

Common Problems With **Do-It-Yourself Wills**



By Samantha Sprague, Associate Attorney

Today, there are websites and YouTube channels dedicated to teaching you how to master every skill imaginable—from decorating with fondant to rebuilding a '69 Camaro. Designing an estate plan should not be one of them! We meet with a variety of people and we occasionally get to see the results of these DIY estate plans. Sometimes putting the wrong documents in place is actually more costly than having nothing in place at all. And it's your beneficiaries who are left to deal with a broken plan. The following are some of the most common problems people encounter with a do-it-yourself Will.

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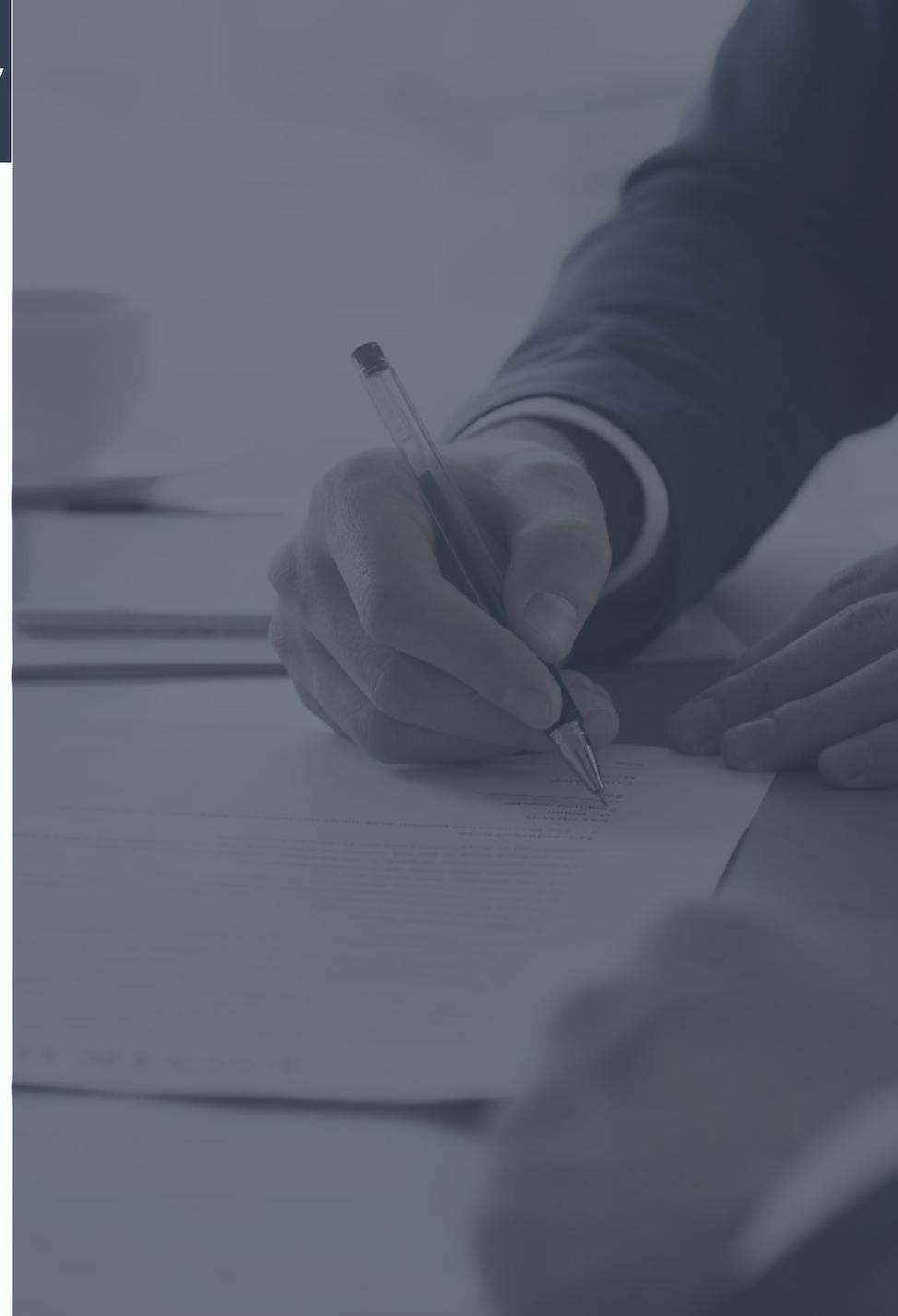
Mistakes Designating Beneficiaries

Designating beneficiaries to receive life insurance policies or retirement accounts is a crucial part of the Will process. Unfortunately, it is a common mistake to designate a beneficiary in a homemade Will but have something else listed on the actual account. There are also statutory requirements regarding spousal allowance for certain retirement accounts and life insurance policies differ regarding default beneficiaries. In which case, the beneficiaries you select may not receive what you list in a will.



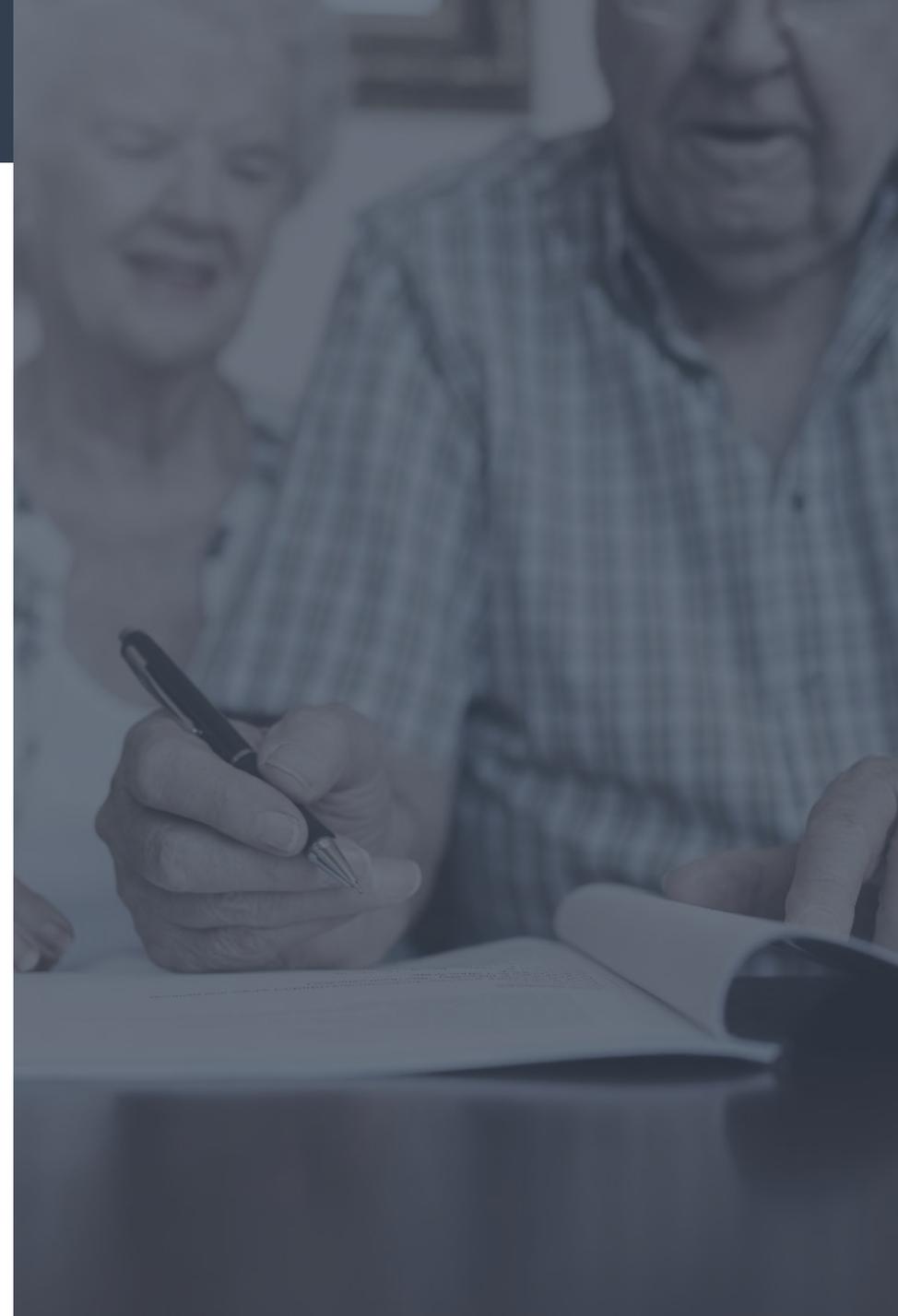
Failure to Designate a Residuary Beneficiary

When designating beneficiaries, people often fail to name a residuary beneficiary. This is the individual who receives what's left over after taxes, funeral expenses, debts, and other distributions are made. They also receive whatever cannot be distributed to the intended beneficiary, often due to death



Outright Distribution

Leaving everything as an outright distribution to your beneficiaries is a common DIY error. Divorce and the death of beneficiaries have a considerable impact on where your assets end up. Many people don't realize you can protect your beneficiaries against bankruptcy, divorce and lawsuit liabilities. You can also protect beneficiaries in special circumstances where there are situational concerns, such as chronic illness, addiction, or financial mismanagement.



The Will Wasn't Signed Correctly

Signing your Will is another step that seems simple yet can be easily mishandled. Estate law is state specific, so some states have different signing requirements for witnesses—some require two signatures, others three. Many states require that the witnesses are not beneficiaries, otherwise known as “disinterested parties.”



Outdated Wills

Outdated, handwritten Wills are very common. For example, Wills from the 1990s remain in effect even if the executor you hired in the '90s is now in his 90s. As your life changes, so should your Will and estate plan. You should revisit your Estate Plan periodically to ensure what you have in place is still what you actually want and that it complies with current law.

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His, Hers and Ours

Blended families are becoming more prevalent and DIY planning can create unexpected results and increased levels of conflict. When self-drawing a will or estate plan, ambiguity is your enemy. Have you considered the ramifications if your spouse remarries? What if you leave everything to your spouse and they don't have a plan in place that includes your beneficiaries? How do you make sure that your assets go to whom you want? Even when everyone gets along, a person's failure to create clear, cohesive, legally binding instructions within their estate planning can create estrangements within families.

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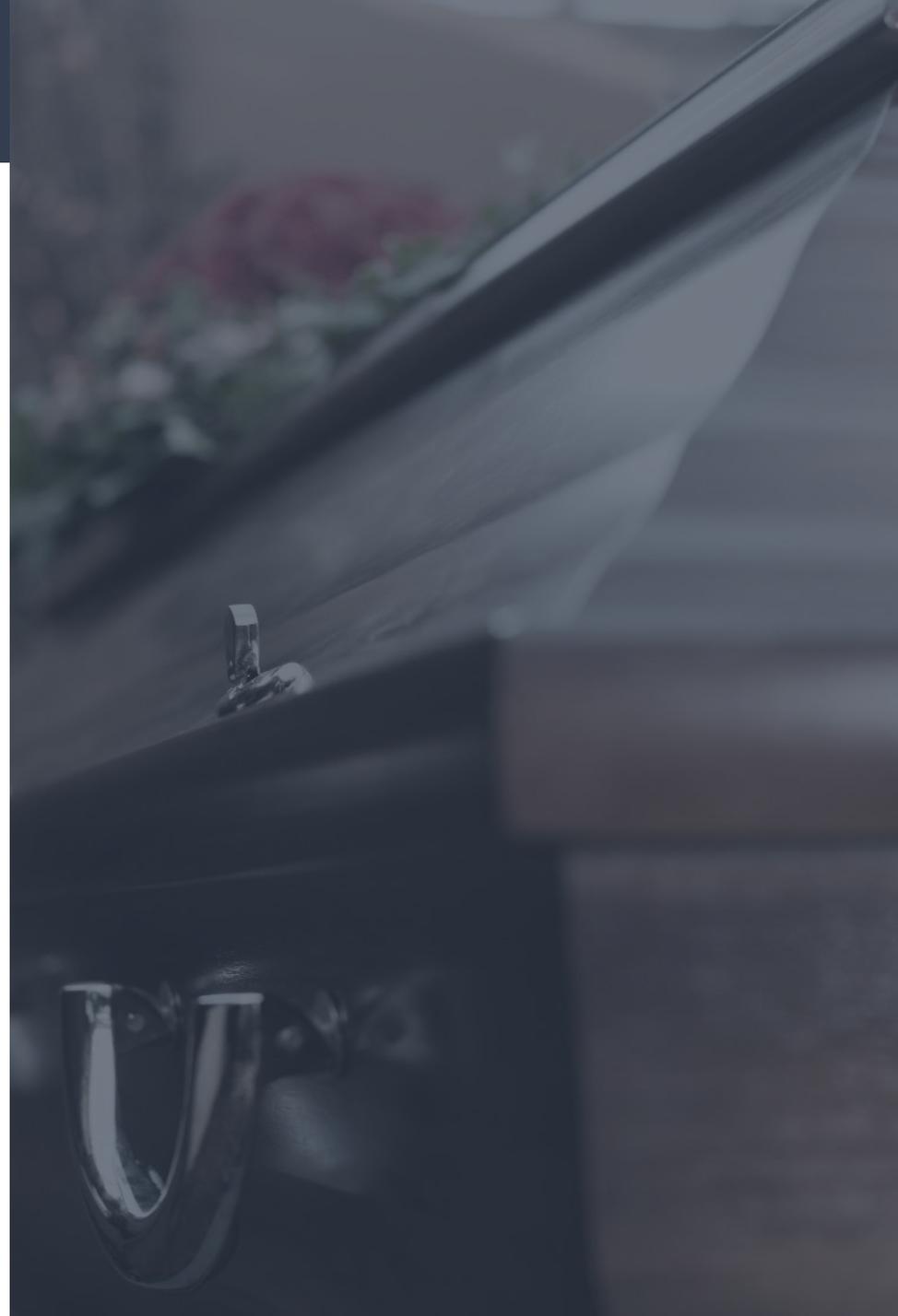


Funeral Instructions

It's common for those who write their own last Will and Testament to include funeral instructions or last requests. However, the majority of Wills are not reviewed or submitted to probate until after the person has passed and funeral arrangements are made. Designating a funeral representative can save your estate time and money. A funeral directive also minimizes conflict because it ensures there is a clear indication of who should be in charge.

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State Laws Create Confusion

Laws surrounding probate, estate taxes, inheritance taxes, and gift taxes vary greatly state by state. Even the legal validity of your Will may change depending on where you reside which makes it difficult for the average person to fully understand these laws and requirements while drafting their own Will, which often creates problems after they pass.



Michigan Estate Recovery

What if you or your spouse need long term care? The first step is to make sure you have someone designated to make healthcare and financial decisions on your behalf if you aren't able to make those decisions. But what happens next? How do you make sure the government doesn't come after your beneficiaries for estate recovery? A will is insufficient protection against Estate recovery.



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An Illusion of Safety

Most people think a Will is all the estate planning you need. However, a Will only applies after someone dies. What happens if you or your loved one gets in severe car accident, has a stroke, or is diagnosed with a debilitating disease? A Will doesn't determine who should oversee your health care decisions or manage your finances, whether temporarily or on a long-term basis.

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Listing Assets Long Before Death

People who write their own Wills often try to list all their assets and assign them beneficiaries individually. By the time the Will comes into play—which could be decades in the future—the type of assets you own, and their value, could be drastically different than when you originally drafted the Will.



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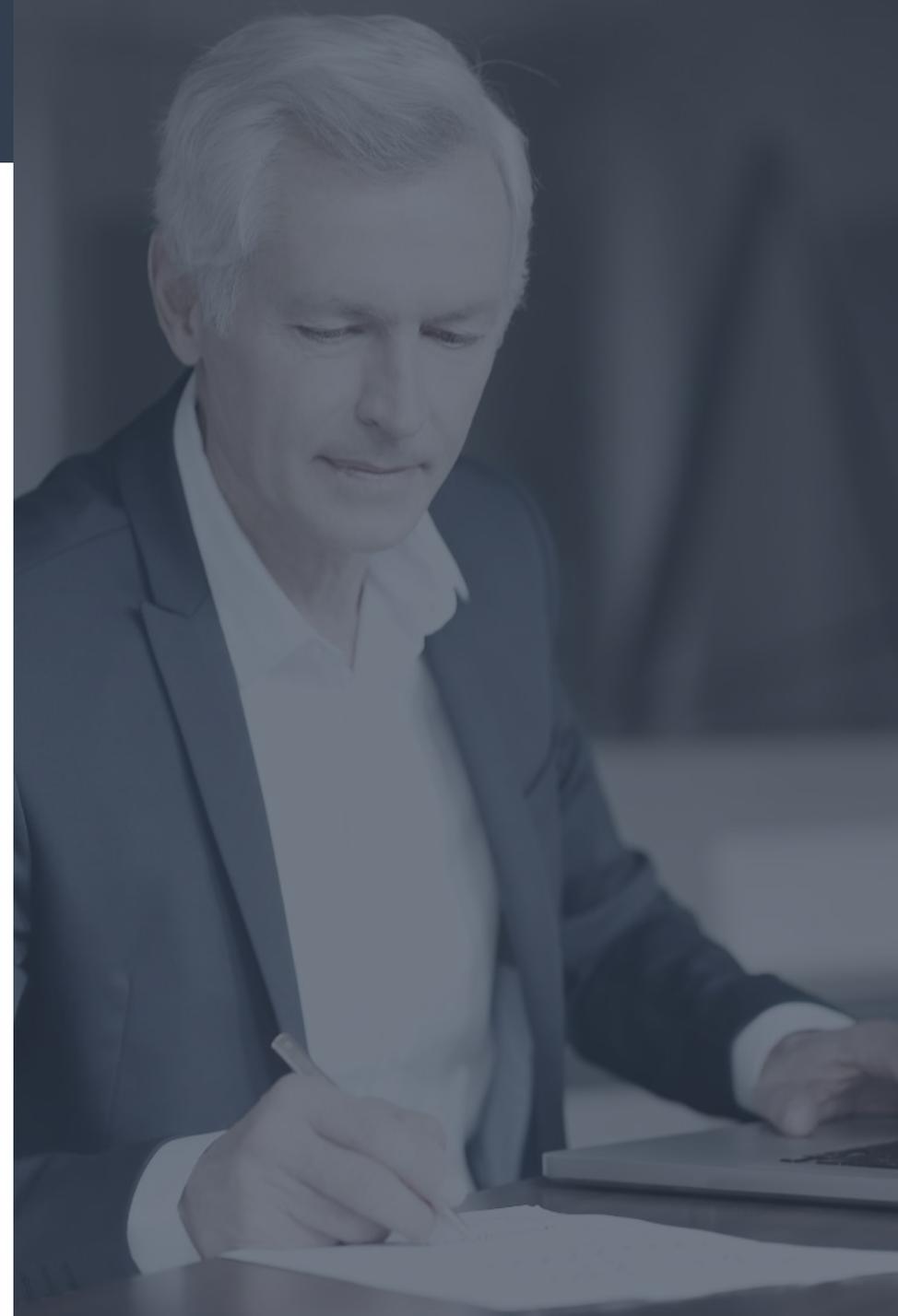


DIY Wills Won't Cover Your Needs

Many people who draft their Wills use generic computer software or online programs to assist them. These products can be useful, but they are not designed to meet your specific estate planning needs. They even carry a disclaimer, stating they are not a substitute for legal advice, which should tell you something.



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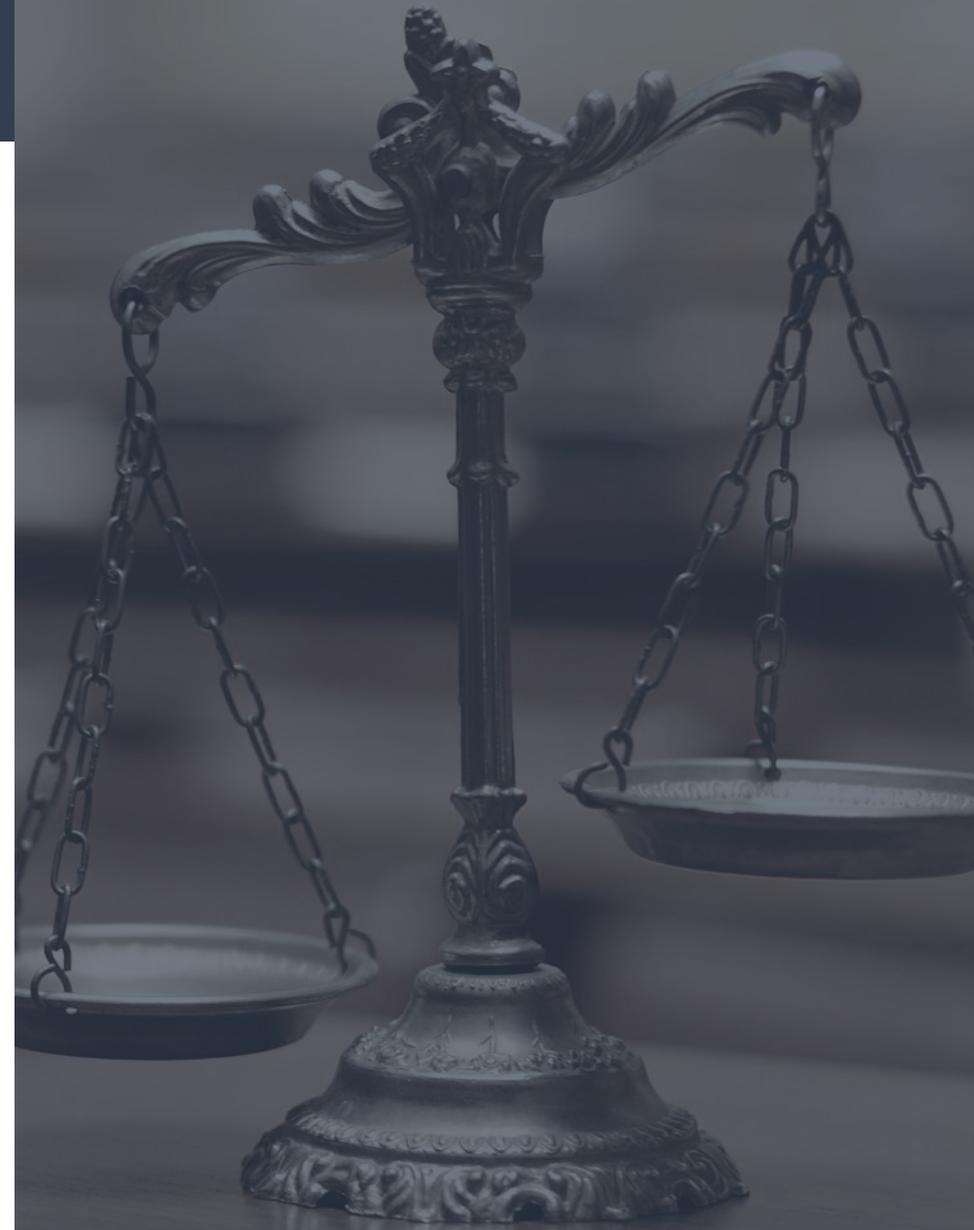


Doesn't Avoid Probate Court

A Will alone does not accomplish the transfer of “probatable property” to someone in your Will. Real estate, bank accounts and other assets held solely in your name are more likely to be subject to probate, which means the contents in your estate may become public record and your beneficiaries are often charged a percentage of the estate as a fee.

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Estate Planning Lawyers

When it comes to estate planning, you and your family will be better off leaving no stone unturned or any possibility unaccounted for. The estate planning lawyers at Carrier Law have years of experience working with Wills and trusts, estate planning strategies, probate, estate tax and other crucial areas.

For more information, call 616-361-8400

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Meet the Author

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Samantha Sprague is an associate attorney at Carrier Law and heads up our Portage office. She works closely with many Michigan families on their estate plans and elder law matters. Sprague was born and raised in Northern Michigan, and graduated from Michigan State University College of Law. She served as a Civil Mediator for the MSU Conflict Resolution Clinic prior to joining Carrier Law.

For information on getting started with an estate plan, call 616-361-8400 or visit us online today.



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