Estate Planning for the 55+ Crowd

by Attorney Michael Hooker

The three core documents of an estate plan are the health care proxy, power of attorney and will. The first two are documents that anticipate that at some point you may be unable to make medical and financial decisions while alive but disabled. The will determines who manages your finances post- death and to whom your assets pass.

The HCP and POA are "insurance" documents. You may need them at some point in your life or you may never need them. A will (or other method of getting assets to your beneficiaries) is, however, indispensable. This is because death is inevitable.

A key goal of estate planning is avoiding having to pro- bate or process your will through the court. If your estate plan is done correctly, your surviving family member should not have to probate your estate. The will becomes a less-important, moot document. My experience has shown that a power of attorney is often more important than a will.

Generally, a couple should jointly own all of their assets, such as brokerage accounts and real estate, in order for the other take 100 percent of the assets at the death of the partner. But what if the partner has a stroke and cannot manage her or his assets and/or sign documents such as a deed to the house? That is where the POA comes into play. It is an absolutely essential document. The rare situation where a POA is not a critical component is when a person or couple's assets are entirely in a trust. In that instance the surviving partner will be able to manage that asset via her or his role as trustee.

Each of the three core documents should name an alternate HCP, POA and personal representative under the will. A personal representative was formerly referred to as the executor. You need to name an alternate in case the primary can't serve the role years from now. If you anticipate that something untoward might happen to your agent years from now, then you should not have to redo your document at that time. You name A; if not A then B; If not B then C. I am not a fan of naming co-agents. It is too confusing for financial institutions. Your partner/agent will have enough difficulty getting the bank to deal with just her or him. Doubling the agency can create more paperwork and logistical obstacles.

If you have minor children, you should nominate a guardian and an alternate either in your will or a separate memorandum. If you have minor children, you should also consider a trust. The trust can either be named in the will or as a beneficiary of an asset - for example, your 401k.Transferring your house and retaining a life estate is a fairly common approach to asset protection. Such a transaction also avoids having to probate your house upon your death. But there are potential downsides such as one of the children becoming estranged or bankrupt, or being sued.

When considering estate planning you should be mindful of whether or not you stand to inherit money from your parents or other relative. If so, you might consider having them provide for your children directly rather than have the inheritance fall into your lap and then you try to figure out a way to protect it for your children.

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