

Estate Planning Helps You and Your Loved Ones

By Barbara W. Reynolds

Occasionally, we receive a call from a family who has a loved one in the hospital. The loved one may be in the Intensive Care Unit due to a car accident, heart attack or stroke. In that case, it may be impossible for the loved one to understand and sign legal documents empowering someone to write checks on his bank accounts or to make decisions on life support. If the loved one has no will, his assets may pass in a way that he never intended.

The term “estate planning” means talking to a lawyer who reviews your assets and discusses who should take care of financial and medical matters during your lifetime if you cannot act for yourself. It also involves deciding who should get your assets when you die and who should wrap up your estate. This meeting should also cover the tax consequences of your desires, if any.

The final part of the estate planning process is to put your wishes into legal documents. A Power of Attorney names someone to take care of financial affairs during lifetime including writing checks, buying and selling real estate, and handling investments. A Health Care Directive, which includes a living will, states your wishes concerning the removal of life support if your doctor determines you are permanently unconscious or terminally ill with no hope of survival. It also names someone to make health care decisions for you.

If you do not have a Power of Attorney or Health Care Directive and a crisis arises, your loved ones may need to apply for a conservatorship through the probate court. This often means a delay in someone being able to act for you by paying necessary bills or it could mean that family members do not have sufficient input into your medical care because they have no legal authority to speak on your behalf.

Furthermore, it means that people who love you will have to spend time at the probate court setting up a conservatorship, rather than staying at your bedside. A conservatorship also means more expense for your family because your conservator will have to use your funds to pay for court fees, a surety bond and often an attorney to assist in the process of preparing the court documents and overseeing court accountings.

Although Powers of Attorney and Health Care Directives are considered simple, inexpensive documents that allow someone to take care of your affairs during lifetime, it is important that they be prepared carefully with your goals in mind.

A Will directs your assets after death. If you do not have a Will, assets in your name alone will pass by intestacy. Such distribution may not be to the people you would have chosen.

A Will is also critical in providing for your spouse and children. A well-drafted Will avoids the surviving spouse having to split her late husband's assets with the children (as intestacy provides) and it also names a guardian and specifies proper asset management for minor children.

Completing the estate planning process achieves two important goals: it eliminates problems for loved ones who cannot act for you during lifetime and provides peace of mind in knowing that you have taken care of your loved ones. The benefits of having a current Power of Attorney, Health Care Directive and Will are tremendous.

The hardest part of the entire process may be picking up the phone and making that first phone call. Once the estate planning process is underway, you wish you had not put it off!

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