

ESTATE PLANNING 101

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As an attorney, I frequently hear folks say, “Why should I plan for death?...when I am dead it doesn’t matter anyway!” However, nothing could be further from the truth. Important decisions should be made prior to that fateful day to ensure that *your wishes* are carried out – not someone else’s. There is also the living component of estate planning with regard to what happens *prior* to death in the event of disability. Make no mistake...it does matter.

The three most common estate planning documents include a Will, a General Durable Power of Attorney, and an Advance Medical Directive. Consequently, these documents are relatively inexpensive. Most importantly, they provide YOU with the tools to decide what happens to you, your property, your health, and your life. Engaging this process will also head off (or at least mitigate) controversies following your death. Here are some brief explanations of these documents:

WILL. Everyone needs a Will – young or Old. A Will allows *YOU* determine and direct who receives your property at your death...not the state. Without a valid Will, your property is distributed according to the intestate succession statutes in Virginia, found in Virginia Code Section 64.2, *et seq.*...and you might be surprised how the statutes work. If you have minor children, you may also appoint the guardian of your children.

GENERAL DURABLE POWER OF ATTORNEY. A General Durable Power of Attorney is one of the most important planning documents for anyone young or old. A General Durable Power of Attorney allows you to select who makes decisions for you in the event you should become incapacitated. What happens if you can’t make decisions for yourself? Who makes them for you? Who makes health care decisions, financial decisions, and property decisions? You can appoint one or more individuals to make those decisions in your behalf. If married, it also protects your spouse in the event of incapacity to transfer assets without a court proceeding. This is a living document which is valid while you are alive and terminates at the death of the grantor (also known as the principal).

ADVANCE MEDICAL DIRECTIVE. Sometimes called a “Living Will,” this document provides your directions with regard to whether you want mechanical life support or artificial nutrition if death is imminent and you are in a comatose state.

Although most folks’ needs are managed effectively with the three documents discussed above, more in-depth planning may be necessary for purposes of Medicare and Medicaid Planning or for other needs by utilizing a Revocable Trust or other instrument. A Trust may also be used to plan for care for children, protect assets, avoid probate, and to take advantage of tax benefits.

Last recommendations: Make sure your documents meet the legalities of your state to be valid and be wary of “do-it-yourself” documents since some of these will not provide sufficient protection or meet statutory requirements. Decide what powers your agent should have while you are living. Think through how your assets should be divided upon death. Identify and select a trustworthy fiduciary or agent. Consult an attorney versed in these matters...and do not be afraid to ask questions!

So...does it really matter? You bet it does.

Good Luck and Happy Planning!



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