



Estate Planning: An Ounce of Prevention, a Pound of Cure

Joe Delaney

There are no crystal balls to tell us when our time on earth will be up, but some people do experience close calls. These instances are jolting reminders that while our time is limited, our planning and preparation can't be.

My friend, Paul, is, arguably, in better shape than most people I know. He's an athlete, he eats right and he takes good care of his body. None of this prevented the cardiac arrest that left him flat lined on a hospital bed, requiring three times before full resuscitation.

His experience makes us think about our own mortality and the suddenness with which decisions — ones we wish we could have made for ourselves — must be made for us. To shed more light on the importance of estate planning, I reached out to estate planning attorney and expert Jennifer Jaynes.

Jennifer outlines two basic scenarios where a little planning makes the difference between an orderly, financially conservative administration of an estate and a long, expensive, chaotic process.

WHAT HAPPENS TO MY ESTATE IF I'M INCAPACITATED?

Without a Plan

If you are in a coma and have never specified who will handle your finances or make health care decisions, someone close to you (spouse, friend or other family member) would need to petition the court to appoint him or herself your conservator. Even if today you know who that person would be, someone must take the time and bear the expense of hiring an attorney to make it official.

Once official, the conservator may face extremely difficult decisions regarding your health. Take Terri Schiavo for example. After cardiac arrest left her in a persistent vegetative state, her husband wanted to take her off artificial life support, but her parents wanted to keep her alive. The two parties were in court for 15 years over the disagreement. Before losing the ability to make that decision for herself, Ms. Schiavo likely never considered the possibility this would happen to her and her family.

With a Plan

By signing the following three documents, you can clarify your wishes while incapacitated:

- A **Power of Attorney** appoints an "attorney in fact" (not necessarily a lawyer) to manage your finances. It can be effective immediately or upon your incapacity.

- An **Advance Health Care Directive** appoints someone (commonly referred to as a “health care agent”) to administer your health care decisions and under which conditions you want to be kept alive.
- A **Health Insurance Portability and Accountability Act (HIPAA)** Release allows the health care agent you designate to access your medical records.

WHAT HAPPENS TO MY ESTATE IF I DIE?

Without a Plan

Again, someone must petition the court to either appoint a decision-maker (an “**executor**” of the will or an “**administrator**” of the estate if there is no will). Probate is the process by which the estate is distributed to creditors and beneficiaries. It is generally a lengthy process with significant cost, figured as a percentage of gross estate value (not net after debt). A \$2 million estate could face probate costs of \$33,000; a \$5 million estate could require upwards of \$63,000 in probate. Not only will these costs diminish your estate, the decisions made by the probate code/probate court may not align with your wishes.

It is also a public process. Consider the documents your family will have to sort through in to find evidence of who gets what and how much? The stories those documents tell about disagreements, mistakes – in other words, private family business – will be made public.

With a Plan

For around \$3,000, a basic estate plan could be sufficient to remove the need for your loved ones to go through probate. It includes the following documents:

- A **Revocable Living Trust** designates beneficiaries of virtually any of your assets you specify.
A **pour-over will** includes guardianship provisions for minor children.
- **Transfer documents** pre-authorize a smooth transfer of assets to beneficiaries.
- It would also include those documents necessary in the event of your incapacitation (Durable Power of Attorney, Advanced Health Care Directive and HIPAA Release).

An important reminder: **Don’t forget to fund the trust.** As a financial advisor, I often see prospective clients make this mistake. Someone may have a wonderfully drafted trust, but they failed to transfer the stock portfolio, real property and/or other assets into the trust. The most *artfully* drafted trust will not do its job if it’s not funded.

PLAN YOUR LEGACY

Healthy athletes go into cardiac arrest; the unexpected happens. You can’t control your time on earth, but you do have some control over the legacy you leave. Make sure you and, more importantly, your loved ones are well-prepared. You can’t avoid the unexpected, but you might be

able to prevent further hardships. Make sure your wishes are clearly stated and your estate plan, as part of a holistic financial plan, is designed to protect those most dear to you.

About Joe Delaney, Managing Director, Lifeguard Wealth, San Rafael, CA

Joe Delaney founded Lifeguard Wealth to help others realize their goals and dreams. As a fee-only financial advisor, he is dedicated to putting clients first. Joe has more than 30 years of financial-industry experience as a CPA and CFO; he has held senior positions with institutional investment and wealth management firms. Since 2001, he has focused his career on creating and executing wealth management strategies for individuals and families. He is licensed to provide investment advisory services, and he holds a BA in economics from Stanford University and an MBA in finance from UCLA Anderson.

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