

# Estate Planning – the Land of Procrastination

by Attorney Michael Hooker

Very few of us enjoy contemplating disability and death. We know, however, that the former often happens and the latter always happens. Sometimes death occurs after a long illness and sometimes out of the blue with a heart attack or car accident. It is critical that all of you have the basic estate planning documents in order *in a timely fashion*. Delay can yield some horrible results.

Consider the Terri Schiavo right to die case in Florida in 2005. Ms. Schiavo had a massive heart attack at the age of 26 which caused irreversible brain damage. She did not have a Health Care Proxy “HCP.” A battle ensued over the removal or retention of life support. While a HCP and a Living Will might not have defused the entire controversy, it would have made the decision making far less torturous.

The following are a few short scenarios I was involved with where delay proved quite disastrous. A 52 year old married woman and her husband had dragged their feet on estate planning. The wife suffered a stroke and was admitted to a nursing home long term. Although Medicaid would pay for her care, it would do so only when the woman’s name was removed from all of her assets, including her 401k. She was not able to understand the document to transfer the asset and the husband didn’t have a Power of Attorney in favor of him. He was left with no option but to go to Probate court to obtain a very costly and bureaucratic Conservatorship simply to remove the wife’s name and transfer ownership to himself.

A healthy elderly widower wanted to change his Will to omit an estranged daughter and leave all of his estate to his caretaker son who resided with him. By the time he had finally reviewed the documents he had fallen ill and postponed our appointment for signing documents. He died shortly thereafter. The estranged daughter received half of the man’s estate to the utter despair of her sibling.

In another case an unhealthy husband in his 60’s never put his wife’s name on his house. The wife with whom he resided suffered from severe mental illness. The husband died unexpectedly leaving a nasty legal mess. He should have either added his wife to the deed or placed the house in a Trust that could later be converted to a disability trust for the wife. Instead, a relative had to become Conservator just to have the right to become Administrator of the decedent’s estate to get title to the house into the widow’s name. And then he had to obtain permission from the court to fund a Trust!

To use an automobile analogy: ignoring the squeak when the car takes hard corners does make the problem will go away. You need to be proactive in a timely fashion and deal with an unsavory task or the consequences may be far more than anticipated.