

Plan Your Estate Before Your Escape

Gina M. Barry, Esq.



Summer is here, and it seems everyone is going on vacation. Perhaps you will head to the shore to enjoy the weather or you

will visit family or friends. When planning to travel, it is common to experience nervousness. What would happen if you did not make it safely to or from your destination? Fortunately, you can establish an estate plan before your trip, and quiet those fears.

Many people contact their lawyer within days of taking a trip. This is not ideal, as you should not rush the completion of your estate plan. If at all possible, you should contact your attorney no later than one month in advance of your trip. Should you find it necessary to establish a plan quickly, establish a simple plan and commit to refining it upon your return. A simple plan includes a Health Care Proxy, Durable Power of Attorney, Last Will and Testament and a Homestead Declaration.

Plan for health concerns

Should you experience an illness or injury while traveling that leaves you unable to handle your medical or financial decisions, having a Health Care Proxy and Durable Power of Attorney in place 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 if you are incapacitat-

ed. Similarly, a Durable Power of Attorney is a document in which you designate someone to make your financial decisions. Having these documents in place allows the trusted person you have named to start handling your affairs as soon as you need assistance.

If you have not executed a Health Care Proxy and Durable Power of Attorney and you are incapacitated, your family will need to petition the court to appoint a guardian or conservator to make your decisions. This 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 difficult emotions due to your unfortunate situation. Further, if you are in a different state when you become incapacitated, this process would take place in that state, which would be cumbersome for your family members. Fortunately, guardianship and conservatorship are completely avoidable if you have a Health Care Proxy and Durable Power of Attorney in place.

And asset distribution

God forbid you should pass away while traveling; your family and loved ones would surely be shocked and distraught. A Last Will and Testament can provide some order during that otherwise difficult time. Your will sets forth the distribution of your probate estate, which are the assets that you leave in your name alone with no named beneficiary. In your will, you will also designate a personal representative (formerly

known as an Executor), who is the person who will be responsible for carrying out your plan. Should you have minor children, you will also name a guardian, and possibly a trustee, who will be responsible for taking care of these children in your absence. This planning takes a tremendous burden off of your family members.

When you do not make a will, the state dictates how your estate will be distributed, which may be very different from your wishes. In addition, there is often disagreement among family members as to who will be responsible for administering your estate. When people are grieving, they often behave in unexpected ways, which compounds the possibility of family strife. Having a plan in place provides for the orderly administration and distribution of your estate in accordance with your wishes.

Don't forget your home

If you own your primary residence, a Homestead Declaration is a necessity. The Homestead Declaration is a one-page form that, once recorded in the Registry of Deeds will protect the equity in your home up to \$500,000 from judgments that arise against you after the declaration was recorded. Should you happen to cause an accident while traveling, your Homestead Declaration will ensure that even if you are sued and your insurance is not sufficient, up to

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\$500,000 of the equity in your home will be protected.

Taking a trip should be an enjoyable experience. Establish an estate plan before you leave and 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.

Gina M. Barry is a Partner with the law firm of Bacon Wilson, P.C., Attorneys at Law. She is a member of the National Association of Elder Law Attorneys, the Estate Planning Council, and the Western Massachusetts Elder Care Professionals Association. She concentrates her practice in the areas of Estate and Asset Protection Planning, Probate Administration and Litigation, Guardianships, Conservatorships and Residential Real Estate. Gina may be reached at (413) 781-0560 or gbarry@baconwilson.com.