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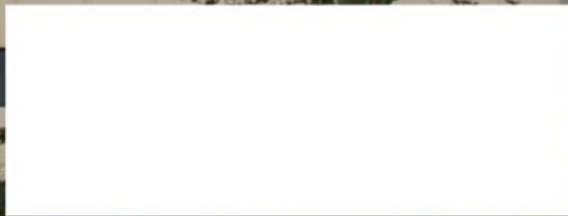
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Not Just For The Aged

Important estate & elder law planning considerations at various life stages

Estate and elder law planning is not just for the aged. Being prepared as it relates to your estate and elder law planning needs can look very different depending on your personal circumstances and stage of life.

With built in flexibility, planning for what we know and can reasonably anticipate is key to being equipped to face the challenges and opportunities that our futures may bring. This article will discuss general planning that each adult individual (age 18 and over) should have in place and will elaborate upon important estate and elder law planning considerations at various life stages.

When most people think about having an estate planning, the main concern is how assets will be distributed after death. Estate planning, however, is much more than just having a will. Not only should it contemplate what should happen after you die, but it also should thoughtfully consider all the “what ifs” that may occur during your lifetime.

The fundamental estate planning documents that all adults should have in place include:

- **A Last Will and Testament** is a legal document that allows you to direct how your property is distributed and debts are to be paid upon your death and to appoint an Executor to make sure that your wishes are carried out.
- **A Durable Power of Attorney** is a legal document that allows you to authorize one or more individual(s) to assist you with your financial and related matters during your lifetime, particularly in the event of mental incapacity.
- **A Healthcare Proxy** is a legal document that allows you to authorize a succession of individuals (joint agents are not recommended) to act on your behalf with regard to health care matters during your

lifetime (if you are unable to speak for yourself or are incapacitated).

- **A Healthcare Directive** (commonly referred to as a Living Will) is a legal document that allows you specify what actions should be taken relating to your healthcare during your lifetime (if you are unable to speak for yourself or are incapacitated).

Elder law, much like estate planning, encompasses planning for the “what ifs” during life and upon death. But it also focuses on specific issues that face older members of our society, including those who never got around to planning for incapacity and death. In addition, elder law includes planning for long term care with an eye on protecting the family of the aging individual and that individual’s assets.

Your stage in life (and the stages in the lives of your family members) will greatly impact your planning at any given point in time. Following are common life stages and steps that might be advisable to consider at each such stage:

Young & broke

When most children turn 18, they are still

heavily reliant on their parents to assist them financially and medically. However, it is at this time that a parent loses parental rights and no longer has the legal authority to assist in this regard.

While the transfer of assets on death might not be a main concern to an 18 year old that has little or no assets, most still want their parents to be able to continue to help them with their finances and medical decisions if they are unable to do so themselves. Therefore, it is imperative for a young adult to sign legal documents, such as a Durable Power of Attorney and a Healthcare Proxy, which would allow this type of assistance to continue if needed (or to appoint another trusted adult who might be appropriate to assist in these capacities).

A young adult should also give some consideration to how he or she would like end of life decisions to be made in the event of a medical emergency and to memorialize those wishes in a Healthcare Directive (Living Will). These documents are revocable (assuming the individual has capacity) so they can always be modified as that young adult grows up and becomes established and would like to appoint other individuals to assist them in this way.

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Single & advancing financially

Just like the young adult above, a single individual building a career and portfolio should have in place the fundamental documents discussed above appointing individuals to assist them with finances and medical decisions during life. While still probably not too terribly concerned with the transfer of assets on death, putting a Will in place might make sense at this life stage (it does not have to be complicated!). There might also be beneficiary designations on life insurance and retirement assets that require some attention.

Newly betrothed or married

By the time an individual has chosen his or her life mate (whether married or not), they should consider updating the agents designated on a Durable Power of Attorney and Healthcare Proxy to include their life partner. Discussions should also be had with your loved one as to end of life decisions so that he or she may understand your wishes in that regard.

If a Will is not already in place, at this point in your life you should consider having one. If you already have a Will, it should be reviewed to ensure that it accurately your wishes. While married couples may have some protections under intestacy laws, depending on your state, unmarried couples might not have those same protections and even if there are protections, they still might not reflect your specific wishes.

This is also a good time to review beneficiary designations on non-probate assets to ensure that your goals and objectives relating to the transfer of those assets upon death are also appropriate.

And baby makes three (or two!)

The first thing a new parent should do (whether single or coupled) is update your Will to include your child in your estate plan and name a legal guardian for your child in the event that something happens to you.

The addition of a new baby is also a good time to consider obtaining or increasing life insurance to cover your new baby's future expenses (especially if you are not there to provide for him or her). The advisability of adding trusts for the benefit of your child(ren) should also be considered once added to the mix.

Divorce, (potential) remarriage & newly widowed

In the event that you separate from your spouse (or your spouse passes away), it is imperative to review your estate planning documents and consider modifications that can be made to reflect your changed marital status. There may also be important tax considerations to contemplate. If you are getting divorced, once finalized, you can revisit your planning to ensure that your updated wishes (in conformity with your divorce agreement, if applicable) are reflected.

If you are considering remarriage (especially if you have children from a previous relationship), it is important to consider how your new blended family will impact your estate plan. Careful consideration should be given before and after your new marriage to proactively address the very sensitive issues that can arise when families join together. Your agents under



your Durable Power of Attorney and Healthcare Proxy should also be revisited at each of these stages.

Nearing retirement with an eye on future care needs

If you have not looked at your estate planning documents and beneficiary designations in a while, now would be a good idea to pull them out to make sure that they still make sense. If you have not already done so, you might also consider and evaluate whether long term care insurance makes sense for you. This is also a good time to consult a professional to evaluate your options relating to potential long term care needs and the impact on your finances.

Conclusion

Regardless of your stage in life, we all have opinions and objectives as it relates to our estate and elder law needs. It is important to choose a legal advisor that can guide you in making these important decisions by helping you think through and understand the sometimes complex implications of the options available to you.

It is imperative that you clearly communicate your wishes and legally document your objectives so that your goals in any given circumstance can be achieved. It is also important to monitor and adjust your plans as time goes on and your circumstances and/or the law change, and to continue these important discussions with your loved ones so that they understand your wishes.

If you would like additional information on this topic, please contact Naomi Becker Collier at ncollier@pashmanstein.com.

By Naomi Becker Collier, Counsel, Pashman Stein Walder Hayden P.C.

Naomi Becker Collier's practice is concentrated in the area of trust and estates with an emphasis on addressing the specific needs of aging individuals, people with disabilities, and their families. She provides her clients with practical guidance and education, addresses their individual needs and assists them in achieving their goals, while simultaneously maximizing the flexibility and planning options available to them.