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Six Estate Planning Documents You Need—But Hate Thinking About

In general, there is only one thing worst than dying... it's thinking about dying. If there is one thing worse than actually dying and thinking about dying, it's probably planning on dying. I think it's safe to say that the whole business of dying is all together unpleasant and one of the reasons why people avoid thinking and talking about it.

Unfortunately, it's also one of the biggest financial mistakes you can make for your family. I'd say it's the biggest financial mistake you can make but if you're dead, I suppose the consequences are pretty inconsequential to you anyway. But unless you just don't care about your family, making a few end of life decisions before it's the actual end of your life can simplify things for your family.

So today we'll discuss six documents you need but absolutely hate thinking about.

Last Will & Testament

Your Last Will & Testament is a legal document that, among other things, explains who will be your Personal Representative/Executor, what powers that individual will have, what should be done with your assets, how that property will be transferred, and, if you have children and they are still minors, who will serve as Guardian of your children.

If you have a trust-based estate plan, your trust will cover everything most of the asset transfer pieces I've listed above. One other minor distinction is that the Executor is called your Administrative or Successor Trustee. Your Last Will & Testament will act as a "Pour Over Will" and cover the transfer of assets into your trust (that the trust didn't cover), what will happen to those trust assets after your death, and the issue of Guardianship of minor children.

Advanced Medical Directives

Advanced medical directives, or advanced health care directives, are a set of three documents that explain what you would like done in terms of treatment and who you would like to make decisions on your behalf. The three documents, and their descriptions, are:

- **Living Will:** Your living will explains what types of medical treatment you want in the event you are incapacitated and cannot decide for yourself. They can be as broad or as specific as you want. Your living will can do things like outline a course of treatment or forbid the use of expensive medical

treatment if it only serves to prolong the inevitable. The living will is only used if the person is unable to give “informed consent” or is incapacitated.

- **Health Care Proxy:** In the event you don't have a living will or it doesn't cover a specific scenario, the person designed as the health care proxy will make decisions on your behalf. Your health care proxy has the same rights to request information, refuse and elect treatment, as you do.
- **Health Care Power of Attorney:** (a.k.a. Durable Power of Attorney) This is not specific to medical issues but is relevant because who you elect has the ability to execute legal documents on your behalf, such as sign checks, make bank transactions, and conduct business as you. (in the case of mental illness, these are known as Psychiatric Advance Directives or Ulysses contracts)

Durable Power of Attorney

I touched on the topic of a power of attorney in the advanced medical directives but I wanted to expand on it. The reason you need a power of attorney is that in the event you are incapacitated for an extended period of time, you will need someone to make some non-medical decisions on your behalf. Your power of attorney is your way of picking who you want to be in charge of your legal and business affairs when you can't be. In legal terms, they are an agent, or an attorney-in-fact (vs. an attorney-at-law), working on your behalf.

A durable power of attorney is a power of attorney that continues to be effective if you are incapacitated. A regular power of attorney is no longer valid if you die or are incapacitated. A Springing Power of Attorney is a type of power of attorney that takes effect only after the grantor is incapacitated or dead. Finally, unless the power of attorney is irrevocable through its own terms or some law, the grantor can revoke it.

Updated Beneficiary Information

This isn't so much a document as it is something you need to revisit. You need to set beneficiaries for all of your accounts, even if you don't think you need to. It is important that the beneficiary you set matches what you outline in your Will, if you've covered it. If they don't, local laws will apply as how to determine who receives the proceeds.

Finally, don't set minors as beneficiaries. In some areas, minors cannot receive or control proceeds from insurance. So if you set them as the beneficiary of your life insurance policy, and you die, then it could lead to further complications (which you are trying to avoid).

Instructions on where stuff is

Finally, leave a little instruction manual to everything you think someone will need should they have to sort out your life after the fact. At a minimum, this includes all of your financial accounts, from bank accounts and brokerage accounts to where you have the deed to your house. Make it very simple for someone to come in and put everything in order because it'll save them a lot of time.

A side benefit of putting together an instruction manual is that it forces you to collect and organize everything. Did you have an account you forgot about? What about policy coverage you weren't aware of? We accumulate a lot of stuff, financial stuff included, that we forget about. Taking the time to sort it out can be very valuable.

Do you have a last will and testament? Advanced medical directives or a guide to where stuff is? Of the six the only two I've addressed are the beneficiary information (which is redundant for us) and a guide to "where stuff is."

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