

LAW REVIEW

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ESTATE PLANNING 101 A

More often than not our parents' estates and financial affairs are not in order. Last week we explored how the kids' involvement in the family's estate planning can be beneficial.

Of course, on the illness or death of a parent the lack of a current will or trust and inadequate life and medical insurance comes as a surprise – after it's too late to do anything about it.

Resist the temptation to assume “everything is handled,” and explore with your parents or family the basics of what needs to be done to protect the family from financial disaster, severe tax consequences, nursing home costs, ineligibility for Medicaid or Medi-Cal and other governmental assistance, and family disagreements after a parent's illness or death.

There's no magic list of what you need to know to avoid surprises in your parents' financial future, but here are a few things to consider discussing with Mom and Dad:

- An easy transition is to ask your parents whether they have a signed *Power of Attorney for Advance Health Care* or *Health-Care Directive*.

Either of these documents ensures that proper health care decisions are made in case they become incapacitated (call or e-mail to

porter@portersimon.com for free forms). We all want to avoid a Terri Schiavo situation.

- Is there a will or trust? Is it current? Has anyone died since the last will or has there been a divorce or have properties been sold? Still want the same executor? Have your parents' assets appreciated such that a trust might be beneficial? Remember it doesn't do any good to lament after the fact how much of the estate went to the government. At the very least, encourage your parents to meet with an estate-planning lawyer, preferably a certified specialist. Preferably Kelley Carroll.
- If your parents (or you!) don't have a will, call a lawyer today (not tomorrow), or if you have minimal assets consider making a will yourself by checking out www.nolo.com or go to an office supply store. Don't just think about it.
 - Where are your parents' estate-planning documents kept? Who has the key to the safe deposit box? Where's the original will or trust?
 - What types of life and medical insurance do your parents have? Does it cover long-term care? Nursing home? In-home coverage? What are the limits? Are the premiums current and are your parents 100% mentally and financially capable of continuing the payments?
 - What assets do your parents have, including cash, residence, investment properties, investments, IRAs, Social Security, banking and savings accounts, retirement plans, and stocks and bonds? Who is on title to the real estate? Have you taken advantage of the California law that allows marital properties to

be held as “community property with right of survivorship,” which can avoid probate and save on income taxes? Most of you haven’t and it’s a very simple process. (Call or e-mail and we will send you a *Law Review* on what needs to be done.)

- Is there a complete list of business, financial and family records, with addresses, account executives, home care providers, accountants, estate planning lawyer, deeds, bank account numbers, stocks, promissory notes, insurance policies, Veteran’s benefits, retirement plans, health records, and a home inventory? (Call for an asset list form.)

- Are the beneficiaries on life insurance policies and 401(k) plans up to date? You will be surprised how many ex-spouses remain on policies.

- Are your parents still driving and has anyone evaluated their driving skills? An unfortunate, under-insured accident is a sure way to lose everything. What are the auto policy limits? Consider an umbrella policy for more coverage – generally not that expensive.

- Do your parents have enough income for their support or will assets have to be sold or can steps be taken today to qualify for Medicaid (or Medi-Cal, as we call it here in California)? I can’t tell you how important that is. Tax-wise, real estate transfers are perfectly legal but must be done timely and properly to qualify.

- Have you or your parents considered charitable trusts and other philanthropic plans that allow you to give to your favorite charity (with write-offs) rather than to the government - and still provide for the kids? The proverbial

“win-win” – even if your estate is modest. A gift in our small community goes a long way.

It’s a lot easier to talk to parents about grandchildren than it is to delve into financial planning, but maybe they will surprise you. It can be reassuring for the entire family. At least make sure the basics are covered.

By the way, have you taken care of YOUR estate planning? If you don’t have a will, you deserve the consequences.

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How would you feel if your assets went to your ex-spouse, to Uncle Sam or completely contrary to your wishes?

Next week we will discuss how best to improve our local community with charitable giving and explore some of the steps that can be taken to protect the family’s assets.

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