

IT'S YOUR LIFE

Thorough Estate Planning Includes Non-Financial Matters

Estate planning is important for reasons other than financial. Typical planning involves a will, a revocable trust, coordinated titling of assets, naming beneficiaries, financial powers of attorney, and health care directives. Failure to include any of these things can lead to unintended results.

Intestacy – If you don't have a will, any assets that don't transfer automatically (through certain types of ownership or beneficiary designation) need to go to someone. With a will, you direct who that will be. With no will (intestate), the state where you reside at your death will decide. All states have intestacy laws which dictate who will receive a decedent's assets. This is usually some combination of a spouse and children and varies from state to state. With no will, you cannot:

- decide who will care for your minor children nor who will handle their money
- decide at what age your children will get their money
- leave money to a charity, friends, or other relatives

Many people think they can simply pull a form from the Internet, fill in a few blanks, and they're done. This might work, but before you do that, consider these potential pitfalls: what if you use the wrong form, fill it out incorrectly, aren't aware of potential income tax consequences, or don't think through all the possibilities? If it's done incorrectly, it's too late to change anything once you die. Attorneys who specialize in estate planning can help you sort through the options and make sure you're using the appropriate form. If they do something wrong, your heirs have recourse against the attorney's Errors and Omissions insurance.

Ownership of property – Real estate and other assets can be owned in ways that, when an owner dies, the property will pass automatically to someone else. An example would be a home owned by both spouses "as joint tenants with rights of survivorship." When one spouse dies, the other automatically becomes owner (proof of death will have to be recorded in the real estate records). Another example would be a joint bank or investment account. Also, it is typical to be able to make a "payable on death" designation on most accounts, which is essentially the same as naming a beneficiary. Many states allow you to file a payable on death deed for real estate. As a cautionary measure, make sure ownership is properly coordinated with your estate plan, or it could lead to unintended consequences.

Life insurance – Who and how the policy owner designates a beneficiary could totally defeat the purpose of the insurance policy if the following aren't considered:

1. Who should get the death benefit and when? (For personal insurance, it is common to name the insured's spouse.) Should there be any restrictions on using the funds? What happens if the spouse remarries or has children from a prior relationship? If these questions are a concern, you should consider setting up a trust to be the beneficiary.
2. If the spouse predeceases the insured, who should get the benefit? (It is common for the insured's children to be named as the contingent beneficiaries.) What if the children are minors? (An insurance company cannot pay a death benefit to a minor.) At what age should the children get the money? Do the children share equally? What if a child predeceases the insured; does his/her share go to the other children or to the child's children? Again, a trust can resolve all these issues if named as the contingent beneficiary.

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End of life decisions – Most people would like to have some say in how they leave this world. Doctors, on the other hand, have an ethical obligation to keep people alive at all costs, no matter the quality of life. All states have some form available that allows people to indicate their wishes for what measures are taken to preserve their life. It helps provide guidance to family members, and allows doctors to terminate treatment without risking a malpractice lawsuit. These documents may also allow a person to indicate what should happen to their remains.

Medical decisions – Different from end of life decisions, these involve making medical decisions in the event the patient is unable to, but is not necessarily in a life threatening or terminal condition (e.g., being unconscious). The Medical Power of Attorney or Health Care Directive allows a person to name an agent or proxy to make decisions on what treatments are authorized.

With some simple planning, you have some control over the end of your life and what happens to your assets. You also have the ability to make things easier for your loved ones if they know your wishes. An attorney who specializes in estate planning can help you make these very important decisions.

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