REILLY LAW, PLC

Estate Planning for Young Professionals: 10 Things to Do Right Now

Young professionals, defined, for purposes of this information paper, to be those in their 20s and 30s, typically don't have estate planning at the top of any "to do" lists. However; along with typical future-looking actions like buying a house, contributing to a retirement account, and maybe buying a little life insurance, there are some relatively easy actions that can be taken to further solidify your loved ones' well-being in the event tragedy strikes. Youth isn't a reason to put off things like making a Will or executing a Power of Attorney -- rather it should be seen as an opportunity to do some simple planning before life gets more complicated.

With that said, here are 10 things that any young professional can do now in order to create a safety net for his or her loved ones.

1. Plan for the unexpected- Accidents don't discriminate.

The fact is that we all (both young and young at heart) only feel invincible. Accidents happen every day and everyone is at risk including even the healthiest, youngest and most vibrant. Unfortunately, most people neither anticipate nor plan for an accident to happen. That means that when one does happen many aren't prepared. The fact that young people face so few health problems in the first place makes then an even less likely group to contemplate what would happen if they weren't able to act for themselves.

For example, what would happen if you were in a car accident on the way home from work and subsequently feel into a coma for days? Who would make medical decisions on your behalf? If you are a homeowner, who would be able to access your checking account to pay your mortgage? While the chances of this sort of thing happening are small, the consequences of a catastrophic accident are very real.

Powers of Attorney for Healthcare and Finances are simple documents to execute and can name an individual that will be legally permitted to make healthcare decisions on your behalf (in your best interests, of course) and handle your financial affairs to ensure that everything is taken care of if something happens. Many attorneys will help you put these protections in place for a reasonable fee. It is money well spent for some peace of mind, particularly for those without spouses who may be able to act for them temporarily without a Power of Attorney.

2. Name a Guardian for your children (even if they aren't born yet).

If you have children, it is incredibly important for you to name an individual who will raise them if you are no longer around. Of course, if you are married, your spouse (especially if she is the birth parent of your children) will almost certainly take on that role. However; what should happen in the event that both of you die at the same time? What if you are a same-sex couple (whether legally recognized or not by your state)? Who will care for your children then?

Most couples at some point or another probably have these conversations with loved ones and assume that the chosen person will just "take care of it". However; the stark reality is that many times this is not the case. Typically, in the absence of a written agreement otherwise, a court will appoint a guardian. As with many things in the law, the process may not always be quick, especially if there are two sets of loving in-laws that both would like responsibility for the children.

By naming a guardian in a valid will, you can ensure that your wishes will be honored. Talking about who you would like to care for your children is much different than doing what the law says is required to accomplish your wishes. A simple Will can be drafted by an attorney for a reasonable fee.

3. Think about whom you want your stuff to go to and put it in a Will.

Because the term "estate planning" can be incredibly misleading, at Reilly Law, PLC we prefer to call our process Peace of Mind planning. It covers a vast array of planning techniques that can ensure your legal readiness both during life and after death. And, while most people assume estate planning is really intended for those with a lot of money and property, the truth is, at its most basic level, estate planning is simply about making wishes known in a way recognized by the law. The term "estate" really refers to anything you own, and not just that stash of cash hidden in your mattress.

If you think about what you have, that is your "estate" for purposes of this discussion. This includes bank accounts, retirement accounts, insurance policies, furniture, jewelry, vehicles, clothing, housing, etc.- everyone has possessions, and they need to go somewhere when you die or be taken care of if you become disabled or incapacitated, even temporarily. In the absence of a valid Will, these things all pass either a) according to how they are titled (in the case of homes, some vehicles, certain benefits and insurance proceeds) or b) according to state laws of intestacy. Intestacy statutes attempt to mirror how the average person would likely wish to pass his or her belongings, however; everyone is obviously unique and your choices are not necessarily those of the state law. Property passing by intestacy simply may not go where you want it to go. Drafting and executing a valid Will is an easy way to set forth who you would like to receive your things in the event you die. After all, it's your stuff. The choice should be up to you, and not the state.

4. Have a pet? Put an appropriate plan in place for its care.

This is an easy area to miss. If you're a pet owner, you know how attached your pets can get to you, and vice versa. But, what should happen to them in the event you're not there anymore? While those with children will probably cringe at the suggestion, pets to many people are like children. In the same light parents should appoint a guardian for their children, it is wise for pet owners to appoint a pet guardian.

There are a few ways this can be done. The first is in a Will. The main drawback to this approach, however can be that probate procedures can be long at times, and there is a gray period where your pet may in limbo as to who will care for it. This is true especially if there are substantial bills for the pet's care such as medication. Your chosen pet guardian may not be able to pay those expenses without funds from your estate. If the estate is stuck in probate you've really put that person in a tough spot. A second option is a Pet Trust. This document can name the pet guardian (just like the will) and can hold funds for the pet's care. It is valid during your life and after your death without the need for court involvement. This approach ensures that the person that will be caring for your pets will have ample funding at their disposal to do so immediately upon your death or disability.

5. Organize important documents and write down where they can be found.

From mortgage documents to tax records to Wills and social security cards, despite our movement towards an electronic existence, there is still paper for many important things. Often times for even the most organized people at least some of these things end up in different places. After your death, chances are that your loved ones will be scrambling trying to figure out how to gather everything. But, there's a simple way to make that task much easier on them so it doesn't add to the immense stress they're already facing over losing you.

Simply compiling all information and documentation in one location is an easy way to ensure that loved ones will have everything they may need in order to wrap up your affairs efficiently. Reilly Law, PLC's Peace of Mind Plan includes a "Roadmap" organizer that enables an individual to list the location of important documents, accounts, titles, passwords, and key professionals that would have access to an individual's records. While this isn't a document with any legal consequence, it can be an important piece of any estate plan.

6. It may not be pleasant, but consider end of life treatment.

Most people remember the Terri Schiavo case, but for those that don't, Terri was a 26 year-old woman who collapsed in her home in 1990 from heart failure that led to subsequent brain damage due to the lack of oxygen. She died in 2005 after life-support was discontinued. Her death followed numerous court battles over whether or not life-support should be discontinued. Her husband insisted that she had voiced her desire never to live in such conditions, while her parents fought to keep her sustained by artificial means. Eventually, the court sided with her husband and life-support was discontinued. This ordeal tore the family apart rather than uniting them to celebrate her life. Terri had never signed any advanced directive setting forth her wishes when it came to life-sustaining treatment in the event she was ever in a persistent vegetative state. Had she executed an Advance Medical Directive, called a Living Will in many states, her family would have definitively known her wishes rather than fighting about what she may have wanted for 15 years.

By executing a Living Will, you can clearly state your desires when it comes to feeding tubes and other life-sustaining procedures in the event you are in a persistent vegetative state or have a terminal condition where death is imminent and would only be prolonged by such procedures. A valid Living Will is legally enforceable and prevents a Terri Schiavo situation from arising. Most importantly, It leaves the decision in your hands even through you won't be able to make the decision once you find yourself in that situation. The power of an effective Advance Directive/Living Will was demonstrated in a recent George Clooney movie, "The Descendants," in which his movie wife was badly injured in a boating accident and, once medical treatment was deemed to be ineffective, her wishes were honored and she was taken off life-support and died peacefully. Her family did not have to agonize about what she wanted. She had left them legally binding instructions. Compare this result to the Schiavo saga and you see the impact of planning at what is an emotionally trying time for any family. The peace of mind in knowing that you are doing what the individual wanted, even if you don't personally agree, can be invaluable for the surviving family.

7. Along the same note, consider funeral arrangements.

Thinking about death is an unpleasant and uncomfortable experience for all but the most morbid among us, but doing so enables you to have the most possible control over the one thing in life that is certain—other than taxes, that is, according to Ben Franklin! Many people, especially young people, don't discuss their wishes regarding funeral arrangements because death is far from their minds. But, however uncomfortable it may seem, there is no guarantee that you'll live to see 80 or 90 years of age. Many young people know someone who died unexpectedly or tragically young. Thinking about how you would like to be remembered and discussing that with family ensures that they are able to make choices of which you would approve. Should you be buried or cremated? Is there a special outfit you would like to be wearing? Where would you like your final resting place to be? For military personnel or veterans, would you like certain funeral honors or to be buried in a National cemetery?

These aren't easy topics to consider, but the decisions will have to be made sometime. You might as well be the one to make them. Again, it can give your family some level of comfort to know that they are honoring your wishes and not having to guess at what you would have wanted.

8. Ensure that proper beneficiaries are named on retirement accounts and life insurance policies.

Retirement accounts, 401(k)s, IRAs, and life insurance almost always pass to the beneficiaries named on the account. Many employers offer some sort of retirement planning as an additional benefit, but young professionals don't always put much thought into naming the beneficiaries on the policy. In the event you die and the policy lists you as the beneficiary, the proceeds are going to be included in your estate which may have unintended consequences. However, by changing the beneficiary designations, you can pass these assets to loved ones without them being included in your estate.

The exact procedures for retirement accounts and insurance policy beneficiary updates vary by institution and sometimes by employer, but typically filling out the institution's form will do the trick. So, if you have recently gotten married, had a child, or realized your ailing parents would be appreciative of the proceeds of a retirement account or life insurance policy, it's wise to contact the financial institution and ensure your beneficiary designations reflect those wishes. Don't rely on your Will or Trust to do this. Without coordination of your estate planning documents with your bank accounts, insurance, or retirement plans, you may have unintended consequences for those major assets in your estate.

9. Own a home? Ensure real estate is titled to reflect your goals.

The titling (legal recordation of ownership rights) of real estate can be a major issue for young people, particularly for those who purchase a home on their own and subsequently get married. In some states you and your new spouse will be treated as if you own the home as "tenants-in-common," basically, you each own an equal interest in the property that can be transferred freely. Upon your death, your interest in the property will not automatically transfer to your surviving spouse. This, of course means that there is a chance the house will need to be sold.

However, in other states there is no automatic right to the home by the spouse not listed on the deed to the property. This can have an unpleasant unintended consequence for the surviving spouse. One solution is to retitle a home as joint tenants with right of survivorship. In this type of arrangement, upon your death the property will automatically transfer outright to your surviving spouse. The transfer can be made by recording a deed with the appropriate official in the county in which the property is located. However, it is highly advisable to work with an attorney if you are contemplating such a change due to certain implications involved -- tax and otherwise. This should be part of your planning process.

10. Ensure that any casual conversations with friends or family find their way to the proper paper.

Finally, although casual conversations with family and friends can be helpful to give them a glimpse into your wishes in the event you die or become incapacitated, these conversations have no legal effect. The law requires that proper writings be in place and formalities followed if your wishes are to be followed. Write everything down, and do it in a way that will be honored by the courts. Write a Will or Trust, appoint a guardian in it, modify beneficiary designations, enact appropriate Powers of Attorney, draft a Living Will, and most importantly, meet with an attorney to ensure it is all done properly. This is NOT the area for do it yourself work! Tackling these difficult issues now gives you the most freedom to enjoy life and ensure peace of mind for your loved ones in the event the unexpected happens to you.

[Adapted from, and courtesy of, Michael F. Brennan, Esq. "The Virtual Attorney™"]

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