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PART 1 - THE PROBLEM WITH PROBATE
(Estate Planning, Probate, And Living Trust)

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Almost everyone is concerned with saving money on their taxes, but most people worry only about income taxes and ignore planning to avoid estate taxes, which can consume up to 46% of a family's taxable estate before it can be passed on to the children. With proper estate tax planning, you could avoid probate and save hundreds of thousands of dollars in estate taxes.

Estate planning is being able to give or leave what you want, to whom you want, when you want to - with as little time and expense as possible.

There are two major estate-planning challenges that must be addressed:

1. How to avoid probate.
2. How to reduce estate taxes.

How to avoid probate court: The purpose of probate is to change the title to your assets to your heirs after you have passed away. If a Will is used to direct or instruct the court as to how you want your estate distributed, it must be probated with the court. A Will does not avoid probate; it guarantees that you must go through probate because a Will is instructions to the probate court. While there may be times when probate is necessary, there are problems with the probate court process.

How to avoid or reduce federal estate taxes: A person's estate includes everything that they own at the time of death, including life insurance death benefits. One of the very best ways to save estate taxes is by using the revocable living trust.

Problems with Probate

1. **Time:** It takes an average of nine to 24 months to probate an estate. If there are a lot of assets, or any complications, the time could be longer, sometimes even years.
2. **Costs:** A Wall Street Journal study estimates the national average **cost of probate at 10%** of the value of the estate. But even if we assume that an estate can be probated for half that amount, it is a cost that can be totally avoided. Most of the costs of probate are paid to your probate attorney, which may be why some attorneys recommend a Will, requiring probate.
3. **Control:** The estate is **controlled by the probate court**. A Will is your instructions to the court, but because of possible contesting of the will or defects, the court may not follow your request. Your heirs must get court approval before they will have access to your estate.
4. **Publicity:** All probate court records are **open to the public** for their inspection or copying. That includes all accounting and financial information, i.e., how much your estate is worth, how much you owe, and who you are leaving your estate to and how much you leave them. You may not want all of this information to be part of the public records. For the aforementioned reasons, I usually recommend that probate be avoided by use of a revocable living trust.