**An Estate Planning Conversation with the Young Family**

Ask anyone you know the kind of person that would need to be concerned with estate planning, and 90% would describe the well-to-do retiree who has spent the last 40 years of life building up substantial wealth.

But what about the other end of the spectrum? Picture a young, newly-married couple that just had their first child. Both parents have stable jobs and a nice starter home. They put away a little money each month if they're lucky just in case something bad happens, and they try to contribute a little bit to a retirement account on a regular basis. After all that and paying the mortgage, there isn't much left for extras, but they're happy, healthy and excited at the direction life will take them.

Estate planning probably couldn't be further from this couple's mind. After all, what estate do they have that needs planning?

Too often, young parents put off estate planning because of this misconception and probably just as likely because of the thought that with long lives ahead of them there will be time for those sorts of things in the future. After all, estate planning ultimately contemplates death which is not something that a vibrant and healthy 30 year-old wants to think about. But, no matter how morbid or uncomfortable the thought may be, the reality is that none of us can predict when death is going to knock on the door.

That's why estate planning for the young couple is just as important as estate planning for the 90 year-old retiree. But, the question probably keeps coming up, "How am I supposed to plan for my estate when I don't have any estate to plan?"

Well, estate planning is about much more than giving away millions of dollars. Young families without substantial assets can still find peace of mind with some relatively simple planning.

Here are 5 things that estate planning can accomplish whether you have $100 or $10,000,000:

**1) Set out who will care for the children**

Chances are pretty good that at some time or another most parents have a discussion about who will care for the children in the event they are no longer around. In fact, it's probably safe to say that this is even discussed with loved ones so that it's known what should happen in the event of an untimely death. But, chances are much worse that these wishes are ever reduced to writing. That means that no matter how clear parents think they have been about what they would like for their children there is the potential for disagreement to arise after it's too late.

For example, suppose a young couple has a three-year-old toddler, but neither parent has a will nominating a guardian for the child. Both parents are killed in a car accident leaving their families to decide what is best for the child. Imagine the parents and siblings of both parents feeling like they would be best suited for caring for the child as well as feeling an obligation to step in and raise him. The room for disagreement is obvious. Perhaps naturally, without any set of written instructions chances are that more than one family member would assume they are in the best position to raise the child. This disagreement leads to the courts determining who will care for the child, and even after someone is finally appointed, chances are that the relationship between both families has taken a hit because of the dispute.

By naming a guardian in their wills, parents can avoid this undesirable, but far too common result. A will can designate a person who will raise the child or children in a manner that would be acceptable to the parents, can avoid family conflicts over the care of the children, and can even specifically exclude someone from caring for the children.

Factors to consider when naming a guardian are:

- *The physical location of the guardian*- Remain mindful that a physical relocation of the child could cause unnecessary stress on him.
- *Lifestyle*: While an aunt or uncle may seem like an otherwise great fit to raise the child, consider his or her lifestyle, including work schedule and social habits.
- *Religious, political and moral beliefs*- Ultimately this person is stepping into the parent's shoes so he or she should share the same values.
- *Financial situation*- In the event that you have not been fortunate enough to leave substantial financial assets for which to raise the child with, consider whether the potential guardian would be able to afford to raise the child in the lifestyle to which he is accustomed.
- *Desire to serve*- ASK, ASK, ASK. While an individual may seem like a perfect fit otherwise, he or she may simply not be ready or willing to be a parent. It's important to make sure that both the person would both be ok with the potential relationship.

**2) Set out how property will be managed until the children are older**

It is necessary for parents to designate someone that will manage any assets being given to minor children. If it's not done that a court will step in and act as a conservator to manage the property on behalf of the child. If a will does not detail how assets should be managed for minor children, then the court will be forced to act. This can lead to additional burden and unnecessary expense. That burden and expense can be minimized with some simple planning.

For example, a more desirable solution may be to leave any assets to minor children in trust. The assets can then be managed by a person of the parents' choosing (whether this is the appointed guardian or someone else). This person is under a legal obligation to manage the assets for the child's benefit and as the parents have set forth. Typically, once the child reaches a mature age the assets can then be distributed to him from the trust to manage on his own.

**3) Set out how and to whom personal possessions and any other assets will be distributed**

This is probably the thing that most people think about when they hear the term 'estate planning'. For young families without a huge amount of savings or other liquid assets it probably doesn't feel like it's worth the effort to actually make a plan. But, in the absence of a will, dispositions of property are made according to state laws that try to mirror the intent of the average person.

Sometimes those laws lead to strange outcomes that may seem to fall short of that goal. For example, take a married couple in Illinois with two children. In the event one spouse, say the husband, dies then his wife would only take half of property while the children would split the other half rather than the wife just taking all the property to support herself and the children. To make matters worse, if those two children are minors then the court would need to appoint a conservator to manage their half of the property.

That is just one example of why it is important to set out any desires in a will. The law may not necessarily accomplish what you'd assume they would accomplish.

**4) Set out who will be responsible for managing the estate**

Upon a person's death there are numerous responsibilities that must be tended to - closing bank accounts, administering the estate, paying debts, etc. Someone needs to be appointed to take responsibility for those actions. In most states that person is called the personal representative and can be appointed in a will.

In the event a person dies and has not appointed a personal representative the court must appoint one. This may or may not be who the decedent would have chosen and can lead to additional cost and delays in administering the estate.

A will can also expand or limit the powers and abilities that the personal representative has so that it can be ensured that he or she is able to act most efficiently in wrapping up the decedent's affairs.

**5) Set out who will make financial and health related decisions if you're unable to do so**

Along with contemplating what should happen after we die, part of estate planning is about contemplating what should happen when we are still alive but perhaps unable to act on our own accord. This 'disability planning' aspect of estate planning includes designating individuals to make financial and healthcare decisions on our behalf in the event of incapacity.

This designation is done through advanced directives, most commonly a power of attorney for healthcare and a power of attorney for property and finances. These documents name an individual to step into your shoes in the event you cannot make decisions for yourself. They empower the individual to do anything from determine a course or medical treatment that would be in your best interests to paying your mortgage out of your checking account. Powers of attorney are governed by state law, and most states, including Wisconsin and Illinois provide statutory forms that, if followed, reduce the risk that financial or healthcare personnel may refuse to rely on them.

Without a power of attorney a determination of who should make decisions is made according to state laws that may or may not reflect your wishes.

So, while estate planning may be seen as something for the old and wealthy, there are reasons that young families, or anyone for that matter, should consider some planning now. Just because there isn't a large financial estate does not mean that there aren't important issues that should be considered and set forth such as who will care for children and who should make medical decisions. A little bit of planning now can go a long way towards lending some you some comfort in the future knowing that your family will be taken care of.

*Michael F. Brennan runs a virtual law office helping clients in Illinois, Wisconsin, and Minnesota with estate planning. He can be reached at michael.brennan@mfblegal.com with questions or comments, or check out his website at www.thevirtualattorney.com.*



Image courtesy of FreeDigitalPhotos.net