Lowndes

Insights

Three Documents You Must Have to Protect Your Family During the COVID-19 Crisis and Beyond

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Naturally, COVID-19 has led to a large degree of uncertainty, which emphasizes the importance of having your estate plan in place – or establishing one if you have not done so already. While it is impossible to prepare for every possible contingency, there are ways to give yourself some peace of mind.

Here are three essential legal documents to execute during this crisis to help protect you and your family going forward:

Last Will and Testament

A last will and testament ensures that you control where and how your assets are devised upon death. If you do not create a will, the state of Florida will decide these matters for you in a process known as intestate succession.

If you know how you would like to devise your assets upon your death, or if you do not want an estranged family member to obtain your assets, you must execute a will. Even in the absence of such, having control over the disposition of your assets is preferable to the alternative.

With or without a will, your estate will go through a process known as probate after your death. While there are no ways to avoid probate, having a will simplifies and expedites the process, and may help you to avoid needless litigation.

Durable Power of Attorney (DPOA)

A will comes into play after your death. But what happens if you become ill with COVID-19 or another serious ailment and lack the capacity to make decisions concerning your health or property during your life – or to even pay your bills?

On one hand, in a guardianship proceeding, a court could appoint a guardian to make medical decisions and decisions about your personal or real property for you. Even so, guardianship proceedings can be avoided

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by executing a DPOA.

While guardianship can be desirable in some situations, it is not the best course of action in every instance. As with a will, undesirable outcomes can be can be avoided by smart advanced planning. Having a DPOA allows you to choose who will manage your affairs in the event that you cannot do so. You can limit those powers to ensure that your wishes are met.

Healthcare Directive/Living Will

Similarly, you can account for certain contingencies in advance by preparing a healthcare directive or living will. If you contract COVID-19 or another serious illness, do you want to be on a ventilator? Would you want to be kept alive for a prolonged period of time? Rather than leaving these decisions in the hands of others, you can make them for yourself at the outset.

Healthcare directives and living wills are critical to have in place before you need them. Once you are rushed to the emergency room, it is too late. You also do not want to put the burden on your family members to guess or speculate as to what you would have wanted in these difficult situations. Make your wishes known early so that they can followed in times of need.

Other estate planning vehicles – like trusts – can be very helpful but are not mandatory. Trusts have desired benefits for those who wish to avoid probate and want to get their assets into the hands of their heirs sooner.

Even after execution, estate planning documents should be updated over time to address changes in the law and in your personal circumstances (divorces, deaths or family dynamics). Often, clients believe they have the necessary documents but do not understand their contents.Or, clients' estate plans are outdated and no longer compliant with Florida law. Some clients moved to Florida from another state and expect that those documents are sufficient under Florida law. In many cases, they are not sufficient and need to be updated. We can review your existing documents to make sure that they accomplish your goals and comply with Florida law.

Far too often, families do not plan in advance and do not have these critical documents in place. Litigating over these issues is far more expensive and time-consuming than handling them on the front end. We would be glad to discuss your options with you.