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Estate Planning 101

Don't put off until tomorrow what you should start today

by Stephan Peasley

Most people don't like to think about, let alone do anything, in preparation of their own demise. I certainly don't. Thinking about the end of your life is not a particularly inspiring line of contemplation. But as we age and our family grows with our children having children, we begin to realize that it is important not only to pass on our accumulated wealth to the heirs that we love and respect (rewarding hard work and kind behavior), but also withholding our generosity to those who are undeserving.

Getting Underway

To do that, you have to plan your estate. The most basic tool that must be completed is a will. Everybody needs one and everybody knows they need one. But for many, to actually have one written is a monumental task --- a task that is made all the more difficult by apathy and inertia.

Without a will, your estate will likely go to probate where the state decides, after long and costly deliberation, who gets what of your assets. So if you don't mind second cousins or ex-spouses sharing in your hard earned money, or that the state decides to sell off all your worldly possessions --- even if you may have wanted to give something of special meaning to a particular loved one -- then don't bother with a will.

More Options

Other parts of a basic estate plan, besides the will, are a trust, a durable power of attorney and a living will or healthcare proxy, which is also called medical power of attorney. These are all legal documents that the court will recognize as your wishes. A will, a trust and a healthcare proxy, if done properly, will keep the state out of your business. As legal documents, they should be completed with the help of an attorney, as this will help to avoid legal challenges after your death. Once completed, they also need to be updated periodically.

Because of that, many of us balk at hiring an attorney. However, it is money well spent.

Legal-ease

Understanding a will is easy. After all, most of us know what it's for. But many are not quite sure what a trust is, and why one is needed. The vast majority of us will not need a trust. A will is sufficient. However, if you want to put conditions on how and when your assets are distributed upon and after your death, a trust is a much better instrument. For instance, you can assign someone, a trustee, to distribute funds over many years, or have the trust specify gifts to be distributed at certain ages of grand children or great-grandchildren even if they are not born at the time of your demise. A trust can be very flexible whereas a will is more rigid.

Here are some easy steps to take to start the process:

1. Decide to do a will. It might sound simple but the act of making a decision will get you started.
2. Set up an appointment with an attorney to discuss your needs for a will and explore the question of having a trust. Make sire the attorney you choose specializes in trust and wills. An appointment will apply pressure to you to make some decisions.
3. Discuss with your spouse how you want to divide your property once you both pass away. Make a list of all your assets and liabilities. Specify any special instruction for a gift to a loved one.
4. Pick someone to be the executor of your will or trustee of your trust. Make sure you discuss this with the person or persons you chose so they agree to this task.
5. Have a durable power of attorney for making medical decisions in the event of you being incapacitated.
6. Choose someone to take care of your children. Hoepefully you will not need this as you will live a very long life but this is very important if you pass away while still raising your children.
7. 'GO' to the appointment with the attorney and have him draw up the documents. Than make sure you sign them. He will notarize them.

You have to start here. Don't get bogged down trying to decide every little decision as to who will get what. A good attorney will give you a worksheet to work through which will help you.

Don't worry about your spouse. If you die, your spouse will inherit all the assets, unless of course that is not your desire. If that is the case you better have a will and maybe a trust. Also, by 2009 federal estate tax law exempts up to $3.5 million of your assets from estate tax, and then estate taxes completely go away by 2010. By 2011 they come back, unless Congress makes a change in the law. That does not include whatever the state decides to do about death taxes.

So if you can't seem to get motivated to get your legal documents in order, that must mean you don't mind the government telling you what to do with your money. Just the thought of that is motivator for me. And should be for you too.

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