

Estate Planning During COVID-19

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“Those who fail to plan are
planning to fail.”

Who said this?

Benjamin Franklin

Winston Churchill

Mark Twain

Corona Virus

We are all facing the same challenge,
but we do so from a position of
different circumstances ...

- **Stages in life** – age, health conditions
- **Family** – single/married, children, elder care
- **Financials**
- **Work** – on-site vs. remote, independent vs. collaborative/team orientation

Though we are all dealing with the same challenges presented by the virus, we are doing so from entirely different circumstances.

Estate Planning is Similar

We all have the same challenge to plan, but we are all in different circumstances which means there is no “one size fits all approach” to estate planning.

This is why it is not always useful to rely on the advice of a friend or online resources – difficult to rely on such input for your specific circumstance.

Using a planning professional can help ensure your plan fits your circumstance.

This presentation will focus on basic issues facing everyone in addressing their estate planning needs.

This will not be a technical presentation about how to resolve complex tax, special needs, long term care issues
– I will leave those issues for future presentations.

This presentation will focus on the following issues:

1. Basic planning considerations – *plan for what?*
2. Selecting fiduciaries – *who is in charge?*
3. Estate administration basics – *what is estate administration during life and after death?*
4. Lack of planning – *what if I do nothing?*

Basic Estate Planning Considerations

Plan for what?

Stages of Life

Incapacity:

Durable Powers of Attorney – financial and health/personal care

End of Life:

Health Care Directive
=
Directive to Physician
=
Living Will

Death:

Last Will and Testament/Revocable Living Trust as “primary estate planning tool”

Durable Powers of Attorney – Incapacity

- Attorney-in-Fact: Agent to make decisions and take actions for you when you are unable or unwilling to do so for yourself
- Powers granted are broad to avoid guardianship
- Two broad areas of life = two documents
 - 1) Financial; and
 - 2) Personal/Health Care
- Separate Powers of Attorney prevents oversharing

Health Care Directive – End of Life

Attorney-in-Fact under Health Care Power of Attorney implements the plan/choices for end of life health care:

Food (Artificial nutrition)

Water (Hydration)

Breathing (Respiration)

Pain medication

Death

What happens next?

Find the Will or Revocable Living Trust

Who is in charge of following your plan?

Will = Personal Representative/Executor/Executrix

Revocable Living Trust = Trustee

Who should be in charge?

While able → You

If unable → Attorney-in-Fact vs. Guardian

If dead → Personal Representative
(Executor/Executrix) or Trustee

Picking a qualified person to be in charge ...

Responsible

Do not have to be experts, just able to hire or consult with an expert

Experience

Financial management vs. person/health care decisions

Family vs. Non-Family

Heir/Beneficiary vs. non-Heir/Beneficiary considerations

Personal Representative

Legal Requirements: [RCW 11.36.010](#)

- “Persons” plus ...
 - Trust companies
 - National Banks
 - Entities whose owners are all attorneys
 - Non-profits, if in compliance with [RCW 24](#)
(Nonprofit Corp Act)
- Over the age 18
- Cognitive Capacity to discharge responsibilities

Not Qualified:

- Corporations
- Limited liability companies
- Limited liability partnerships
- Minors (< 18 years)
- Persons of unsound mind
- Convicted Felons (any)
- **Persons convicted of any crime involving moral turpitude**

- No set definition, determined by trier of fact on case by case basis
- Generally - “reckless, evil and/or morally reprehensible conduct”
- Examples (non-exclusive): Homicide, Manslaughter, Child Abuse, Rape, Kidnapping, Robbery, Arson, Theft, Prostitution, Fraud

Trustees

[RCW 11.36.021](#)

Same as above, plus ...

State, regional, community, technical colleges, and
any other entity so authorized by Washington law

Handling the Decedents Affairs

What is the process of Administration?

Incapacity:

- Directed by Durable Powers of Attorney -OR- Guardianship Order/Letters
- Attorney-in-Fact or Guardian begins making decisions about financial management and use and/or about personal and health care decisions.
- No self-dealing, must act in alleged incapacitated person's best interest
- No duty to preserve assets for heirs/beneficiaries unless expressly directed

End of Life:

- Directed by Health Care Directive
- Attorney-in-Fact nominated by Health Care Directive is the person responsible for decision making -OR- Guardian
- Family can participate, but Health Care AIF/Guardian has final authority unless otherwise expressed in DPA

Upon Death – Basic 4 step process

- 1. Determine person in charge**
 - a) Probate assets
 - b) Non-probate assets
- 2. Gather the assets** – control them for use in remainder of process
- 3. Pay the bills**
- 4. Distribute** the remainder of the estate as required by law (intestate succession), Will, and/or Trust

Note: non-probate assets are distributed by form of ownership (JTWROS) or by beneficiary designation (POD/TOD)

Probate Administration

What is probate?

“The judicial oversight of steps 1 - 4 above”

Non-Probate Administration:

- Revocable Living Trust Administration
- Community Property Agreement
- Administration by affidavit: succession, small estates
- Administration by TOD/POD – life insurance
- Administration by form of ownership - JTWRORS

What if I do nothing?

Incapacity:

- There is no Attorney-in-Fact and family will have to commence a guardianship for a Guardian to be appointed
- Time consuming and expensive
- GAL and Guardian appointed – no control over who serves
- Guardianship Letters – Renewal required to maintain authority to act (personal care place, inventory, and financial accounting)

End of Life:

- There is no health care Attorney-in-Fact appointed to implement your end of life care decisions and such decisions are not known
- Family joint decision making – high probability for dispute, confusion and erosion of relationship not to designate a decision maker

Death: Administration by Law

- **Who is in charge?**
No control over who may petition to be appointed as PR/Administrator; order of priority governed by statute
- **Gather the assets?**
No control over who does the gathering, but fiduciary duties are still owing

Death: Administration by Law

- **Pay the bills?**
No control over who pays the bills, but fiduciary duties are still owing
- **Distribute the remainder?**
Intestate Distribution: distribution by law [RCW 11.04](#)
- **General Presumption:** to the surviving spouse and to the nearest surviving blood relatives

For example:

If married at death, all community property to surviving spouse, split separate property between surviving spouse and surviving children

If single at death, all property to surviving children, parents, siblings, nieces/nephews ...

Lesson

1. Everyone has a will, either by statute or by instrument (will or trust)
2. If you don't like your statutory will, you need to execute your own instrument

Stay tuned for additional presentations where we will tackle various planning and administration issues in more detail.

We are happy to help with several seasoned attorneys ready to assist you develop a lifetime or testamentary plan to meet your specific needs.



Thank you

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