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CASE IN POINT: Identifying the Differences Between EstatePreparation, Estate Planning, and Estate Administration

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By Tara Faquir and Leah Del Percio

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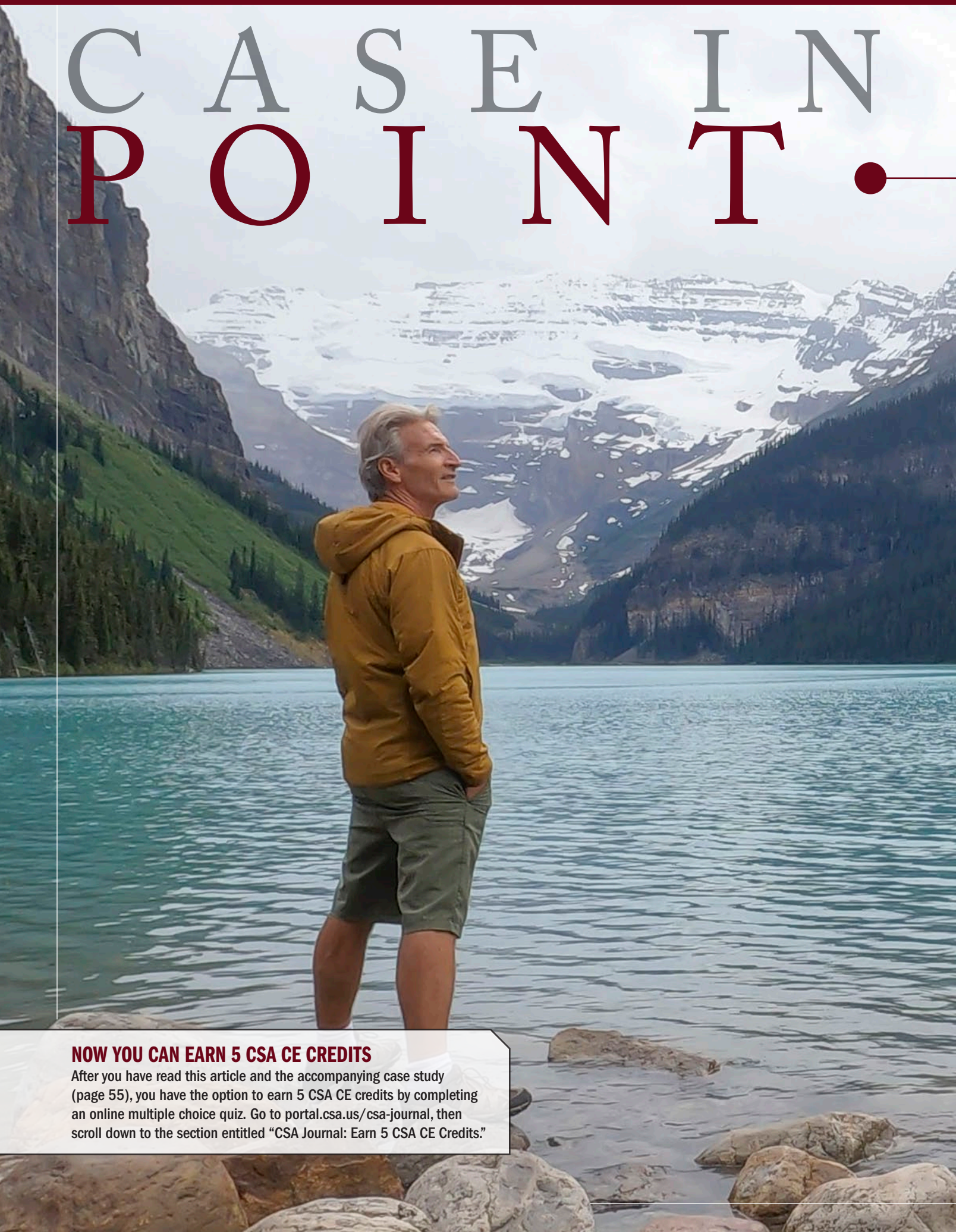
CASE IN POINT



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Identifying the Differences Between

Estate Preparation,

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To protect your loved ones after you pass, and to ease the process of administering your estate, create a will—but don't stop there. There's much more you can do to prepare and plan your estate today.

BY TARA FAQUIR AND LEAH DEL PERCIO

We often feel uncomfortable talking about the plans we need to put in place to protect our family and loved ones after we pass. Perhaps as a result, misconceptions are common. An incomplete understanding of estate preparation, planning, and administration can unintentionally leave blind spots in the process, which leaves family members and beneficiaries challenged to sort out discrepancies while grieving a loved one. For example, many people think that a will is the sole document to create, and those with limited assets might think that estate planning is only for the wealthy.

The reality is, a will is only one portion of the estate planning that needs to be done, and an estate is in fact formed for every person who has passed away, regardless of wealth, and must be administered. Without proper planning, settling affairs after you pass can become an endless (and expensive) endeavor for your loved ones, even if you don't have an expensive home or valuable assets.

This article will articulate the differences between estate planning, estate preparation, and estate administration, as well as provide a handful of tips for making this difficult discussion more comfortable as you begin creating after-life arrangements with your family and interested parties.

There are three steps to a comprehensive estate plan: the preparation, planning, and administration phases. Read on to explore more.

Estate Preparation

Estate preparation or "prep" is the first step someone can take during their life to organize and manage their assets and liabilities. These assets and liabilities become your "estate" after you pass away. It's important to note that everyone has an estate, regardless of wealth. An estate contains all assets and expenses related to an individual's life and must be administered.

The tactics within estate preparation are entirely organized and completed by you (meaning, you don't need an attorney for this process). Estate preparation is also an iterative process that evolves as your life changes. There are four components of estate prep:

1. **Locate.** Ask yourself, do you know everything you owe and own? For many, this may be a simple "yes," but for others, specifically those who do not manage their finances, it's more complicated. If you don't know the answer to this question, it's time to have a conversation with those "in the know" to understand what you or your household owes and owns.

   If someone else is managing your finances and they experience an emergency or unexpectedly pass away, it can be extremely hard to uncover all of this crucial information retroactively. In addition to financial records, you'll want to locate a number of other important documents, such as your will or power of attorney. Locating this information while all parties are of sound mind and health is critical.
2. **Organize and audit.** After locating all of your documents, the next step for estate preparation is organizing and auditing your assets and documents and looking for gaps. For example, do you have assets like a sentimental piece of jewelry, or a baseball card collection, that are not listed in a will or lack beneficiaries? Create an inventory of these types of assets and create a list detailing which persons you wish to receive them when you pass away.

   Additionally, note that in many states (though notably, not New York), if you make specific reference to an inventory of tangible personal property in your will, it will be incorporated by reference into that will, and your executor or personal representative will be legally bound to give those items to the beneficiaries you note in that writing. Please discuss with your attorney whether or not separate writings disposing of this personal property can and/or should be incorporated into your specific estate plan.

   Once you've organized all of your information, it's time to stow it away for safekeeping in a location that's accessible to whoever may need access. For example, if you have a safe or file cabinet with a lock, this would be a great place to store any important documents and give your loved ones a key or information on how to access it.
3. **Communicate.** Collecting, auditing, and organizing your documents is a fool's errand without communicating the hard work you've done. For example, does your power of attorney *know* they are your power of attorney? In an emergency, would your health care representative know they are named in this role? Not only do you need to tell people who are named to roles in your estate that they are named as such, but it is also important to let a trusted person know where your important documents are and how to access them. It can be uncomfortable to bring up a conversation inherently cloaked in sadness, but it is far better to have this conversation now than to have this person experience frustration, additional stress and pain, or financial loss because they are unsure of what your wishes were.
4. **Take action.**

   The final step in estate preparation is to take action on any issues that arose after auditing your paperwork. For example, maybe you uncovered disparate pieces of information, like multiple retirement accounts that need to be consolidated. Or perhaps you and your spouse have multiple vehicles; if only one name is listed on the car titles, it may make sense to add both names to all vehicles.

   This is also a great time to create a process for

updating your will on a regular basis, like semi-annually or annually, to ensure it entails all of the most accurate and up-to-date information possible.

Estate Planning

Estate planning is commonly defined as "the process by which an individual or family arranges the transfer of assets in anticipation of death. An estate plan aims to preserve the maximum amount of wealth possible for the intended beneficiaries and flexibility for the individual prior to death" (Legal Information Institute, n.d.).

Many people are familiar with some components of estate planning, like working with a financial planner for retirement plans or having a will drafted with an attorney. Another goal of estate planning is minimizing the taxes on what you leave behind to shield your loved ones from potential issues with the IRS.

For the purposes of our discussion, we will focus on the will, which is not only important in order to make sure a person's wishes are carried out post-death but can also save families great frustration after someone's passing. A will can minimize the chances of family strife because it provides a clear set of guidelines that says where things go— essentially, who gets what.

After drafting your will, it is important to identify people for critical roles within your will, and then inform them about your estate plan. Those key roles are as follows:

1. **Healthcare proxy/healthcare representative.** Should you fall ill and be unable to make health-related decisions for yourself, your healthcare representative will make health-related decisions on your behalf. You will also need to identify the person you choose in your medical power of attorney and/or living will. In this document or documents, you can also establish your wishes in certain scenarios (i.e., organ donation, intubation, artificial nutrition, when/when not to remove from life support in end-stage situations, etc.).
   Questions to ask your healthcare representative. Work with your healthcare representative so they understand your intentions. For example, pose a handful of "what if" questions and scenarios, like "What if I have a heart attack?"; "What if I am terminally ill?"; "Do I wish to be resuscitated?"; "Would I be satisfied carrying out my life on a breathing machine or a ventilator?"; "Where do I stand when it comes to a feeding tube?" If any of these questions elicit an emotional response from either you or your representative, imagine the difficulty of making these life-or-death decisions in a matter of seconds.
2. **Executor.** Following your death, your executor is appointed and tasked with handling all tasks related to settling your estate. They must follow the instructions and manage the wishes and affairs you outlined in your will. This includes collecting assets, valuing property, paying your bills, safeguarding your assets, and distributing your estate. They will also be responsible for any partial distributions that are to be paid, filing your final tax returns, and distributing assets to the beneficiaries as the will directs, even where a beneficiary is a trust.
   Questions to ask your executor. The first and most important question to ask is, "Are you willing to serve as my executor?" In some cases, having this conversation comes as a surprise. The person you are considering may feel unwilling to act on your behalf for many reasons. This is why we cannot stress enough how important it is to discuss your decisions directly with the individual(s) whom you choose to appoint. It is courteous to share this information, and it provides an opportunity for you to explain your wishes and see to it that they understand the responsibilities this role involves.
3. **Trustee.** In your will, if you leave assets to an estate beneficiary in trust, or direct that your entire estate "pour into" a trust established during your lifetime (i.e., a "pour-over" will/trust plan), you will have to name trustees, who are ideally stewards of your estate and are instructed to carry out the wishes you outline pursuant to the terms of that trust.
   If you have a standard fully-funded inter vivos trust (i.e., during your lifetime, you moved all of your assets into the revocable trust within a "pour-over" will/trust plan), your named trustee ends up handling your estate administration. This person should be someone you would trust to manage your finances, as they will handle the trust property on an ongoing basis after you die. Generally, in this scenario, a trustee will have full power over all estate/trust finances, as the role can begin at incapacity and continues after death. This person may even be responsible for keeping your beneficiaries informed and inventorying your assets to determine their value. They step into your shoes, and at times, must exercise their best judgment on how to administer the trust and make distributions to beneficiaries on an ongoing basis. This can be difficult when the personal,

mental, and/or financial situation of a beneficiary has changed from when you created the trust. As such, it is best practice to ensure you have named a trustee whom you believe shares similar values and decision-making skills as you, and, in the trust document, provide that trustee with broad flexibility and powers to take action in the event of unforeseen circumstances. In short, it is an absolute "must" that you trust any trustee named in your estate plan.

Questions to ask your trustee. Whomever you name as your trustee should always be aware of the trust and its provisions, including during your lifetime. Opening the doors to your personal details makes the role of a trustee sensitive. In some cases, the person you appoint as your trustee may act differently towards you or may not wish to have that role at all. It's important to continuously ask, "Is this a good fit for you?" When it is not, it is imperative that you update your estate plan to name a new trustee or successor trustee.

4. **Power of attorney/attorney-in-fact.** In this document, you designate another person to act on your behalf if you are unable to make a business or financial decision *during your lifetime*. This document grants permission to an individual whom you trust to act as your agent to make important decisions with respect to personal and financial matters. "Power of attorney" and "attorney-in-fact" are terms sometimes used interchangeably to identify this individual. The powers granted to your attorney-in-fact cease at death.

   Questions to ask your attorney-in-fact. As a parent, you may wish to enlist your adult child as your attorney-in-fact. However, not every child is accepting of this role. There could be several reasons why someone, namely your child, would prefer to not take on this role. Some factors that should be considered when making this decision are geographical proximity, emotional readiness, and familial disagreements that could arise, just to name a few. Keep in mind, the tasks associated with being an attorney-in-fact can be daunting as well as demanding. It is not a role for everyone to assume, which is why it is so important to talk to the person you are considering to ensure that they feel comfortable representing you and your finances.

Estate Administration

Estate administration is the process of carrying out the plans of someone's estate after they pass away. During estate administration, one of the steps you'll go through is called probate. Probate usually refers to the process by which someone gets formally appointed to administer a deceased person's estate and is only one aspect of an estate administration.

Though probate is a term people usually deem as the hardest part of an estate administration, in many states, it is quite the opposite. It is the first step in the process of administering an estate and is used to merely give someone the authority to do all of the actual tedious, arduous and difficult administrative work that closing out an estate involves.

If there is a will, the probate process is used by the state where the deceased person resided and/or owned property to:

1. Verify the validity of that will,
2. Identify all potential beneficiaries of the estate, and
3. Appoint the person the deceased named in their will to administer their estate (i.e. the "Executor" or "Personal Representative").

If there is not a will, an estate still must be administered, and state law determines "who gets what," and who is allowed to administer the estate. Here, the probate process is used to:

1. Identify all of the available people who benefit under the laws of that state, and
2. Appoint the person that is legally entitled to administer the estate (the "Administrator").

It is possible to avoid probate or part(s) of the probate process. Many estates are mostly made up of assets that pass to a named beneficiary outside of the probate process such as retirement accounts, pensions, social security, life insurance, bank accounts, etc. These assets are even referred to by estate lawyers as "non-probate assets."

Conclusion

All this to say, focusing on one part of estate planning, like creating a will, is not a comprehensive strategy for protecting your family once you pass. The more you are able to pay attention to detail during life, the fewer road bumps your loved ones will face once it comes time to settle an estate.

So, what happens in a scenario where estate preparation, planning, and administration is well-planned as opposed to ill-planned? Read the case study that follows to learn more.

Case Study

Discussion

If we look at the trifecta of needs for a fully-developed estate plan from our Case in Point Article, you'll remember it is broken into three parts:

- Estate preparation
- Estate planning
- Estate administration

Estate preparation, the first step, sets the foundation for estate planning and estate administration. While each component of the trifecta is important, the preparation piece will determine how difficult the planning and administration could become for your family after you've passed.

Meet the Hoffmans

Take for instance the story of Bart and Susan Hoffman. The Hoffmans were a couple who had a strong grasp on their during-life preparations and estate planning. They diligently stashed away money into their retirement plans, and major assets like their home, ski house, boat, and cars were all paid off. Additionally, they accumulated a sizable amount in savings.

Bart and Susan felt confident that their during-life preparations, coupled with the work they did to create a will, would be enough to protect their family for years to come. However, as we will see, in a number of important ways they failed to complete the foundational work of estate preparation. So, once Bart passed, followed by Susan just five years later, their

daughter Hillary faced a number of issues during the administration portion of the estate plan. Very shortly after her parents' passing, Hillary realized the paperwork trail linking her parents and her to the will had a number of gaps. For example:

- **There is no "Buy one, get one" with estate administration**. Not only did Hillary need to administer her mother's estate, but she also realized that before she was able to close out her mother's estate, she must also open and administer her father's estate from several years prior. To do so, Hillary had to obtain her father's death certificate and probate his will, too.
- **Non-forward-looking estate plans create problems**. Susan did not name a successor executor to Bart in her will and failed to update it after Bart passed. This added additional legal steps to Hillary's appointment as executor in a time of grieving.
- **Lack of information now leads to headaches later**. Susan and Bart may have spent time locating and organizing their documents years prior to their deaths when they created their estate plan; however, they did not establish a process to update the paperwork as life evolved, leaving Hillary in a bind when it came time to put together the pieces. Putting the pieces together and determining what your deceased loved one "owned" and "owed" is often the most difficult, time-consuming, stressful, and costly aspect of an estate administration and involves months of waiting by the mailbox.

Additionally, if Bart and Susan located each of their documents, they did not properly audit the information at hand. For example:

- Hillary uncovered a retirement account with no named beneficiary from Bart's financial records.
- Neither Bart nor Susan's cars were titled jointly; one car named Susan on the title, and the other named Bart.
- The family ski house was titled jointly between only Bart (not Bart and Susan jointly) and his brother, Larry.

Because of the limited action to tidy the paperwork ahead of their deaths, Hillary had to work through the tedious process of organizing Bart and Susan's financial documentation, without them around to give her any necessary information or assistance. The issue with the family ski house is an example of how incomplete estate planning can open the doors for family strife, particularly if Larry wasn't willing to help Hillary access her portion of the home.

Bart and Susan had every intention of setting their family up for success and keeping them protected for generations to come. But, because of the lack of estate preparation, a few costly mistakes were made.

- Bart and his brother Joe purchased a boat together. When Bart died seven years ago, Joe inherited the boat but never knew he had to pay an inheritance tax.
- Creditors contacted Hillary demanding payments be made for debts that were already paid off and past the statute of limitations, and Hillary mistakenly complied.

If Bart and Susan knew the issues Hillary would eventually face with their estate plan, there is no question they would have changed the way they planned. In a situation where estate preparation, planning, and administration was done diligently, many of these issues would have been avoided, and more of their estate would have been left for Hillary's benefit.

In the event that you face a situation where an estate was poorly prepared or planned out, get help with the administration process. An estate administration platform, like Trustate, can obtain, organize, and verify documents on your behalf. Organizations such as Trustate can also help provide the easiest action items for resolving issues like how to transfer car titles to another name. They can also help walk you through the probate process to make it as seamless as possible. •CSA


Leah Del Percio (left) and Tara Faquir are the founders of Trustate. Trustate is the nation's leading estate administration technology, created to ease the burden of estate administration for trusts and estates professionals and the clients they serve. Founded by Leah Del Percio and Tara Faquir in 2020, the technology has saved professionals hundreds of hours in time and thousands of dollars in operational costs. Trustate's offerings are available in all 50 states. Reach the authors at leah@trustate.com and tara@trustate.com.

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