Are You Prepared for the Unexpected?

If you don't have a comprehensive estate plan in place, the results could be disastrous

Key takeaways

- You never know what life has in store for you, and procrastination can have serious consequences for your loved ones and your assets
- While many of today's affluent, multigenerational families understand the importance of having an integrated estate plan, it isn't always easy to make time to draft and update one
- One of the best motivators for getting started is knowing what could happen if you don't

While many of today's affluent, multi-generational families understand the importance of having an integrated estate plan, it isn't always easy to make time to draft and update one.

A complete plan includes a will, trusts, and key legal documents such as powers of attorney for financial and health care matters, and requires some real advance thought on what you would like to have happen if life takes a surprising turn. Perhaps you are busy with your business, career, charitable endeavors, family, or travel. The decisions required can be complicated and—if you are in good health—it may be tempting to put them off. But you never know what life has in store for you, and procrastination can have serious consequences for your loved ones and your assets. One of the best motivators for getting started is knowing what could happen if you don't.

Let's take a look at some hypothetical planning scenarios that illustrate the importance of acting now to protect your loved ones from the unexpected.

I. What if you don't have a will?

Sally is a successful CEO and owner of her own business. She has substantial assets, is divorced from her estranged husband with whom she has no contact, and has two young children at home being cared for by her trusted nanny. She knows that drafting a will should be a priority, but she's in the prime of her life and simply doesn't have the time or the inclination to think about such things. While traveling on a business trip, Sally unexpectedly perishes in a tragic accident.

If you don't have a will in place when you die, the state in which you reside will determine what happens to everything from your property, to your children, to your business.

Perhaps the most important document that you will ever write, your will includes specific directions on how you wish your estate to be distributed after your death. In some states, creating lifetime revocable trusts to coordinate with the will is popular, often lowering the costs and burdens of the probate process. The will (or the will and the revocable trust) will include provisions for any tangible personal property that you may own—jewelry, furniture, and the like—and will also name guardians for any minor children. It also indicates what sources will be used to pay any estate taxes and debts that are due, and it names an executor who will be responsible for the settlement of your estate. If you don't have one in place—meaning if you die intestate—the state in which you reside will determine what happens to everything from your property, to your children, to your business.

Your property

The state must distribute your assets according to a mandatory default scheme based on who the court considers to be your next of kin, regardless of the quality of your relationship with those people. The court will also determine who gets sentimental family heirlooms. Not surprisingly, this can all lead to significant family strife as well as lawsuits. Even, as in Sally's case, where her children are clearly the next of kin, the state cannot set up the long-term protections for her children that Sally might have wanted. Would she want significant assets going outright to her children at age 18 or 21? And who will supervise the assets while they are minors—her estranged ex-husband?

Guardianship of your children

If your minor children are left without a surviving parent, the court will be charged with naming guardians for them, after holding a hearing and deciding what it considers to be in the children's best interest. It is possible that someone who shares neither your values nor your parenting style will raise your children. In Sally's case, the court would likely determine that her ex-husband is the reasonable guardian, as he is the children's father, if he is willing to accept that role. Knowing his strong reluctance to participate in their upbringing so far, Sally should name someone she believes more suitable in her will to prepare for the unexpected and secure the best alternatives for her children.

Your business

If a successor isn't explicitly named, the process of transferring the business could get tied up in the legal process known as probate. The probate process generally is fairly straightforward—the executor presents the will, is authorized to administer the estate, determines the beneficiaries and creditors entitled to the money or other property, makes the distributions, files any tax or probate documents with the various government entities, and closes the estate, all within the prescribed and monitored timeframe. With a successful business as part of the estate, and no succession plan in place, the probate process can extend much longer, negatively impacting business operations and profitability. In some cases, such damage may be irreparable.

A will's importance is clear regardless of your personal situation. Without a will, you have no input about the distribution of your property after your death or the persons involved in administering the estate. A local court makes those decisions, and it has no authority to deviate from state law. In essence, the state steps into your shoes and makes all of the decisions for you.

This can be avoided with proper planning. By creating your will now, you can always add to the provisions or alter the document as your life evolves. It's important to review your current will every five years to be sure that it's up to date and still reflective of your current wishes.

II. You haven't protected family wealth from life's messy situations

Mark's children are responsible and trustworthy adults, with the exception of his 22-year-old daughter, Karen, who is intent on marrying a charming businessman with a penchant for day trading, risky business ventures, and lavish spending. Mark's family has significant multigenerational wealth, and despite his insistence, Karen refuses to ask her fiance to sign a prenuptial agreement. After a mere two months of wedded bliss, Karen's husband begins pushing her to tap into her trust fund to support his ventures. Fortunately for Mark, the trust his father established when the children were young has safeguards in place to protect the family fortune.

Trusts can be valuable tools in helping to protect your assets from a variety of potential hazards, such as spendthrift family members, creditors, and even ex-spouses in the event of divorce. They can also be used to place limits on what each beneficiary is entitled to, based on the level of financial responsibility he or she displays.

In the case of Mark's daughter Karen, the family trust to which she had access was established as a dynasty trust, which is a long-term trust created to pass wealth from generation to generation without incurring transfer taxes. Not only may this type of trust offer tax savings, but it also protects the principal, or corpus, of the trust, and in some cases the trust's income as well. Dynasty trusts—which in some states can last in perpetuity while in others are limited to a certain length of time—can be drafted to give a trustee discretion to decide how much income or principal to distribute to the beneficiaries. Sometimes called a "sprinkle trust," its trustee can keep certain beneficiaries from accessing funds for frivolous means, while providing more liberal support to those beneficiaries who display prudent financial practices. Because Karen's portion of the trust has very restrictive distribution provisions, she was unable to obtain funds for her husband's gold mining expedition. Eventually, the marriage ended in divorce, and of course, Karen's husband attempted to obtain "his share" of Karen's trust in the settlement. Thanks to the dynasty trust, he was unable to do so.

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III. You've remarried but haven't revised your estate plan

Richard, heir to a multi faceted real estate development business, is divorced from his wife of 30 years, with whom he has three grown children. Richard recently remarried, and his new wife has two children of her own. Richard has not taken the time to update his estate plan, which provides for his spouse upon his death.

Of course, before he remarried, Richard would have been wise to consider a prenuptial agreement in which he and his fiancée could have agreed on the specifics of how they would treat their children and assets in the event of divorce or death. Even without the prenup, Richard should draft a new will. If he dies before doing so, at best, the language in the old will regarding his spouse could cause considerable confusion, and at worst, provide more control to his new spouse than Richard wanted. Allowing her control over all of his assets could mean that she could leave Richard's assets to her own children, leaving Richard's children from his first marriage with nothing. Family litigation would be likely.

With today's changing family dynamics and the prevalence of blended families due to divorce and remarriage, planning becomes even more critical if you want to be sure that all of your heirs are treated as you would wish. Trusts can help you provide for a current spouse while ensuring that assets ultimately pass to children from a previous marriage.

IV. You haven't planned for estate taxes

Prominent philanthropist Veronica has been living a busy life, supporting her favorite charities, serving on various boards, volunteering wherever needed. Her estate plan is in place and leaves the bulk of her assets, lucrative real estate holdings, to her three children. Upon Veronica's death, her children are shocked when they find that they don't have any funds available to pay the estate taxes, and may be forced to liquidate Veronica's valued holdings to foot the bill.

If you have significant assets, your heirs will generally have to file an estate tax return and pay the amount due within nine months of your death. If you haven't left them liquid assets to do this, they may be forced to quickly sell off real property or investments, possibly at fire-sale prices, to satisfy the tax man. Under current law, estate tax applies only to estates with a value over approximately $13.99 million per married couple in 2025, or $27.98 million per individual (www.irs.gov). Many states also impose a state estate or inheritance tax.

Veronica's estate plan could have benefited from a life insurance strategy to provide the liquidity needed to meet her estate taxes. Through this strategy, you establish an irrevocable life insurance trust (ILIT) and apply for a policy equal to the projected estate taxes, making the ILIT the owner and beneficiary of the policy. You make an annual tax-exempt gift to the ILIT, which then pays the policy's annual premium. When estate taxes are due, the estate-tax-free death benefit could be loaned to the estate to provide it liquidity for the estate tax, allowing the inherited assets to stay in the family.

V. You haven't named anyone to act on your behalf

When Dan last met with his attorney, she reminded him that he hadn't drafted durable powers of attorney for financial or health care. A self-starter with no siblings or living parents, Dan did not feel comfortable placing his financial or physical well-being in the hands of just anyone. He felt that with his good health, he would not need such documents for a long time. When Dan was unexpectedly injured and in a coma for three months, his second cousin, someone whom Dan had limited contact with, stepped forward and was appointed Dan's legal guardian.

If you become incapacitated without financial or health care powers of attorney, your family may have to go to court to be appointed as your legal guardian, so they can handle your financial, legal, and health affairs.

Even if your family successfully petitions the court to make decisions for you, your loved ones may not know what you want them to do if you haven't spelled it out. In the case of health care, your loved ones may be forced to make life or death decisions when they are already emotionally taxed. Without your guidance, they may also disagree about what to do. In Dan's case, his cousin was at a loss as to what Dan would have wanted medically, because they did not know one another very well. Financially, Dan's cousin was not very savvy, and made some business decisions on Dan's behalf that were detrimental to his company.

When Dan recovered from his injuries, he recognized the importance of having these critical documents on hand and immediately had his attorney draft them as part of his estate plan, naming his closest friend and business partner as his attorney-in-fact for financial, legal, and health care matters.

Make your estate plan broad and flexible

As important as it is to make estate planning a priority, it is equally important to make sure your documents are drafted correctly. This not only means meeting all legal requirements, but also ensuring that language is broad enough and flexible enough to meet the needs of today's modern families—now and in the future.

Whenever you think about a strategy, you want to be sure about who will benefit from it. Traditional estate plans generally benefited only biological children and grandchildren. Today's families, however, are more likely to include children who are adopted, born outside of a traditional marriage, or born from advanced reproductive technologies that make even posthumous births possible. Therefore, it is important to work with advisors to make sure your language is broad enough to include anyone you consider family.

Meanwhile, it is important to make plans flexible, as it is impossible to know what the world will look like decades from now. Heirs may not be able, or wish, to own a family home or business. Therefore, it is essential that you provide exit strategies for individual family members, as well as the family as a whole. And, it's important to review all of your plans after a significant change in tax law, a change to your personal situation, or every three to five years, to help ensure that they continue to meet your family's goals.

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