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Weathering the Storm: How to Get Your Affairs in Order

Written By **Eldridge D. Dodson** (edd@wardandsmith.com)
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I'm writing this in Wilmington, North Carolina at a time when many in this area still are struggling after Hurricane Florence.

The weekend before the storm was bright and sunny. I would have rather gone to the beach, but instead, I was preparing for a hurricane that I kept hoping would turn away. I stocked water and supplies, put up storm shutters, and removed objects from the yard that could damage my neighbors' homes. Once the storm passed, I began the process of cleaning up the mess it left behind. As I was cleaning, I was reminded of the importance and great benefit of my advance planning. There is certainly a correlation between planning for a storm provided by nature and also planning for life's other types of unwanted "storms" and how advanced planning can give you the peace of mind that you've done what you can to weather both. On a daily basis, I help individuals prepare for these life "storms" such as incapacity and death. To assist you with your own preparations, here are some of the estate planning questions we encourage people to consider.

Do I need a will?

Consider: Do I have minor children or stepchildren and want to choose who will care for them? Do I care who will receive my assets at my death? Have I protected assets passing to my family from their creditors? Will some of my beneficiaries need help in managing assets? Do I have a blended family? Do I care who will handle my family's affairs after my death? If the answer to any of these questions is yes, then you probably need to prepare a will.

Minor children cannot receive property directly from an estate. Instead, a guardian must be appointed by the court to hold the property for the minor. The time, trouble, and expense of a guardianship can be avoided by simply designating in a Will a trustee or custodian for minor beneficiaries. A Will also can express your choice of guardian for your minor children.

Likewise, in your Will, you can choose who you would like to serve as your Executor to carry out your wishes and who you would like to receive your assets. Without a will, clerk of court determines who will handle your affairs and the laws of North Carolina determine who receives your assets. Often the result is dramatically different from your wishes. For example, if you die without a will, leaving a spouse and two children, your spouse receives only the first $60,000 of your personal property and 1/3 of the balance of your property. Your

remaining property would go to your children. If you have any stepchildren, they would not inherit from you.

Finally, if you have a blended family, plan to leave assets to someone who needs "help" managing the assets, or plan to leave assets to someone who has special needs or creditor issues, your will can provide for the creation of a trust for an individual rather than leaving your assets outright to him or her at your death.

Do I want to reduce expense and red tape in winding up my affairs after my death?

Consider: Do I want to avoid probate costs? Do I care if my assets and beneficiaries are part of the public record? Do I want to simplify and ease the administrative burden on my family after my death? If the answer to any of these questions is yes, then you may want to use a revocable trust in your estate planning.

A revocable or "living" trust may simplify the transfer of assets to your family, reduce administration expenses, and provide privacy. A revocable living trust is a trust established by you during your lifetime which becomes the owner of your assets. Assets that are intended to be owned by the trust must be transferred or titled in the name of the trustee (the person or entity in charge of managing the trust – typically, you). A revocable trust is ignored for income tax purposes, so no additional income tax returns need to be filed. When you die, your trust becomes irrevocable and designates who will receive the trust assets, just like a will.

There are several substantial benefits that may be obtained from using a revocable trust instead of a will. A properly funded revocable trust avoids the statutory probate fees and the expenses of preparing inventories and accountings for the clerk of court. If you own real estate in more than one state, use of a revocable living trust can help avoid the cost and complications of having to administer your estate in more than one state. Moreover, the administration of a trust can be completed more efficiently than probate administration, which can drag on for a year or more.

In addition, a revocable living trust can be useful if confidentiality is important to you. Wills, inventories, and accountings are filed with the probate court and are matters of public record. The details of your assets passing under a will, their value, and who receives them can be obtained by anyone. By contrast, the terms of your revocable trust and information about its assets and beneficiaries typically remain private.

Furthermore, if a bank trust department will manage your estate and trust, their fees generally will be lower if assets are owned by a revocable living trust and do not have to go through probate. These savings could be substantial.

Will my retirement accounts pass to my beneficiaries in the most protected and tax efficient manner?

If you think that your retirement accounts are controlled by your will or trust, like any other asset of your estate, you are wrong. Assets such as life insurance and retirement accounts pass by beneficiary designation rather than under your will or trust. You should review the beneficiary designations to confirm who will receive these assets and update the designations where appropriate.

If you have established a trust for a beneficiary for reasons addressed above, you may want to direct retirement account assets to that trust as well. However, before naming a trust as the beneficiary of your retirement account, you should consult with an attorney regarding the income tax implications. A trust named as the beneficiary of a retirement account can be drafted to qualify for "stretch treatment", allowing the annual distributions that are required after death to be taken (or stretched) over the beneficiary's life expectancy. If the trust does not qualify, then the retirement benefits will have to be distributed within 5

years after your death – resulting in larger distributions. The distributions are included in the beneficiary's taxable income in the year it is distributed. If the retirement account pays out over 5 years, distributions often result in higher income taxes than the beneficiary would have paid if the required minimum distributions had been stretched over the beneficiary's life expectancy.

What will happen if I become incapacitated?

Consider: Do you want to choose who will make financial and health care decisions for you if you become unable to make those decisions for yourself? Do you want your family to be able to handle emergency situations for you quickly, efficiently, and privately, without court involvement? If so, it is crucial to implement the proper documents now.

Creating the proper documents now will reduce some of the uncertainty should you become incapacitated. If you do not have these simple documents in place and become incapacitated, the court would appoint a guardian to make financial and health care decisions for you. Most people would rather decide for themselves who should make these decisions, and avoid the time, expense, and stress of court involvement.

A Durable Power of Attorney allows you to choose a trusted person or persons and grant them the authority to act on your behalf if you become unable to manage your financial matters. Similarly, a Health Care Power of Attorney allows you to grant authority to another person to act on your behalf in making healthcare decisions including the withholding or withdrawal of life-prolonging procedures. Finally, if you desire that your life not be prolonged by extraordinary measures should your medical condition become hopeless, it is important to memorialize that desire in an Advance Directive for Natural Death, otherwise known as a “living will.”

Do I need to worry about estate taxes?

The estate tax exemption was dramatically increased in 2018 so that each person is allowed an "exclusion amount" of $10 million, adjusted for inflation. The exclusion amount in 2018 is $11,180,000 for an individual and $22,360,000 for a married couple. However, the new law is only in effect through 2025. In 2026, the exemption amount will be lowered to the 2017 exemption level of $5 million per person (adjusted for inflation) unless Congress changes the law.

Are there other planning opportunities?

Certain individuals may benefit from more advanced planning that can minimize estate taxes for future generations. There are a number of sophisticated planning techniques that can be utilized such as an installment sale to a grantor trust, the creation of an irrevocable life insurance trust, charitable remainder trusts, and grantor retained annuity trusts to name a few. While these more sophisticated techniques are not right for everyone, significant benefits may be realized in appropriate circumstances.

In summary, please take time to make sure that you have a plan in place in the event of your incapacity or death. Hopefully, it will be a long time before you need to implement the plan, but when the time comes, you and your family will be prepared.

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