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WHEN IS IT TIME TO THINK ABOUT ESTATE PLANNING?

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What does it mean to have an estate plan?

Any planning requires different moving parts, and estate planning is no different. While estate planning does require certain legal documents, which will be discussed herein, the planning process doesn't begin and end with an attorney, but includes many other professionals around one's daily life, such as a financial advisor.

When do I need to start thinking about my estate plan?

While everyone should have an estate plan, an estate plan is crucial if you have: minor children; any family members with a disability and/or who do not want to receive an inheritance, a business and/or a start-up, no children and are single. It's important to note that assets do not determine whether or not someone needs an estate plan, but rather determines what type of plan they should have. Here, we will focus on the young family, so those with minor children. A young family having an estate plan doesn't not just to benefit the individual creating the plan, but it mostly benefits their children.

"THERE ARE A FEW TIMES IN ONE'S LIFE THAT IT'S ACCEPTABLE TO BE SELFISH AND THIS IS THAT TIME. "

There are a few times in one's life that it's acceptable to be selfish and this is that time. However, while you are allowed to be selfish in who you choose to be the fiduciaries and beneficiaries, the documents are more for your loved ones and heath care professionals, than they are for you. Many times, when you are young, you have at least two families- the family who raised you and then the family who you will be raising. In a perfect world, both families blend, but too often than not, death and money bring many emotions to the surface. Therefore, to protect both your assets and your loved ones, putting your intentions in writing, in a clear and concise manner, will mitigate any potential fighting and legal action. The question becomes, what do you need in writing and what does it need to say?

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The Legal Stuff

Most legal estate planning documents consist of the basic documents: a Last Will and Testament ("Will"), Healthcare Proxy and Power of Attorney. All documents serve a distinct and necessary purpose, and some are more important than others during different times in one's life. The Healthcare Proxy and Power of Attorney are both documents valid upon life and become invalid upon death. Whereas the Will becomes valid only upon death.

The Power of Attorney is all about the money and is a purely financial document. You pick individual(s) to act on your behalf for your financial transactions. In the estate planning world, this document many times is used for individuals with mind altering diseases (ie-dementia). However, for young professionals, and even young adults in college, it's important to have someone to make financial decisions on your behalf if you are unavailable for any reason.

The healthcare proxy is many times the most serious and necessary document, especially for younger adults. This very short, clear, and concise document determines who you want to make your health care decisions, if you were unable to do so. The most difficult decision anyone will ever have to make is whether cease life sustaining treatment, to put it bluntly, you will nominate who should "pull the plug." This crucial document not only states your wishes but lists the individual who you believe is mentally strong enough to fulfill your wishes. Anyone who has reached majority age, especially if they have moved away from their home, including going to college, should have this document, as it provides health care professionals not only the individual you want to make these decisions, but provides their contact information- something that is crucial during an extremely difficult time.

Last, but certainly not least, the Last Will and Testament. There's a common misconception that when someone passes away as a New York State resident, their entire estate goes to their spouse. In reality, were someone to pass away without a will, accordingly to the intestacy laws on New York State, a little over half of your estate goes to your surviving spouse and the remaining half go to your children, equally, whether your children have reached the age of majority, or not. Therefore, the way to make sure that most, if not all of your assets pass to your spouse, is to execute a Will.

Additionally, and more importantly, the way to protect the money from going directly to minor children or young adults, is to create a trust inside the Will, to hold and protect the minor's share until an age that you deem appropriate. Many people are concerned with their infants inheriting a lump sum of money, because how does an infant open a bank account? While it's costly and time consuming, the laws offer protections for minors, so they do not have access to funds until they reach the age of majority. However, once your child reaches 18, the Court allows the former minor to receive their inheritance in one lump sum. You need to ask yourself- would you want an 18-year-old to inherit a large lump sum inheritance on their 18th birthday? Most likely, the answer will be no, at least not with some oversight, and this is what makes creating a will that much more crucial. There are certain provisions and trusts that are created in Wills allowing you to determine at what age you are comfortable with your minor(s) inheriting a lump sum

Although legal documents are crucial to any estate plan, there are ways to make sure many of your assets pass quickly and effectively to your beneficiaries without having to wait for your estate to be passed through the Court system. One of the ways to achieve this goal is to have a more complex legal plan. However, the other way is to speak with a financial advisor who can work with you in setting your assets up for success both in life and upon death.

In addition to drafting the abovementioned legal documents, families and businesses should go through what could be considered an economic "fire drill". In the words of Cuba Gooding Jr, "Show me the money".
Young families need to consider the loss of income and financial needs of surviving spouses and dependents, and don't just think this stops with young children. Many are financially supporting aging parents or siblings with special needs to varying degrees. In order to simply understand the impact, could your loved ones continue to live the lifestyle they have become accustomed to without your income?

Death is essentially a form of early retirement from an income perspective. When considering outstanding student loan debt, mortgages, college education, and how much family members and a surviving spouse and would need in order to stay home and raise a family, this is often why most are woefully unprepared and have a need for life insurance. Although not everyone needs life insurance, most families need more than they have or anticipate having.

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The Legal Stuff (Continued)

According to a joint study by LIMRA and Life Happens, 42% of American households would face financial hardship within six months if a wage earner would die unexpectedly. With the economic stresses and inflation environment caused by the COVID-19 pandemic, these statistics are likely to become even gloomier. To ensure family planning is in order, obtaining the right amount of life insurance is paramount.

Subsequently, families ought to be cognizant of how beneficiaries are structured on not only their life insurance but also investment and retirement accounts. In New York, if assets are left to children intentionally or inadvertently, they will have autonomy at age of majority. The importance of having a Will and incorporating the use of a Trust to ensure assets are inherited at the right time and the right way could prevent the money from causing more harm than good. Coupling the use of trusts and careful trustee selection to receive assets on behalf of children can help ensure that assets are protected.

Business Owners

For the entrepreneurs out there, a similar process needs to take place. In the event you have a business partner, what would happen with the equity in your company if one of you were to pass away? This is where the use of Buy-Sell agreements comes into play and a topic unto itself. Look here for more information on Buy-Sell planning. Nonetheless, incorporating legal, tax and financial planning for your company is paramount. Often, business owners will use life and disability insurance to fund the purchase of stock from a deceased partners family.

In the event of owning 100% of the enterprise, understand the impact to your family and employees if you were no longer at the helm. Would your widowed spouse want to continue to run the business? Are there key-employees that could continue to run the business, or could afford to purchase the company from your family? Careful thought needs to be given in this scenario. Life insurance can serve as a valuable tool in continuity planning for your business- paying off credit lines, funding buy-sell agreement, and even protecting the company from the death of a non-owner key employee are just some of the reasons life insurance is used in corporate planning.

Beyond the Basics

Perhaps resources are abundant, you've experienced a windfall, or your family has built generational wealth. If the notion of estate planning is novel or has been continuous, affluent families will often consider the use of various gifting and freezing techniques in conjunction with trusts to preserve assets from taxes and other corrosive forces. Whether it be estate taxes, creditor protection or for governance, establishing inter-vivos trusts can help further planning objectives for a family.

For instance, Consider the use of life insurance for estate and business planning- although the IRS has generally blessed the death benefit of a life insurance policy as being income tax-free, the proceeds would be part of the insureds estate and ultimately subject to estate taxes. Using a trust to own the life insurance policy can not only remove the death benefit from the estate of the insured, but also ensure the assets are protected from creditors of the beneficiaries of the trust as long as assets remain in the trust. Trustees can make income distributions to beneficiaries while keeping the corpus of the trust preserved from potential creditors or lawsuits. Careful drafting and legal structure protocol must be followed to provide these benefits but worth the effort of families navigating dynamic planning goals.

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OUR EXPERIENCE means that we are able to recognize their unique planning opportunities to help them reach their goals. We take the time to educate them and block out the noise and misinformation.

OUR FIRM seeks to take the guesswork out of how legal, financial, and accounting systems work together for your benefit.

OUR TEAM develops a customized plan to make up for lost time in ways that are focused, effective, and based in experience.

With these considerations, clients realize that working with a thought-leader helps impact their chances to win the game of life.

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