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The Basic Estate Plan: Don't Leave Home Without It

By Gina M. Barry, Esq.

Summer is just around the corner, and many will be heading off for vacation. Some will visit far away places. Others will travel to see family or friends. When planning to travel, most people experience some nervousness. Most would admit that they contemplate what would happen if they were to not make it safely to or from their destination. The best way to quiet those fears is to establish a plan before you travel.

If you wait until you make travel plans to establish an estate plan, there usually will not be much time to establish the plan before departure. Still, you should at least establish a basic estate plan as having a basic plan is better than having no plan at all. Should your "travel plan" require refinement, you can always see to that upon your return. A simple, yet effective, plan includes three documents: (1) a Last Will and Testament; (2) a Health Care Proxy; (3) and a Durable Power of Attorney. If you are a homeowner, your basic plan should also include a Homestead Declaration.

Should you pass away while traveling, your family would surely be caught off guard. Having a Last Will and Testament can provide some order during that otherwise chaotic time. Your Will directs the disposition of your probate estate. In your Will, you will designate an Executor, who is the

person who will carry out your estate. When you make a Will, you decide how your property will be divided, and you choose who will be responsible for carrying out your estate. This takes a tremendous burden off of your family members.

When you do not make a Will, the State establishes the distribution scheme of your estate for you, which may be very different from your wishes. In addition, when there is no Will, there is often disagreement among family members as to who will be responsible for administering the estate. Clearly, having a plan in place provides for the orderly distribution of your estate in accordance with your wishes.

Should you become ill or have an incapacitating accident while traveling, having a Health Care Proxy and Durable Power of Attorney will make a world of difference. A Health Care Proxy is a document in which you designate someone to make health care decisions for you in the event you are incapacitated. Similarly, a Durable Power of Attorney is a document in which you designate someone to make financial decisions for you. Having these documents in place makes it very easy for the person you have named to step in and start handling your affairs as soon as you need the assistance.

If you have not executed a Health Care Proxy and Durable Power of Attorney and you become incapacitated, your family will need to petition the court to appoint a guardian or a conservator to make your decisions. The guardianship process is time-consuming, expensive and public. The process alone will put a tremendous amount of stress on family members who will already be dealing with their emotions relative to your unfortunate situation. Further, if you are away from home when you become incapacitated, this process could take place in a court in another state, which could be cumbersome for the family members involved. Note well - a guardianship is completely avoidable if you have the right documents in place.

For homeowners, having a Homestead Declaration is a necessity. The Homestead Declaration is a one-page form that, once recorded in the Registry of Deeds, puts everyone on notice that your principal residence is your homestead. The Homestead Declaration will protect the equity in your home up to \$500,000 from judgments that arise after the declaration was recorded. Should you happen to cause an accident while traveling, the Declaration will give you peace of mind that even if you are sued and your insurance is not sufficient, the equity in your home will most likely be protected.

Establishing a basic estate plan before you travel is smart and conscientious. Once established, you will experience the peace of mind that comes with knowing that even if your trip does not go as planned, you have a plan in place that will protect you and your family.

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