

Are Your Estate Ducks in a Row?



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WHAT IS YOUR ENDGAME?

By Fred Dunbar

Procrastination. Many people are guilty of it – some for their entire lives. When you were young, maybe you didn't do your homework, or perhaps you didn't study for the next day's test, since it was going to snow ... but then it didn't. Perhaps it is near the end of the month, and you keep putting off writing checks (does anyone still write them?) for your monthly bills, and all of a sudden you missed the due date, causing late payments and interest. Maybe you have guests coming for dinner, and somehow you just couldn't leave the beach to go shopping. No worries, there is always takeout.

These examples have rather minor repercussions, but procrastinating your estate planning can have some serious consequences.

When we meet with clients to discuss financial planning, we always discuss estate planning and ask if they have their documents in place. This seems to be the one area where many people procrastinate. Is this you? It's understandable that dying or becoming incapacitated are outcomes that many people do not like to think about. But if you don't think about it, will it go away? How well did that work out back in the day when you put off studying for a test and no snow came to bail you out?

What is estate planning? It is managing your assets in the event you become incapacitated or die. There are three basic documents that most of us should have: an Advance Health Care Directive, a Durable Power of Attorney, and a Last Will and Testament.

Advance Health Care Directive

This legal document commonly includes two key documents. A living will is a written statement on what your wishes are should you become seriously ill and unable to communicate. It provides guidance to someone else appointed to make your health-care decisions. It may include direction on pain meds or directions to provide, withhold, or withdraw nutrition, hydration, or possibly the use of a ventilator. The Durable Health Care Power of Attorney appoints someone to make health-care decisions. An example is the ability to authorize a "Do Not Resuscitate" (DNR) order on your behalf.

There are times we meet with married couples who are clients, and they jokingly say they have a pact with each other. They don't have any documents, but if one of them becomes incapacitated, they will practice "pillow therapy." This is not the 1975 comedy-drama, "One Flew Over the Cuckoo's Nest," where the Chief (Will Sampson) places a pillow over McMurphy's (Jack Nicholson) face to put him out of his misery before the Chief escapes the psychiatric hospital. There are obviously much more practical (and legal!) ways to go about articulating medical decisions toward the end of life as described previously.

Durable Power of Attorney

A Durable Power of Attorney (POA) is a document in which you decide who will handle things when you can't do it for yourself. You are the principal, and the person you empower to act on your behalf is called the agent or attorney-in-fact. Some of the powers may include the buying or selling of assets (investments, homes, retirement plans, etc.). It can allow the agent to operate your business, complete and sign your income- and gift-tax returns, or even sue someone on your behalf. The agent can also create a living trust to benefit you (the principal), your spouse, and your heirs. The one thing this

document does not allow is for the agent to execute or revoke a will. The POA can be written to empower the agent now or sometime in the future if you become incapacitated.

Last Will and Testament

This document is considered a key element of any estate plan. A will is prepared under state law and names who should receive your property. The person(s) you name to carry out your wishes is called an executor. Upon your death, probate will be required, which is the process of distributing your property to whomever you have named as heirs under court supervision. Unfortunately, the probate process can be expensive and time consuming, plus it makes your wishes (content of the will) a public record.

The above are three of the most basic documents that everyone should have. The problem is, life gets in the way, and many times these documents are never completed. Some couples cannot decide who will be the guardians for their minor children. Some couples cannot decide whom they trust in order to handle their affairs or possibly carry out their end-of-life wishes.

If you don't complete these documents, the state will provide guidance, but it might result in your assets being distributed in a way that does not coincide with your intentions. In New Jersey, Uncle Phil Murphy has a plan for you. If you die without a will, you are said to have died "intestate." Dying intestate affects your assets without a named beneficiary – nonretirement brokerage accounts, bank accounts, real estate proceeds, etc. If you have a named beneficiary – life insurance, retirement plans, transfer on death (TOD) brokerage accounts, payable on death (POD) bank accounts, IRAs, etc. – these assets are not probated and are paid directly to whomever you have named. One example in New Jersey is if you are married, have no children, and your parents are alive, your spouse will inherit the first 25% of the intestate property (not less than \$50,000 and not more than \$200,000), plus 75% of the balance. Then your parents will inherit the remaining balance. This might not be what you want. There are too many examples to list, so if you would like to see more, just Google "dying intestate" for your state.

Life gets in the way. The names in the following example are fictitious:

Ozzie had the greatest intentions, but life got in the way. He and his wife, Harriet, had two children, David and Ricky. When Harriet died, he was devastated. Ozzie was a widower when I met him, and he told me in one of our first meetings that he didn't have a will. I recommended that he sit down with an estate-planning attorney to create his last will and testament. He told me he was on it.

A couple of years later, Ozzie started dating Gladys, who was also widowed. Eventually they got married, and I asked him again if he ever completed his will and he said no, but he was on it. He wanted to make sure that David and Ricky inherited his assets. Unfortunately, Ozzie died nine months into his marriage with Gladys. You guessed it; Ozzie never got around to completing his will.

All of his assets (without named beneficiaries) were inherited by Gladys, who kindly told the boys at his funeral that she intended to leave his assets to them, per Ozzie's wishes. She was going to meet with an attorney to create her will and would make sure that the money she inherited from Ozzie would be left to David and Ricky. Well, as fate would have it, Gladys died shortly thereafter and never did meet with an attorney to draft her will. At Gladys's death, her four children from her first marriage received everything, and David and Ricky received nothing. As you can imagine, they were a little upset.

As summer wanes, stop everything, and call your attorney to set up an appointment to get your estate in order. Now that the procrastination is over, relax and head to the beach with your favorite beverage, book, and chair to enjoy the balance of summer.

Fred Dunbar, CLU®, ChFC®, RFC®, AIF®, is President of Planning Directions, Inc., a registered investment adviser, and Common Cents Planning, Inc. He also offers securities through Commonwealth Financial Network, member FINRA/SIPC. Advisory services offered through Planning Directions, and fixed insurance products and services offered by Common Cents Planning, are separate and unrelated to Commonwealth. Fred may be contacted at 800-647-0762, by e-mail at fdunbar@commoncentsplanning.com or by mail at 239 Baltimore Pike, Glen Mills, PA, 19342. He's always happy to meet with you "down the shore" at 6606 Central Avenue N. Sea Isle City, NJ, 08243.