

Estate Planning: Not Just for Elders

You Should Prepare Now to Prevent Future Problems

By HYMAN G. DARLING, Esq.

Maintaining your estate plan is very important, regardless of your health or age. In fact, the Commonwealth of Massachusetts has already drafted a will for you, so if you want to make your own decisions about the distribution of your assets, the only way to do so is through your own will. But that's just the first step.

This year has brought many state-specific changes in laws that require an update of your plan. For instance, in Massachusetts, there is a new homestead declaration law, which was enacted to provide an automatic exemption for homeowners. There is an additional increased exemption available if it is claimed; however, a document must be prepared, notarized, and recorded in order to become effective.

In addition, the federal law relative to estate taxes has changed so that the exemption is now \$5 million per person, but only for two years. Then you must also consider your own state-specific tax laws and tax rates. Since no one knows what the law will be in two years, you shouldn't count on the \$5 million exemption forever, and therefore should plan around an anticipated reduction in the exemption.

Additional documents also need to be revised regardless of the size of your estate. One of the most important is the health care proxy, also known as a health directive, advance directive, or living will in some states. This is not just for the elderly. In fact, everyone over the age of 18 should have one, and this includes your college-age kids, because hospital privacy laws may actually prevent you from obtaining information about them if they become hurt or sick. Three of the most-highly publicized cases regarding the right to die included Karen Quinlan, Nancy Cruzan, and Terri Schiavo, all relatively young women who did not have a health care proxy in place.

This document allows you to designate who will be your decision maker in the unfortunate event of incapacity, as well as



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been declared disabled, it may be appropriate to have their share held in a trust as opposed to providing an outright distribution for them. If a trust is being established, care

whether you wish to be kept alive by machines, and donate your organs. It also may include directives for funeral arrangements, such as cremation, burial, memorials, etc.

The power of attorney is another vital document that every individual should have. It nominates an individual or an entity, such as a bank or trust company, to make financial decisions for you when you become incapacitated and are unable to attend to your own financial matters. This would include paying bills, attending to investments, maintaining or selling a residence, paying a mortgage, filing tax returns, and all other financial matters.

Please note that the person nominated under the power of attorney does not have to be the same person who is serving for health-related decisions. This is an important concept, and the people that you nominate may serve different roles and have different strengths in performing various tasks. Care should be given when making these decisions to select the most appropriate, responsible, and trustworthy individuals to carry out these duties. If you already have a health proxy and power of attorney, it may be appropriate to review them at this time to be sure that the individuals named are still able and competent to make these decisions.

Your will should also be reviewed to be sure that the individuals who are named as executors and beneficiaries remain appropriate for the tasks. If your child or grandchild is named as a beneficiary and has financial or marital problems, or has

should be given to choose a trustee who will be capable and willing to attend to all financial affairs.

Consideration for guardians to care for your minor children if you are unable to do so is another important consideration. Please also consider this if you are a grandparent caring for your grandchildren.

Financial Matters

Other areas of concern that must be considered include retirement planning and financial planning. It's never too early to plan for retirement and provide funds for your children's education. Setting up so-called 529 Plans, as well as establishing IRAs, Roth IRAs, and funding a 401(k) and other qualified plans, are a necessity. Funds that are contributed at an early age may contribute significant appreciation with compounding and will provide for additional retirement funds to augment whatever your private pension or Social Security may fund.

Other considerations in your planning process include verifying beneficiary designations of life insurance, annuities, and retirement plans. Be sure that the individuals named are still appropriate and listed in the correct percentages and amounts. Also, charitable planning is a major consideration if you want charitable deductions, either during your lifetime or upon your death. Long-term care insurance is also important if you want to alleviate the need to spend private funds for long-term care, be it institutionalized care or home care. The sooner

and earlier a policy is purchased, the less costly the premiums, and the more likely you will be insurable, since medical issues may prevent coverage in the future.

In addition, preparing an inventory of your assets, making a list of your professional advisors, and also providing your login names and passwords to online accounts should be completed, so if you become disabled or pass away, there won't be any delay or problems in accessing those ac-

counts and paying your bills. This includes social-media sites, because your family may wish to create an online memorial or take your pages down.

Nobody likes to contemplate what the future inevitably holds, but it is critically important to follow through on the planning process and complete the necessary documents to minimize taxes, avoid probate, and preserve assets for the next generation. ❖

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