

COVID-19 Update: Estate Planning Checklist for Uncertain Times

April 30, 2020

In these unprecedented times we find ourselves, when nothing seems within our control, and very little is going “according to plan,” we want our friends and clients to know that there are things they can do to bring some small measure of peace and certainty to their lives. Planning for the future – especially for the unexpected – is one critical way to bring peace of mind.

We understand that addressing these issues can be difficult. Nevertheless, in the midst of all that is happening in the world, we want to highlight the importance of having your affairs in order, including a well-constructed, thoughtful estate plan. We respectfully suggest that you consider the following documents as part of a comprehensive estate plan:

- Advance Directive for Health Care
- Power of Attorney
- Last Will and Testament

Advance Directive for Health Care

We are receiving many calls recently inquiring about Advance Directives for Health Care. First, in this document, the principal appoints a health care representative, who is authorized to discuss the individual’s medical care with medical providers, and to make medical decisions in consultation with those doctors, if the patient is unable to communicate. Second, the Advance Directive contains a living will. This part of the document provides guidance and directions regarding end of life care. (Advance Directives are NOT Do Not Resuscitate “DNR” orders. A DNR order is written by a doctor after speaking with the patient. The order provides that CPR should not be instituted if the patient suffers a cardiac event or stops breathing.) Further, Advance Directives written by our firm typically include specific authorization for the health care representative to sign a Practitioner Order for Life Sustaining Treatment (“POLST”) on the patient’s behalf. This is a document that is signed by individuals (or their health care representative) when they are facing a terminal diagnosis or otherwise at risk for a life threatening incident. The POLST form provides very specific instructions about the medical care and procedures, including resuscitation and artificial feeding and fluids that should be initiated or withheld if death is imminent. The Advance Directive provides individuals with a means to make decisions about their health care before there is a medical emergency.

Power of Attorney

The second document you should consider as part of your estate plan is the Power of Attorney. By signing a Power of Attorney document, you appoint someone as your Agent in financial, business and legal matters. The document may be drafted to be effective immediately upon signing or upon a disability or incapacity.

Last Will and Testament

Finally, every adult, no matter what stage in life, should execute a Last Will and Testament. In a Will, you provide who will receive your assets after your death, who will be guardian of your minor children, and trustee of any money and property left to those children and who will handle the other affairs of your estate. Without a Will, state law will dictate how your assets are divided upon your death and who will be responsible for settling your affairs. Absent a validly executed Will, the individual appointed to settle your estate (called an Administrator) will likely be required to post a bond.

What Can I Do Now?

Our priorities have all shifted in the face of the current pandemic. Things that we thought we couldn't live without, we quickly realized were actually quite dispensable. Each of us had an endless to-do list; we worked each minute to get things done. That is not the case any longer. We have very little control over what is happening outside our homes at the moment. We've been reminded over these past weeks that what is important is found within the walls of our homes: our loved ones and our health. Getting your affairs in order, to provide peace of mind to yourself and your loved ones should now be, perhaps more than ever, at the top of the list of things to check off.

The health crisis should not hold you back from creating your estate plan. In fact, it should encourage you to move ahead with all expediency.