

Don't Underestimate the "Just in Case"

by Esther Zelmanovitz, Esq.



There are many excuses to procrastinate estate planning. "I don't need estate planning, I'm young," "I don't have much money anyway," or "My spouse will take care of my kids." But what happens when life takes an unanticipated turn and tragedy strikes? We

hope to live long, healthy, and peaceful lives, but estate planning documents are critical to have "just in case."

The following documents may be the most important documents you will ever prepare:

- A Durable Power of Attorney can protect your property if you become unable to manage your financial affairs. Your appointed agent can act on your behalf for financial matters such as paying your bills, banking, insurance matters, filing tax returns, collecting government benefits, and even estate planning.
- Advance medical directives (Health Care Proxy and Living Will) allow you to appoint an agent to make medical decisions on your behalf if you become unable to do so and lets others know what your wishes are regarding your treatment, including end of life decisions.
- A Last Will and Testament directs the distribution of your property after you pass. A will may include special distribution provisions, for example, to protect a disabled beneficiary's needs.

Consider the following two scenarios.

Scenario One: While on vacation with his two sons, Bob*, a healthy and active 63 year old man, has a sudden stroke leaving him with permanent, severe brain damage. Bob did not have estate planning documents.

No one has legal authority to manage Bob's finances and legal matters. Checks cannot be signed. Interest and late fees accumulate on his credit card bills. Bob's investments are at risk. College tuition for Bob's son becomes overdue for next semester. Bob can't access government benefits. Further, although Bob's family all love Bob, they have differing opinions on what type of medical treatment Bob should receive, but do not know what Bob would have wanted, resulting in contention among his close-knit family.

Ultimately, a guardianship proceeding is needed. In a guardianship proceeding, a court would determine if the facts warrant appointment of a guardian to make financial and/or health care decisions on Bob's behalf and the court would further determine who that guardian would be. The process can be lengthy, expensive, and possibly even adversarial if, for example, family members conflict with

each other. Advance estate planning could have prevented this avoidable anguish.

Scenario two: Susan* is a single mother of three. Her oldest child, Johnny, is 22 years old with special needs and receiving government benefits. Susan is killed in a tragic car accident. She did not do any estate planning.

Without a will, the court, and not Susan, will decide who will become guardian of Susan's minor children. Additionally, the law provides that Susan's estate will be inherited outright equally by her children. Johnny's outright inheritance results in risk to Johnny's eligibility for government benefits. While mourning the loss of his mother, Johnny would need to quickly seek legal help to plan for the disposition of his inheritance and protect the continuance of his government benefits. Furthermore, his planning options would be limited. For example, even if he swiftly creates a first party special needs trust, the trust would require a Medicaid payback provision upon his death, which would result in Susan's other beneficiaries being unable to access any remaining funds in the trust.

On the other hand, if Susan had, before her death, prepared a will directing Johnny's share into a (third party) supplemental needs trust for his benefit, Johnny would seamlessly be able to continue receiving his government benefits without emergency planning. Further, any funds remaining in the trust after Johnny passes would be left to Susan's remaining beneficiaries.

Having estate planning documents in place will give you peace of mind that not only your chosen agents will be able to act on your behalf and in accordance with your stated wishes, but also that your loved ones will be able to focus on what is truly important and not have to deal with preventable legal hardship.

Wouldn't it be better to do estate planning that is never needed rather than find yourself or your family in a situation where you need it but didn't do it? Ask yourself which you would regret more. Be smart and do your estate planning "just in case" there comes a time when you need it. Do not wait until it is too late.

**fictional characters for example purposes*

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