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## OCTOBER 17-23, 2011 IS NATIONAL ESTATE PLANNING AWARENESS WEEK



In 2008, Congress passed H.R. 1499 declaring the third full week in October each year to be National Estate Planning Awareness Week. This year, this special week falls on October 17-23, 2011. The purpose of the National Estate Planning Awareness Week is to bring attention to the estimated 120 million Americans who do not have up-to-date estate plans to protect themselves or their families in the event of sickness, accident, or death. A significant number of people do not understand how inadequate their estate planning really is, and that a will alone is not enough.

It is the purpose of the following discussion to make you aware that proper estate planning involves more than just a Will. In addition, estate planning is not only for the elderly, but is a process that everyone over age 18 should address, from the single individual, to couples both with and without children. The estate planning process should not be avoided because of uncertainties which may exist with respect to Federal estate tax issues. Taxes (both State and Federal) are only one component of a proper estate plan and uncertainty with respect to one issue does not mean that planning is not possible or important as to the future well-being of you and your family. A proper estate plan should take into account your particular circumstances and both your current and future goals.

The attorneys at Henry & McCord who practice estate planning have extensive education in elder law, tax planning and other areas which are used to ensure that you receive quality representation. Estate Planning is not an area where every attorney can practice (generic forms will not protect your family from the unexpected). Why trust your loved ones to attorneys who practice in every area. At Henry & McCord, our attorneys have specific areas of focus. This concentration in certain practice areas allows our attorneys to give you the skill and experience that you deserve.

*This publication is a service to our clients and friends. It is designed to give only general information on the topic actually covered and is not intended to be a comprehensive summary of recent developments in the law, to treat exhaustively the subjects covered, to provide legal advice, or to render a legal opinion.*



## Planning for the Future.

A 2004 poll commissioned by the American Institute of Certified Public Accountants found that Two-Thirds (2/3) of Americans over age 65 believe they lack the knowledge necessary to adequately plan for retirement.

In addition, Seventy (70%) percent of Americans fail to plan because they lack awareness of the consequences of not having a plan in place. Some of these consequences include difficult and costly guardianship proceedings, the inability to determine how you are cared for during incapacity, costly and prolonged probate processes after death, not caring for your loved ones in the way you would prefer, and having the distribution of your assets dictated by state statute. For example, if you leave assets to minor children, a costly guardianship will be required until they turn 18, then it will be distributed to them without any possible savings for educational needs.

Sixty-Two (62%) percent of clients fail to plan because they are under the assumption that estate planning is only for the wealthy. However, this is a misconception. If you have any assets or any children, it is in your best interests to have a need to plan. Estate planning is used to protect individuals and their loved ones of all ages and at all stages of life.

- ◆ **I am Single.** Being married is not a requirement to need a Will. Whether you are married or single, by not having a will, you allow Tennessee intestacy statutes to dictate where your assets may go. In case of incapacity, if you have not had prepared Powers of Attorney for your Healthcare decisions and your Financial concerns, you do not get to designate who will make such decisions – financial or medical – for you. Rather, your family members may be required to incur the time and expense to secure a conservatorship for you. An estate plan can address all of these things and more.
- ◆ **I am young and will live forever.** While this may be the case, you cannot know for certain when or if you will become incapacitated or pass away due to random accidents and events. A proper estate plan will help ensure that your loved ones can help you in the best way possible with respect to your incapacity or other medical needs. In addition, a proper estate plan will set forth a blueprint for how you wish your assets to be used to care for your loved ones after you pass away.
- ◆ **I am afraid to plan for my death or incapacity.** Just because you are prepared for the worst (e.g. your death or incapacity), does not mean that it will come true. Rather, a proper estate plan will ensure that if anything does happen, that your family can be comforted by knowing that your estate plan contains your wishes and that they will be implemented.



- ◆ **My children are not old enough to worry about these issues.** Your estate plan will detail how your assets will be used to benefit your spouse and children. The use of your assets after your death can be very beneficial to ensuring that your children grow up with those assets which you would have wished for them to have. Without an estate plan, there is a very good likelihood that all funds left to your children will be withheld until they turn 18 and then just delivered in a lump sum. You need to have a mechanism in place that allows your children to inherit should you pass away, but also that provides that such inheritance for your children will be delivered and used in the way you design and not dictated by guardianship laws and court processes.
- ◆ **Estate Plans are only for the wealthy.** If you do not have a lot of wealth, you may not need Federal Estate and State inheritance tax planning, but you still should have an estate plan. Estate Planning is the ability to control your assets during your lifetime, to plan for how your assets will be used (and by whom) for your benefit during incapacity, and to determine to whom, how and when your assets will be transferred to your loved ones at your death. These are powers that everyone needs.

### **Planning for Aging and Disability.**

Elder financial abuse is so prevalent that it has become a new specialty area of the law. Traditional estate planning documents, such as a Will and a Power of Attorney for Healthcare, do nothing to address this. Henry & McCord can assist you with steps to minimize these risks.

### **The Attorneys at Henry & McCord are available to assist you.**

If you wish to determine how the current repeal/uncertainty of the tax law may affect your estate plan, Henry & McCord would be happy to provide such advice. You may contact James H. Henry II or John R. LaBar ([jlabar@henry-mccord.com](mailto:jlabar@henry-mccord.com)) at (931) 455-9301 to schedule an appointment.

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