

Estate Planning in a Nutshell

By **MIKE HOOKER**
Attorney

The three core documents of an estate plan are a health care proxy (HCP), a power of attorney, and a will.

A HCP is a document naming a surrogate to make medical decisions for you in the event you are incapable of making them. I recommend you include end-of-life language within the document. Also, name an alternate, just in case the person you name can't serve in the role.

A power of attorney document names someone to manage your finances should you become unable. I prefer an immediate POA to one that is only effective when your physician says you are incapable of dealing with your finances (the latter is known as a "springing" power of attorney). Make sure you name an alternate, as with the HCP, and perhaps a second alternate.

The final document of "the big three" is a will. Key considerations are identifying the personal representative, what happens to a bequest to a particular beneficiary if they predecease you, charities, and bequests to minors. Bequests under a will to minors create substantial bureaucracy in the probate court. If the bequest is not substantial I suggest you simply leave the money to your children and let them earmark it for your grandchildren.

While it is important to have a will, there are better, simpler ways to get assets to your survivor beneficiaries. This is known as probate avoidance. Probate is the process of getting your will allowed by the court. It is quite burdensome and can be avoided by doing some legwork now. Avenues to avoid the hassle, cost and delay of probate include, but are not limited to a) deeding a house to one or more children while retaining a life estate b) life insurance naming specific beneficiaries c) naming beneficiaries on IRA's, 401k's or other retirement accounts d) naming transfer on death beneficiaries on brokerage accounts e) adding someone else's name to your accounts, and f) titling assets in a Revocable or Irrevocable Trust.

I am 58 years old and have children in their 20s and a 92 year old father. I, like many of you, am a member of the sandwich generation.

While we think of estate planning in relation to our children, we need to recognize that many of us are also children who might reap an inheritance from our own parents. I had a 65-year-old disabled client who was interested in protecting her assets for her children by transferring them. Yet her 95-year-old mother intended to leave her estate to her. The 95-year-old should instead consider skipping her daughter and leaving her estate to her grandchildren.

Like the 65-year-old above, most of my clients are interested in "asset protection." They don't want the state or nursing home to get their hard-earned savings. There are four primary methods to engage in asset protection: a) die b) have children take care of you until death c) long term care insurance d) asset transfers. LTCI and asset transfers are really the only avenues within your control.

The federal and state governments are tightening the rules on asset transfers. They take a dim view of the middle class trying to get on the bandwagon of Masshealth. The look back for receiving aid was three years when I started practicing in elder law. It is now five years, and will likely stretch longer.

The prevailing thought is, if you have substantial savings, then you need to either transfer them at younger age or buy LTCI. My wife and I purchased LTCI a few years ago. While it can be costly, it allows us to hold onto our assets rather than relinquish control by transferring them to our children or an Irrevocable Trust where someone else is the Trustee. You must be very careful when transferring assets to children as it exposes your assets to their world. What if they divorce, become estranged or get sued? It is a risk you take.

Most of us need not concern ourselves with estate inheritance taxes. The federal threshold is over \$5 million while the Massachusetts threshold is \$1 million.

Trusts may come into play in your estate plan. The primary ones are Revocable (Living) Trusts, Irrevocable Trusts and Supplemental Needs Trusts (SNT). Revocable Trusts are used to avoid probate court. They do not protect assets from nursing home costs. Irrevocable trusts in theory protect from nursing home costs, but they have been successfully challenged lately by Medicaid, so I steer clear of them. SNTs are very important if you have a disabled child or grandchild. Do not directly leave him or her a bequest. Instead, establish a SNT, which will be funded at your death.

