

IF YOU WILL®: *Short Takes on Estates, Taxes and Trusts*

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"IF YOU WILL®: Short Takes on Estates, Taxes and Trusts" is a quarterly glance through an informal lens at selected news items, court decisions, legislative changes and/or important issues pertinent to estate planning. It is primarily intended to inform and entertain you. But if it causes you to pick up the phone and call us with a legal question, we won't complain; and if it inspires you to examine our more in-depth legal updates, you can view them in the "Publications" section of our website at burnslev.com/publications.

A SOMETIMES NEGLECTED ITEM ON THE NEW YEAR "TO DO" LIST

The pending arrival of a new year presents an apt time to both look at future dreams, ambitions, and opportunities and to prepare for pitfalls in the road ahead. It is a time not only for holiday joys and memories, but for facing both pleasant and difficult tasks we should do in preparation for the future.

One of the most difficult but important tasks we can undertake is preparing for the inevitable passing of a loved one who is elderly or terminally ill. We can bring peace of mind to them and to ourselves by doing what is necessary to avoid the turmoil and anxiety of medical, legal and family battles, or just the confusion of post-mortem goose chases for missing documents related to finances, asset ownership, insurance, or funeral wishes.

A question we are often asked is what one can do to help prepare for the imminent death of a close relative or friend. This edition of "If You Will" provides a look at some legal suggestions to help prepare for this event.

Seven Legal Steps to Help a Loved One Prepare

Here is an overview of what you can do legally to help a close relative make sure his or her planning is complete:

1. Execute a Will. If your loved one does not already have a valid will, you should suggest that a lawyer craft one. Where a will exists, but is more than a decade old or was executed in another state, an attorney review should be considered. A valid and well-drafted will is essential for anyone who wants his or her wishes honored. In certain situations under current state probate law (including that of Massachusetts and other states), family members to whom a decedent was not especially close may inherit part of the decedent's property in the absence of a valid and well-drafted will.

2. Draft a Health Care Proxy. It is important to designate in advance in a legal document the people who can make medical and end-of-life decisions ("health care agents") in a legal document. Such documents have different names in different states, including Health Care Proxy, Durable Power of Attorney for Health Care, Health Care Directive, or Living Will. The persons designated as health care agents can use verbal or written guidance to make decisions when a physician determines that your relative cannot make or communicate such decisions. Generally speaking, however, the more detailed and complete the guidance is, the closer the health or hospice providers can come to realizing and adhering to such preferences. Health care instructions should be reviewed in detail, and if necessary, revised. A lawyer often has language or ideas that are vast improvements over the templates provided by a medical provider or the state government.

3. Create Powers of Attorney. Your loved one should be encouraged to confer upon a trusted person (it does not need to be an attorney) the power to handle financial and legal decision making should incapacity strike. Failure to do this may result in the need to initiate an expensive guardianship proceeding. Most financial institutions will honor a document that is well drafted and validly executed, and having an attorney set one up is generally quick and inexpensive.

4. Consider a Trust Instrument. Trusts are amazingly versatile legal instruments that can address almost any estate planning situation. They can preserve a piece of property for generations, provide financial security for a disabled heir, reduce future tax exposure, protect one or more heirs from creditors or their own spendthrift behaviors, and in many cases avoid the expense, delay, or public nature of probate proceedings.

5. Utilize Estate, Gift and Income Tax Planning. More than 99 percent of all estates will not owe federal taxes, but most of the New England states (Massachusetts, Rhode Island, Maine and Connecticut) assess taxes on estates worth less than the federally exempt amount of \$5.25 million (most of the state exemption amounts are \$1 million or less), so tax planning is still important. Especially toward the end of life, last-minute gifts may be a viable strategy to reduce state estate tax. In other cases, income taxes, especially potential capital gain taxes, may be the main issue, and the estate plan and estate assets should be carefully scrutinized to make sure such taxes are minimized. A little bit of tax planning can save many times the amount invested in legal fees, and can reassure your loved one that the legacy they spent a lifetime building will be passed on to their selected heirs rather than wind up in federal or state coffers.

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6. Review Beneficiary Forms. Insurance policies and retirement plans (i.e., IRAs, 401(k) plans, 403(b) plans, or designated benefit pensions) should have current beneficiary designations on file that are aligned with, rather than conflict with, the total estate plan. Retirement plans in particular require careful attention to make sure the best tax result is achieved, if that result is possible under the estate plan. It is possible under state law to use beneficiary designations on securities accounts and certain bank accounts. These may be used to avoid probate, but an estate planning attorney should be consulted to make sure the use of such designations does not distort the overall plan of distribution.

7. Provide Information to Your Personal Representative and/or Attorney-in-Fact. As important as any of the foregoing steps is the need to provide critical information to the person named in the will as personal representative and/or the person given power of attorney over financial affairs. Among other things, your loved one should make available to these trusted individuals information about the identity and location of:

- Accountants, lawyers, doctors, insurance agents, and other professional service providers;
- Any wills, powers of attorney, trusts, or similar legal documents;
- Any stocks, bonds, annuities, mutual fund shares, or life insurance policies;
- Any bank accounts or safe deposit boxes;
- Any real estate interests or documents;
- Any interests in retirement plans, including 401(K) accounts, IRAs, or pensions;
- Any credit cards, mortgages, or loans;
- Any accounts or service plans related to utilities or maintenance for houses or vehicles;
- Any identification cards for Social Security, Medicare or other government benefits;
- Any jewelry, heirlooms or other valuables that are stashed in a hiding place where they may never be discovered, or might even get tossed out with the trash; and
- A list of usernames and passwords to access all online accounts.

Each of the foregoing tips provides a basic summary of an estate planning issue far too complex to be dealt with in a publication such as this. However, we hope this overview will encourage those with relatives, spouses, partners or friends who are facing the end of life to consult with us and explore these meaningful issues in detail.

Who Needs Estate Planning and When?

For many people, the value of an estate plan will far exceed its cost due to tax savings. Furthermore, estate planning is not just for individuals who have a net worth in excess of state or federal exemptions (currently set at \$1 million for MA, and \$5.25 million for the U.S., but subject to change). The following people can greatly benefit from estate planning with experienced legal counsel:

- Individuals or couples who have dependents or beneficiaries with special needs;
- Adoptive parents, who need to make special provisions for inheritance that differ from state law provisions applicable to those without a legally enforceable plan;
- Other non-traditional families, such as those of unmarried couples or domestic partners;
- Married persons who have previous spouses or children from a prior marriage;
- Those who have special charitable goals; and
- Those who have ownership shares in a closely held business that could suffer grave disruption from an inheritance battle or significant death taxes on their estates (such people can benefit from a well-structured agreement providing for life insurance on key owners in amounts adequate to fund the purchase of the decedent's shares, according to valuations set by agreement).

NOTE: This newsletter is not intended to constitute legal advice, which always must be given based on the facts of a particular case. If you have any questions, do not hesitate to call us for additional information.

For more information, please contact your Burns & Levinson attorney. To learn more about our Trusts & Estates practice, visit www.burnslev.com/our-practices/trusts-estates.