

We establish routines to guide us through our daily repetitive activities as efficiently as possible. Think about the beginning of your day from the moment you wake up until you walk out the door. Visualize the things you do, and the order in which you do them. They are almost the same every day. You do them automatically while your mind starts engaging the challenges of your day.

TAKING CARE OF YOUR OWN (E)STATE OF AFFAIRS

Estate Planning Requires Proper Preparation of Documents; Tips for Health Care Professionals to Plan Ahead



WHAT HAPPENS WHEN the routine is disrupted? Healthcare professionals well know how quickly and unexpectedly life can be interrupted. You've witnessed, and perhaps experienced, the chaotic scramble to reestablish normalcy of daily activities after an injury, illness, or death has severed the routine. Other events, such as storms – recall a recent flood or a canceled airplane flight – can also cause disruption and can have financial or health consequences far beyond mere inconvenience.

Routines handle daily, expected activities, but disruptions are certain to occur. Although daily routines are reflexive and almost mindless, it took some level of planning to establish them. Planning for the inevitable disruptions is also necessary. The

planning is not difficult, and may be referred to as estate planning.

What is an Estate Plan?

An estate plan is the organization of your affairs for their control and utilization in the absence of your ability to handle them yourself, and for the final disposition of your assets upon your death. An estate plan should address any special needs a member of your family might have. It might also include tax planning to reduce income tax and death taxes.

Everyone has an estate plan. The question is, is yours intentional, or by default? If you fail to intentionally plan your estate, the laws will provide a plan for you. The laws are necessary to protect your assets while you



are living from theft or misappropriation, and, upon your death, to assure the orderly passage of your property to your family. However, the “one size fits all” formula is not likely to be the best for you and your family. Further, if you are fortunate enough to leave a legacy to benefit a special cause or charitable organization, you must do so intentionally. A purposeful estate plan will secure the best use of your finances for your benefit during all phases of your life, and provide for the transfer of your assets upon your death in the manner that best serves your desires and the needs of your family.

The basic estate planning documents include powers of attorney, living wills, and trusts. Beneficiary designations for life insurance policies, annuities, and retirement accounts are also important documents. Finally, a will is essential.

Granting a Power of Attorney

A financial power of attorney is your grant of power to another individual to act on your behalf with respect to your property. A healthcare power of attorney is your grant of power to another individual to obtain confidential medical information and to make healthcare decisions on your behalf.

Granting a power of attorney does not deprive you of legal capacity to make decisions for yourself. Your agent has a responsibility to use the power solely for your benefit, and to use it subject to your instructions, if any are given. A power of attorney may be revoked by you at anytime, and otherwise is valid only during your life. After death, succession and probate laws apply, and the administration of your property is handled by a succession representative – either an administrator or executor.

Granting a general, unrestricted power of attorney is the equivalent of legally cloning yourself. By granting such powers, you allow another person to act on your behalf with respect to all legal, financial, property, and

healthcare matters. While powerful and very useful when needed, they are also subject to abuse by the agent in whom much trust is placed. Therefore, give power only to a person in whom you have absolute trust that they will use the power solely for your benefit, and in the manner that best matches how you would act on your own behalf.

What is a Living Will?

A living will is your directive to withhold life-sustaining procedures. It applies if you are diagnosed by your treating physician and one other to be suffering an incurable, irreversible injury or illness that will result in your death. A living will applies only when you are otherwise unable to give instructions on your own behalf, and it supersedes any instructions that may be given by family members or your agent under a healthcare power of attorney. Essentially, you make

this difficult decision for yourself and relieve your family of making it for you. The Louisiana statutory form for a living will requires you to instruct how invasive nutrition and hydration is to be administered. You either designate it as “life sustaining,” in which case it will be withheld, or as “comfort care,” in which case it will be provided. Although Louisiana has a statutory form for a living will, you are free to modify it as you wish.

What are Trusts?

Trusts can be used to accomplish a variety of estate planning purposes. Generally, a trust is the possession and administration of property by one person for the benefit of one or more other persons. The typical use of a trust is to provide for special circumstances when an heir is unable or incapable of managing inherited property prudently, or to provide for asset protection

WHY HAVE A WILL? YOU MUST HAVE A WILL TO DO ANY OF THE FOLLOWING:

1. To give your spouse any of your separate property.
2. To give your spouse more than a usufruct of your share of community property.
3. To extend the spousal usufruct beyond remarriage or for the lifetime of your spouse.
4. To make particular bequests of special items.
5. To provide for the needs of your legatees, such as leaving property in trust.
6. To make bequests to persons other than your children.
7. To make charitable bequests.
8. To disinherit a child or other heir.
9. To waive collation.
10. To name an executor.
11. To provide for independent administration of your estate.
12. To give authority to your executor to allocate assets of your estate.
13. To provide for or waive compensation to your executor.
14. To provide for special instructions for the sale or other disposition of property.
15. To name a tutor guardian for your minor children, or to name a guardian for a special needs child.
16. To maximize federal estate tax planning opportunities.
17. To address the order of succession in case of simultaneous death.
18. To address issues inherent in second marriages and mixed families.

DIALOGUE

and management. An important planning feature of a trust is that it can be made exempt from the claims of the beneficiary's creditors. Such a trust is called a "spendthrift trust." A spendthrift trust is critical planning if your heir has existing financial problems, is in a high risk profession, or is in a troubled marriage.

Special Needs Trusts are used to prevent the disqualification of a child or other family member who is, or may become, the recipient of means-tested government benefits. A special needs trust can be used to supplement the level of care and to pay for health-care and living expenses not otherwise covered by means-tested benefit programs.

Trusts are used for estate tax planning purposes to take advantage of lifetime gifting opportunities, and, upon death, to minimize federal estate tax. Trusts are often created to own life insurance for the purpose

of excluding life insurance proceeds from the taxable estate of the insured. Trusts for estate tax planning purposes are usually irrevocable.

Revocable living trusts may be used as a substitute for a testament, to avoid probate with respect to the property placed in trust, and for management of property after the owner becomes disabled or incompetent.

Beneficiary Designations and Wills

A review of life insurance policies, annuities and retirement plans should be a part of your estate planning. The proceeds of these assets pass strictly according to the beneficiary designation of record with the insurance company, and with the administrator of any retirement plan.

The primary estate planning document is a will or a testament. It addresses the distribution of your property after your death. Any

property not disposed of by your testament will be disposed of by operation of law.

You have an estate plan. Do you know what it is? ■

About John McDermott: Practicing law close to 40 years since 1978, John McDermott serves as the Chair of the Taylor Porter Tax and Estate Planning and Administration practice. He is ranked among Louisiana Super Lawyers and Best Lawyers in Tax Law. John represents and advises clients in the selection, formation, and governance of business entities, including corporations, limited liability companies, and partnerships. He represents hospitals and physician practice groups with respect to business and tax matters. He designs and drafts executive compensation packages and non-qualified deferred compensation plans. He also does estate planning and handles successions, probate, and estate administration matters. In 2017, John was appointed to chair the Internal Revenue Service Advisory Council's Small Business/Self-Employed and Wage & Investment Subgroup. John is a Board Certified Tax Law Specialist, Louisiana Board of Legal Specialization, and he is a certified public accountant.

What impact does the mind really have on your health?

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