There are a series of documents that encompass basic estate planning that anyone alive needs to get in place. Some of these documents have the word "power" in them, so I like to think of them as your powers because, with them, you gain the ability to control your future. Even if your fate is to be one of the 5.7 million Americans living with Alzheimer's, or

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if you're one of the 16.1 million Americans providing an estimated 18.4 billion hours of care for someone with dementia, you can still do things now to prepare.¹ Don't wait until it's too late. Don't fall into the "it won't happen to me" trap, because anything can happen to anyone, even the nicest, most hard-working and thoughtful people in the world. If you take the time to make these decisions today, no one will have to wonder what you want or make these decisions for you. These powers represent the bare minimum of life planning that everyone should address.

This paperwork can also protect you from a family member or caregiver who might try to take advantage of the changes that happen to even a healthy senior brain. A 2017 study done by researchers from Cornell and York universities found that aging adults with healthy brains sometimes experience atrophy or less connectivity in two key areas that can make them vulnerable to financial exploitation.² When this happens, circumstances that would normally trigger a warning sign suddenly seem perfectly fine. For example, the elderly victim

¹ <https://www.alz.org/alzheimers-dementia/facts-figures#prevalence>

² <http://news.cornell.edu/stories/2017/03/brain-changes-older-adults-increase-risk-scams>

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might see nothing wrong at all with signing a bonus check for \$6,000 for the three extra loads of laundry performed by a hired caregiver.

Like Marie with her unscrupulous son, this is not what I want for you.

I don't mean to scare you by telling you these stories; I only want to make you aware of the fact that these things do happen, and the time to prepare is now. You can protect yourself and your loved ones if you plan early on. Here is what you need to do to avoid being victimized and falling into the "it won't happen to me" trap.



Estate Planning: The process by which an individual or family arranges for the transfer of assets, obligations, or responsibilities in a manner decided upon by the individual or family.

STAT: Every 65 seconds, someone in the United States develops Alzheimer's.³

TIP: Don't confuse an estate plan with a trust, and don't think you have to be wealthy to need an estate plan. A trust might also include documents such as a power of attorney or a healthcare directive, but an estate plan prepares for the transfer of all assets, in addition to the paperwork designed to address life issues.

³ <https://www.alz.org/alzheimers-dementia/facts-figures#prevalence>

MEET YOUR MAIN POWERS

Estate planning documents are non-investment areas of your retirement plan important for maintaining your current standard of living. They allow you to exercise power to protect yourself and your assets even if you are unable to speak on your own behalf. They can also prevent arguments and bad feelings among family members. They include the following documents:

Power of Attorney: This document is used to protect your financial interests should you become incapacitated through an accident, illness, or advanced age. It gives a trusted individual the authority to act on your behalf to address certain legal and financial matters. In the state of Kansas, you can appoint a trusted individual as your attorney by drafting a simple document called a power of attorney. This trusted person doesn't have to be an actual attorney, but you can name a lawyer if you wish. It's more common to name a family member; for example, Marie in our story above named her daughter as her power of attorney. Marie wanted to remain living at home for as long

as possible. Should she become unable to pay her electric bill, her daughter would be authorized to sign the checks and take care of banking matters so Marie could remain living comfortably at home.

In the state of Kansas, you are asked to spell out specifically what powers you are granting this person. For example, can your power of attorney sign checks? pay bills? gift sums of money? You can limit powers by including specifics about anything you do or don't want to have done on your behalf.

Healthcare Power of Attorney: Like the financial power of attorney, the healthcare power of attorney is a written document in which you name someone (your “agent” or “attorney-in-fact”) to make healthcare decisions for you in the event you are unable to speak for yourself. This person is then able to act on your behalf and carry out your directions for healthcare, without the delays of court proceedings. Healthcare decisions include the power to consent, refuse consent, or withdraw consent to any type of medical care, treatment, service, or procedure. The person you name to carry out your wishes

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will know what your intentions are, so there won't be any arguments or questions.

TRAP: Just because you have a living will doesn't mean your healthcare decisions will be honored. Living wills **ONLY** apply to decisions regarding "life-sustaining treatment" in the event of a "terminal illness," which does **NOT** include Alzheimer's, dementia, or coma.

TIP: A carefully-drafted healthcare directive can let your attorney-in-fact honor your wishes if you are in a permanent vegetative state.

Living Will/Healthcare Directive:

This document spells out a specific directive of what you want to happen should a situation arise involving life-sustaining treatment. It doesn't rely on the actions of another individual; rather, it gives the instructions directly to the doctor and medical staff. For

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example, you might specify that you don't want life-saving measures taken to revive you and keep you alive if you have a terminal illness.

In my experience, this is a document that gives family members great peace of mind. For dire situations where the patient is unconscious or unable to speak on their own behalf, it can be extremely difficult for family members to decide whether to terminate life support. If you have this document, you remove the painful and difficult decision from them so they know exactly what to do for you.

STAT: Only one in every three adults takes the time to complete an advance healthcare directive for end-of-life care.⁴

⁴ <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2017.0175>

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TIP: In the state of Kansas, an advance healthcare directive form must be signed in the presence of two witnesses. These witnesses cannot be:

- You
- The person you appoint as your healthcare agent
- Entitled to any portion of your estate
- Directly financially responsible for your healthcare
- Related to you by blood, marriage, or adoption

If you can't imagine a situation where these documents would become vitally important, I invite you to familiarize yourself with the Terri Schiavo case. Terri was a young woman who on February 25, 1990, collapsed in her home after a full cardiac arrest. Lack of oxygen flow to her brain caused massive brain damage, and after 10 weeks in a coma, her diagnosis was declared a persistent vegetative state. Her husband Michael Schiavo worked

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with Terri's doctors, attempting speech and physical therapy. After eight years of no change, Michael petitioned the Sixth Circuit Court of Florida in Pinellas County to remove her feeding tube pursuant to Florida Statutes Section 765.401(3)⁵. Terri's parents opposed the petition, arguing that she was still conscious.

In all, the Terri Schiavo case involved 14 appeals and numerous motions, petitions, and hearings in the Florida courts; five suits in federal district court; and four denials of certiorari from the Supreme Court of the United States. Finally, on March 31, 2005, 15 years after her diagnosis, Terri was allowed to die.

Had Terri's wishes only been recorded in writing beforehand, the court battles, legal costs, and family grief could have been prevented.

⁵ [https://www.mayoclinicproceedings.org/article/S0025-6196\(11\)61439-0/fulltext](https://www.mayoclinicproceedings.org/article/S0025-6196(11)61439-0/fulltext)

CHAPTER ONE: HANDBOOK HOMEWORK

Think about who you would trust with your life, and then take a few minutes to answer the following questions:

Do you have specific wishes about what you would like to happen in the event of a terminal illness where you are being held on life-sustaining equipment?

Who is an available and dedicated person you would trust to handle your finances if you are unable to do so yourself?

First Choice:

Second Choice:

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Who is an available and dedicated person you would trust to make healthcare decisions on your behalf?

First Choice:

Second Choice:

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