

Estate Planning Considerations That Apply to Nearly Everyone

Written By **Peter B. von Stein** (pbvonstein@wardandsmith.com)

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Our attorneys field questions every day about the nuanced estate planning issues that arise due to a client's unique circumstances, but there also are many fundamental estate planning considerations that apply 'across the board,' regardless of one's family situation or financial

condition.

This article contains core information about the vital estate planning measures that almost all North Carolinians should have in place.

Why You Need an Estate Plan

Estate planning is not just for affluent individuals. While good estate planning can lead to desirable financial outcomes under the right circumstances, estate planning in its most basic form involves implementing the legal steps and directives that are necessary to ensure that your health and your assets are managed properly in the event of incapacity and death.

Everyone should consider:

- Do you want to make sure that your family has the legal authority to direct and take part in your medical care if you become ill?
- Do you care whether your assets will pass to your spouse, children, or other beneficiaries after your death?
- Do you want to avoid a costly and uncertain court proceeding if you, your spouse, or your adult child becomes mentally incapacitated?
- Do you have minor children or grandchildren, and specific desires about how they would be cared for in the event of your death?
- Do you care about your finances and affairs becoming part of the public record when you die?

If your answer to any of the these questions is "yes," then you likely need an estate plan.

Foundational Estate Planning Documentation

The following documents are the foundation of any good estate plan.

- **Last Will and Testament.** A simple Will directs the disposition of a person's assets and names someone to handle final affairs, in the event of death. In the absence of a Last Will and Testament, the disposition of your assets may be controlled by state law, and the result may be much different from what you intended.
- **Revocable Trust.** A revocable trust can help ensure that the management and disposition of your assets is more private and efficient during your lifetime and at death.
- **Durable Power of Attorney.** A durable power of attorney typically names a spouse, adult child, or other individual(s) of your choosing to step in and handle your financial and legal affairs when you are unable due to incapacity or absence.
- **Health Care Power of Attorney.** A health care power of attorney is a document that nominates a trusted person (usually a family member) to make health care decisions in the event of your incapacity. Without this document, decisions about your medical treatment may be made by the attending physician or might involve petitioning the court for a guardianship – an expensive and cumbersome process.
- **Living Will.** A living will addresses medical decisions and directives related to end-of-life care.
- **HIPAA Authorization.** The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") protects an adult's private medical information from being released to third parties without the patient's consent. Without a valid HIPAA authorization on file, a doctor or medical provider legally cannot, and frequently will not, discuss the patient's medical information with family members.

Ownership and Beneficiary Designations

An essential component to planning for death involves reviewing the way that your assets and accounts are structured. Asset ownership and account-specific beneficiary designations can supersede and undermine even the most carefully-drafted estate planning documentation. Unfortunately, these aspects are often overlooked, and unintended consequences ensue. Having the advice of an attorney with significant experience in estate planning and administration is the best way to ensure that your assets and your estate plan will work hand in hand.

Changes in Circumstances

If you already have an estate plan in place, that's great. But in the vast majority of cases, an estate plan will need to be updated over the course of a person's life. If your estate plan no longer addresses your needs or accurately expresses your wishes, it's time for an update.

The following are common reasons for updating one's plan:

- Children grow up and become able to manage a parent's healthcare and estate matters.
- Changes in financial circumstances.
- Relocation to a new state.
- Separation, divorce, or remarriage.
- Changes to applicable law.
- Birth, death, or marriage of a beneficiary.

We're Here to Help

If you are ready to focus on family, health, and wellbeing through estate planning, contact Ward and Smith,

P.A. and start (or continue) a relationship with one of our attorneys today.

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