

Why Everyone (Yes, Even You) Should Consider Estate Planning

Benjamin Franklin famously stated, "in this world nothing can be said to be certain, except death and taxes." Much more recently, Steve Jobs addressed the issue of death in a commencement speech at Stanford University saying, "Remembering that I'll be dead soon is the most important tool I've ever encountered to help me make the big choices in life." Throughout all of modern history, great thinkers have addressed the unavoidability of death. However, despite all the advances in science and technology, humanity has not managed to overcome that certainty. Estate planning is a process through which people prepare for the inevitability of illness and death. While the idea of thinking about these subjects may be uncomfortable, an hour or two spent making decisions today can avoid confusion and conflict in the event that tragedy befalls you or your loved ones.

There is a misconception that estate planning is only for the wealthy who want to control their fortunes from beyond the grave. While one part of estate planning consists of the documents expressing your wishes after your death, those documents are only a portion of the whole process. Estate planning creates your blueprint for taking care of yourself and the ones you love in those hardest of times. By taking the time to work with an attorney to draft your estate plan, you ensure that should the unthinkable happen, your loved ones will be able to look out for your interests, respect your wishes, and inherit your property with as little trouble and delay as possible.

When approaching the estate planning process, two of the most relevant documents are the Durable Power of Attorney and the Patient Advocate Designation. These two documents allow you to appoint others to make decisions on your behalf in the event of incapacity. This is important because it allows a trusted family member or friend to make financial, legal, and medical decisions if you cannot make them for yourself.

The Durable Power of Attorney appoints a person who, upon your incapacity, has the authority to deal with your *legal and financial well-being*. This means that if you are incapacitated, there a person who can arrange for payment of bills, file insurance claims and lawsuits, and handle other business matters on your behalf.

The Patient Advocate Designation is similar to the Durable Power of Attorney, except that it appoints a person to make *medical decisions* on your behalf. This authority is important because once you reach the age of eighteen doctors are not legally required listen to the opinion of anyone in your life in making medical decisions if you cannot make decisions for yourself. Without a Patient Advocate Designation, your loved ones will be required to file a petition in Probate Court for their appointment to make medical decisions on your behalf. This process takes time and money. Having a properly executed Patient Advocate Designation negates the requirement of court interference and delays, and ensures that your parent, partner, or trusted friend has the legal authority to enforce your desires when it comes to medical treatment.

While the Patient Advocate Designation allows your surrogate to enforce your wishes for the medical treatment, another document, the Living Will provides guidance as to those wishes. Through a Living Will, you define the scope of care you wish doctors to employ to sustain your life. The Living Will acts as a second voice for you should you become incapacitated, reassuring both your Patient Advocate and medical personnel of your wishes.

While preparing for an emergency is important, you cannot forget the inevitability of death, and this is where the Will and Living Trust come into play. These two documents serve to enforce your wishes as to the distribution of whatever assets you may own after your death. A Will takes effect upon a person's death and generally states how you want your assets distributed during probate, the public process of administering of an estate. A Trust is similar to a Will, in that it is used to distribute assets. However, unlike the Will, a Trust is not subject to the public Probate process. A Trust creates a private agreement that can last many years and distribute your assets over time, frequently in a more financially beneficial manner. It can protect beneficiaries against their creditors, dependency conditions, poor marriages or just lack of maturity.

Before you decide that you do not have enough assets to worry about a Will and/or Trust, consider a few often overlooked factors.

- Do you have children? This by far is the strongest motivation for having a Will and Trust. Those documents allow you to appoint Guardians you trust to raise you children and ensure that any assets you pass along to your children are used to their greatest advantage for their benefit.
- Do you own a house? Even a mortgaged home is an asset to pass on to someone or to sell to add to the total value of the estate.
- Do you have a life insurance benefit or retirement accounts with your employer? While your savings may be limited, any life insurance benefit creates a sudden influx of assets to an estate and you will want to decide how to disburse the remaining funds.
- Who would you rather control the distribution of your estate, you or the State Legislature? If you do not have a Will, State law imposes a default distribution scheme for the distribution of your assets.

The estate planning process is more than determining who gets your money and property when you die. It is important to take the time to consider what is best for you and your loved ones. When you are ready to make the decisions needed to protect yourself and your loved ones should tragedy occur, make an appointment to speak with an estate planning attorney.

In picking an attorney, you should look for someone who will take the time to answer all of your questions and explain in more detail the documents discussed in this article. Your estate planning attorney should learn about you, your family and your needs, and then work with you to create a plan that meets those needs. Before hiring an attorney to draft your estate plan documents, make sure that attorney is a person with whom you can build a life-long relationship and, when unfortunate circumstances arise, will be there to assist and guide you and your loved ones through those difficult times.