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Is Your Estate Plan Complete? Have you Considered These Points?

By Gary Altman & Renuka Somers

Roughly two-thirds of Americans do not have an estate plan, according to a recent survey from Caring.com. If you are among the minority of US adults who have prepared a will, living trust, and other end-of-life documents, you may think that your estate plan is settled. But think again. An estate plan is a living set of documents that should be regularly reviewed and updated at least every 4 years. Even if you are vigilant about changing your estate plan over time, there may be aspects you have missed, such as beneficiary designations for retirement accounts or life insurance policies.

Because your estate plan relies on others, such as designated decision-makers and beneficiaries, consider not only what might happen to you, but also what might happen to them. There may be other aspects of your estate plan you have overlooked. The best-laid plans often go awry but paying attention to the smallest details can help keep your final wishes intact.

Do you have backup decision-makers?

A well-thought-out estate plan involves numerous individuals you designate to carry out your stated preferences. They include:

- Personal representative or Executor: The person you appoint to administer your estate through the probate process after you pass away
- Trustee: The person you name to manage your trust's money and property
- Guardian: Somebody to whom you give the legal responsibility to care for your children, including adult children who lack the capacity for self-care
- Power of attorney agent: A chosen individual with the authority to handle medical or financial affairs on your behalf if you become unable to manage your own affairs

Choosing these crucial decision-makers is not a matter to be taken lightly. They will exercise considerable control over your affairs and must be trusted to act on your behalf. However, there may come a time when they are no longer able (or willing) to do what you are asking them to do. Therefore, list your first choice and at least two backups for each position in your estate planning documents.

People's lives—and your perception of their lives—can change dramatically in a short period, and certain changes might affect their ability to serve you. For example, you might discover that a trustee has had problems handling their finances, which calls into question their ability to handle trust funds on behalf of your beneficiaries. Or a guardian could have issues with their children, which causes you to question their ability to serve as your children's caretaker.

It need not be suspect behavior to make you question your decision; it could be something as benign as age. Somebody who makes an ideal guardian in their 30s, 40s, and 50s might be less than ideal in their 60s and 70s. Similarly, a legal guardian might be too young now—but the perfect candidate in five to ten years.

And what would happen if the guardian you name dies or becomes disabled? A replacement may also be required if a named decision maker approaches you and declares that they would rather not be in that position.

The key takeaway is that you should regularly reevaluate your choice of trusted decision-makers and name backups. Alternatives will ensure there is no catastrophic failure in the chain of command that leaves crucial end-of-life matters in the hands of the courts.

What about your pets?

Many pet owners will acknowledge that their furry (and feathered and scaled) friends are much a part of the family. Your pets are arguably more reliant on you than your children for their daily needs. Have you stopped to ask who will look after your beloved animal friends when you cannot do so?

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It is probably not the case that your pets are overlooked—and if you are an empty nester, your pet might receive the devotion once reserved for your children. But they may not have been top of mind when you met with an estate planning attorney to create your estate plan.
Besides naming a legal guardian for your children, you can name one for your pets. As with any other trusted decision maker, it is helpful if you can provide a list of other people to care for your pet if your first choice is unavailable, instructions for how your loved ones can find a suitable home, or shelters you are comfortable having your pet surrendered to in the event no one can care for your pet. (In the news recently, the Queen left her corgis to her son and over 100 horses to a designated beneficiary in her will). Beyond naming a caretaker for the animals that survive you, it is best to put your wishes for their care in writing. That way, the person who takes ownership of your pets knows what needs to be done for them, including things like medications, allergies, favorite toys, food, and how to best handle any unusual quirks they may have.

Have you named contingent beneficiaries?

A beneficiary is someone you name in your estate plan to inherit your money and property, such as bank accounts, investments, and insurance policies. Upon your passing and the administration of your estate, these accounts and property are distributed to or managed on behalf of your chosen beneficiaries. However, there are a few instances where you will need a contingent or backup beneficiary:

- The primary beneficiary predeceases you.
- The primary beneficiary cannot be located.
- The primary beneficiary refuses their inheritance.

Without a contingent beneficiary, your money and property might be passed on according to state law in these scenarios. This could require going through the probate process, which can delay distribution, increase estate settling costs, and lead to family infighting. These potential outcomes are best avoided, and that can be easily done by naming a contingent beneficiary —or two, or three, or more, if you have any doubts.

Have you considered the unthinkable?

Although you may prefer not to think about it, you should be prepared for the unthinkable: the loved ones you name as beneficiaries in your estate plan predecease you.

In this highly unlikely but catastrophic scenario—in which nobody in the legal chain of inheritance is alive to receive the proceeds of your estate—having contingent beneficiaries may not be enough. Depending on where you live, if you have no surviving family, the government could end up with your money and property.
Although this is not a common occurrence, for those with smaller families and few living relatives, it is not impossible. Adding a remote contingent beneficiary clause to your estate plan allows you to name a charity or other organization that will receive your money and property should the unthinkable happen.

Planning for the Unexpected

For many of us, illness, accidents, or other unexpected life events such as having to go through the probate process for a loved one serve as a wake-up call they should have a basic will, at the very least. Although important, many people still put off estate planning, citing procrastination, a perceived lack of enough money and property, a lack of knowledge about the process, and concerns about costs.
Estate planning need not be complicated or expensive, and when you consider the potential costs of not having an estate plan, can you afford to leave things to chance—or the courts? For those who already have estate plans in place, your plans should be reviewed every 4 years which includes a review of beneficiaries and

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decision-makers. It is worth your peace of mind to revisit an estate plan and add backup decision makers, pet caretakers, contingent beneficiaries, disaster clauses, and anything else you may have overlooked.

Our estate planning attorneys will ensure that all your bases are covered. To schedule an appointment, please contact our office at 301 468 3220.

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