

Covid-19 and the Importance of Estate Planning

Dear Client,

For many, the fear and anxiety surrounding the COVID-19 pandemic has sparked considerable concern over not only our physical but also our financial health. This commentary will share some fundamental planning applicable to all, regardless of age or net worth. While market volatility and direction are difficult to predict, there is at least one area of financial planning where you remain at the helm – your estate planning. Although the reality of COVID-19 has been a great disruptor to our daily schedules, it has forced many to address the “what if” scenarios that we so often choose to avoid. “What if” you contracted the virus and were forced into quarantine, unable to see your loved ones or your advisors to finalize your estate planning. Take this opportunity to concentrate on those important matters affecting your loved ones and your estate.

Get Your Estate Planning House in Order

Whether you have no estate documents or older documents that warrant revisiting, much of the work can be accomplished from home. In accordance with social distancing guidelines, most attorneys are conducting meetings telephonically or through videoconferencing. The attorney may then email draft documents for review and even execution if necessary. Perhaps you began the process some time ago but put off finalizing and signing. Remote witnessing and notarization may now allow you to execute your documents and complete the entire process without ever leaving home.

Estate Planning Essentials

No matter your age or asset level, each of us should have the following essential estate planning documents:

1. Last Will and Testament or Revocable Living Trust
2. Financial Power of Attorney
3. Health Care Power of Attorney or Health Care Directive
4. Living Will

If you have none of these, it may be prudent during the pandemic to first prepare the simpler ancillary documents, the Powers of Attorney and Living Will, putting those documents in place immediately, while taking time to consider the larger decisions to be addressed by your Will or Trust, which may require a couple of meetings at least. By executing Powers of Attorney, you will have created a plan for managing your financial and health care needs, avoiding possible court intervention in the event of a prolonged hospitalization, severe illness, or any other situation short of death.

Last Will and Testament

Your Will provides for the distribution of your estate at death, names a personal representative of your choosing to settle your estate and carry out the instructions contained in your Will, and allows you to name a guardian for minor children and to appoint a trustee to manage assets on their behalf. While a Will requires a court proceeding to open and administer the estate (known as probate), your specific intent and instructions will be carried out. Alternatively, if you die without a Will (known as dying intestate), state law determines how your assets pass. An intestate administration is generally a costly and far more inefficient process.

Revocable Living Trust

Similar to a will, a Revocable Living Trust provides for the distribution of assets, but with regard to those assets titled in the name of the Trust only. Assets owned by the Trust pass outside of the probate court proceeding per the instructions contained in the Trust agreement. Therefore, a properly funded Living Trust can avoid probate and reduce the legal expenses and other costs associated with settling an estate. While you may make decisions as trustee as long as you are willing and able, should you become incapacitated, your named successor trustee will swing into action and begin managing trust assets on your behalf, avoiding court involvement and the associated costs and delays. Nonetheless, you will still need to prepare a Will, a “pour-over will” in this case, as a safe harbor directing any assets titled in your individual name at the time of your death to your Trust. If you have minor children, you also need a Will to name a guardian.

Financial Power of Attorney

Your Financial Power of Attorney allows you to appoint an attorney-in-fact or agent to act on your behalf with regard to financial matters in the event you are unable to do so yourself, for instance due to incapacity or an extended hospital stay or quarantine. For estate planning purposes, the Power of Attorney should be drafted broadly granting your agent all necessary powers to handle anything that may arise with regard to your financial well-being. Your Power of Attorney grants authority over your bank accounts, investments, and insurance policies, in addition to other acts he or she may need to perform for your benefit.

Health Care Power of Attorney and Living Will

Your Health Care Power of Attorney and Living Will allow you to appoint an agent to make health care decisions for you if you are incapacitated, as well as to express your wishes concerning end-of-life decisions should terminal conditions exist. If you become unconscious and in a permanently vegetative state with no medical expectation of recovery, your Living Will sets forth your explicit instructions with regard to artificial life sustaining treatment, feeding tubes, and organ donation. Children having attained the age of eighteen should prepare similar documents, as parents no longer have legal authority to handle these matters beyond the child’s eighteenth birthday.

Conclusion

No estate plan is complete without also giving proper attention to your beneficiary designations for life insurance death benefits and retirement accounts. Be advised that many (and possibly most) of your assets pass outside of probate by beneficiary designation or survivorship, meaning such assets are not governed by your Will. Your estate plan should be reviewed every few years or sooner in the event of a significant life event and/or major change in title or the value of your assets. Such review should include a focus on income and estate tax implications, asset structure and titling of assets, and any significant change in personal or financial circumstances. There is no reason reviewing or even preparing your estate documents cannot be initiated and conducted remotely while adhering to social distancing guidelines. We are glad to assist you through this process each step of the way. If you do not know where to begin, simply start with a phone call to our office.

Sincerely,

The Financial Planning Committee
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This material has been prepared for informational purposes only, and is not intended to *provide*, and should not be relied on for *tax or legal advice*. You should consult your own *tax* and *legal* advisors. If you do not have such advisors, we are happy to recommend someone to you.