

Why You Should Start Thinking About Your Estate Plan Today

By: Rose G. Proto, Esq.

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“In this world nothing can be said to be certain except death and taxes.”

-- Benjamin Franklin, 1789

Planning for one's death or incapacity may not be at the forefront of an individual's thoughts, however it is a crucial step to be taken for those who desire that their wishes are properly carried out and that their loved ones are adequately cared for after their death. Whether or not you are aware, as a resident of New York State, if you own an interest in property, you have an estate plan. Individuals who have taken steps to execute a will or a trust instrument are already familiar with their estate plan. However, in the event a person dies without a will, the laws of New York State will dictate the manner in which that person's property is disposed. Dying without a will can often create surprising results that would have otherwise been unintended by the deceased.

For example, if an individual is survived by a spouse and children, New York State Estates, Powers and Trusts law will direct that \$50,000.00 plus one-half of the residue of the estate will go to the spouse, and the remaining balance will go to the children by representation. This is a somewhat arbitrary scenario to most and is rarely desired by individuals. A properly drafted will, on the other hand, allows individuals to express and preserve their testamentary intent to ensure that their wishes are carried out with specificity. Creating a will forces individuals to take inventory of their assets and give serious thought to their transfers upon death, thereby simplifying the administration of the estate and avoiding any potential hardships down the road.

Another consequence that may befall individuals with no estate plan is the unintended forfeiture of any applicable estate tax reductions. The federal government imposes a tax on individuals who transfer their property at death, depending on the value of their estate. The property to be included for purposes of valuation is what is known as the “gross estate,” and consists of cash, securities, stocks, bonds, real estate, insurance, trusts, annuities, business interests, and other assets. This property is assigned a “fair-market value” for purposes of estimating worth, which is not always commensurate with the value for which it was originally paid or acquired at. Proper estate planning identifies any applicable estate tax deductions to allow individuals to pass more of their wealth on to their loved ones. In certain circumstances, the use of trusts can also help to accomplish this result and enable individuals to have more control over how their wealth is distributed. Asset protection is an important consideration for many, and an estate plan is a great vehicle to reduce the impact of federal estate tax.

Another disadvantage to the absence of a comprehensive estate plan is that it renders individuals unable to hold assets in trust for a minor or disabled beneficiary, or for themselves. Trusts are an efficient estate-planning tool that can be fashioned in a number of ways to suit the needs of the trust creator, referred to as the “settlor.” Trusts

provide for simplicity in the long run as settlors may appoint trustees to handle the burdens of maintaining trust investments. Trustees can also be appointed to act in the event of the settlor's incapacity, thereby offering continuity and uniformity in asset management throughout an individual's lifetime. In the event the settlor wishes to exercise control over how the trust is managed for any minor or adult beneficiaries, an attorney can draft specific instructions for the trustee as to the distribution of wealth. In many ways, a trust is a living and breathing document that speaks long after an individual's death.

It is important to note that an estate plan goes beyond the disposition of an individual's assets. The individuals with whom we entrust to make crucial health care decisions on our behalf is a significant role, and will be dictated by governing law in the absence of a Health Care Proxy and/or Living Will. For this reason, both documents are commonly included in one's estate plan. A Health Care Proxy allows an individual to delegate authority to a person of his or her own choosing to make health care decisions on behalf of that individual under certain circumstances. A Living Will allows an individual to set forth the end of life treatment desired in the event that the individual cannot express his or her wishes. These two documents are vital in order to ensure that an individual's beliefs and desires are carried out properly with regard to his or her health care and end of life treatment.

In closing, an estate plan is an excellent tool that can effectively accomplish a multitude of goals, including: 1) ensuring that an individual's property is disposed of according to his or her wishes, 2) protecting an individual's assets to the greatest extent possible, 3) allowing an individual to place the burdens of asset management in the hands of a trustee, and 4) enabling an individual to appoint an agent to make his or her health care decisions under certain circumstances.

Most importantly, an estate plan provides you with invaluable peace of mind in knowing that your loved ones will be taken care of exactly according to your wishes.