

Eight Steps To Protect Your Family

This is an age old problem and many a great or educated person has given advice. “Reduce your plan to writing. The moment you complete this, you will have definitely given concrete form to the intangible desire.” Napoleon Hillⁱ

It’s something that many people want to do, but only a few take the time to complete. In fact, fewer than twenty-five percent of Americans take the time to memorize their wishes on paper. Benjamin Franklin said “by failing to prepare, you are preparing to fail.”ⁱⁱ What are the costs associated with this lack of preparing? There are many, some of them baring financial consequences, but many have emotional consequences. For example, failing to designate someone to make healthcare decisions for you should you been unable to make your own decisions will involve the appointment of a guardian by the Court. For married couples who have amassed a significant estate, the failure to plan will have real financial consequences in the form of an Estate Tax when the survivor between them passes away.

“Planning is a process of choosing among those many options. If we do not choose to plan, then we choose to have others plan for us.” Richard I. Winwoodⁱⁱⁱ. There are certain steps that everyone should take in trying to manage and plan for the future. Other steps become more important as your personal circumstances dictate.

1. Sign a financial power.

A Durable Power of Attorney designates someone, known as your Attorney-in-fact, to handle your financial affairs. The Attorney-in-fact can pay your bills, manage investments, file taxes and even (if you elect to allow it) change beneficiaries on your life insurance and retirement accounts and give away your assets. Once this document is executed, it is important to so make sure you keep it up-to-date. Also give thought to what safeguards you want. Example: while you might retain confidence in a child or friend to act as an Attorney-in-fact for you, you might want to allow interested parties the ability to request accounts of their activity. In the event that you fail to execute this document, the only way that someone can provide assistance to you upon your incapacity is to obtain a Court appointment as a Conservator.

2. Execute medical forms.

In Massachusetts this is referred to as a Health Care Proxy, a HIPAA Authorization and Release, and a Living Will. While these documents all deal with healthcare decisions, they each have a very specific purpose. The Health Care Proxy appoints an agent to make your healthcare decisions upon your inability to make the decisions. It is only put in effect upon the orders of a physician. Failure to execute this document will require someone to obtain a Court appointment as a guardian. The HIPAA (Health Insurance Portability and Accountability Act) Authorization and Release allows designated agents the ability to obtain healthcare information about you, regardless of your capacity. It does not include decision making authority. Without this

document, your loved ones may not be able to learn the status of your health. The Living Will communicates your desire, or the lack there of, of the use of extraordinary measures in maintaining your life. If the people who will be making healthcare decisions are not familiar with your interests, they may be forced to make decisions that will preserve your life.

3. Write or update your will.

If you have not executed a Will, give consideration to doing so. A properly drafted and executed Will replaces the statutory distribution rules put in place for residents of the Commonwealth. If you have a Will, but it was executed many years ago or drafted and executed by when you lived somewhere other than Massachusetts, have the Will reviewed. If you have a Will, but have had a major life change, such as a divorce, change in health or birth of a child, an update is needed. Without a Will, your assets will be distributed according to the laws of Massachusetts--and you might not like its formula due to your personal circumstances. This is especially true if you are in a second marriage and die without a will. For the sake of harmony among your survivors, spell out in a signed and dated list who gets which family treasures.

4. Check the titling of assets.

Assets are either individually titled or jointly titled. If they are jointly titled, they can be referred to as tenants in common or a joint tenancy. The former results in each tenant, account holder, owning a divided share of the whole. The later means that the asset will pass to the survivor following the death of the first. Many elders will designate a child as a co-tenant on an account for convenience purposes. In doing so, they fail to take into consideration the risks associated with that decision. For example, if the child were to get sued by a creditor, the funds in this jointly titled account could be at risk. It is important to understand how your assets are titled and that it results in the least amount of risk for you, the owner of the asset.

5. Review beneficiary forms.

Check the beneficiary forms on file for your individual retirement accounts and life insurance policies. The forms, not your Will, determine who gets these assets. Many times, these forms are executed before an individual gets married, has children, or when parents are alive. These forms are often considered "set it and forget it" and in reality they are anything but that designation. If you have designated your spouse as the beneficiary of your IRA or 401(k), consider naming your children "contingent" beneficiaries. That way, if your spouse dies before you, your kids will be able to roll the money into an "inherited IRA" and stretch out distributions and tax deferral over their life spans. Otherwise, if the account lacks a designated beneficiary it could require that the proceeds pay out in a shorter time frame than they might.

6. Calculate your net worth.

Whether you are doing retirement, investment or estate planning, you need a current check on your net worth. You might even get a pleasant surprise. After the recent economic turmoil people are typically underestimating their net worth. In calculating your net worth, you need to consider all assets in your name and all assets that will generate or pass from your name to another as a result of your passing. Examples include cash, real estate, and investments (regardless of individually or jointly titled), retirement accounts, savings bonds, insurance proceeds (from life and mortgage) and personal tangible property. Use this net worth exercise as an occasion to assemble an updated list of your holdings and as preparation for the next step. Based on the results of this step, many of the steps that follow will be critical as well.

7. Plan for estate taxes.

The Commonwealth of Massachusetts imposes their own estate, or inheritance, taxes, for all estates over \$1,000,000. This is in contrast to the Federal Estate Tax limit which is currently at \$5,340,000. While it would be nice to worry about the federal limits, most people will not have a federally taxable estate. That said, it is not that difficult to generate a Massachusetts taxable estate. With the way that real estate has increased in value in many communities, a person need have a few investment accounts, a retirement account and a life insurance policy to exceed these limits. Planning here usually consists of the execution of a trust. It could be a revocable trust to segregate that portion of your estate that would otherwise be taxable by the Commonwealth. Alternatively, you may have a large life insurance policy that could go into an irrevocable trust.

8. Give, if you can.

Now that you've done your net worth calculation and some planning, you know whether your estate is likely to be subject to state or federal taxes. If it is, you may be able to reduce the size of the estate by making annual gifts to your kids and grandkids. Anyone can give \$14,000 a year in cash, stock or other property to any other person without worrying about federal or state gift or estate taxes. This amount is set to increase with inflation on an annual basis. In addition, you can pay anyone's college or private school tuition or medical bills (including, say, orthodontia); so long as you send the check directly to the school or health care provider, that spending may not count against the \$14,000. If you want to transfer a bigger chunk at once, you get a single lifetime gift tax exclusion of \$5.34 million, which, when used, reduces dollar for dollar the amount you can pass to heirs free of federal estate tax. Massachusetts has no limit on the amount of gifting that can occur.

“Plans are only good intentions unless they immediately degenerate into hard work.” Peter Drucker^{iv}. And hard work it is. That must be why such a small percentage of Americans avail themselves of these results. But even if a complete plan is not executed, “it’s not the plan that’s important, it’s the planning.” Dr. Graeme Edwards^v. Just starting the conversation surrounding the above issues is a step in the right direction.

ⁱ Napoleon Hill, an American author in the area of the new thought movement who was one of the earliest producers of the modern genre of personal-success literature. He is widely considered to be one of the great writers on success, 1883-1970.

ⁱⁱ Benjamin Franklin, a Printer by trade, a scientist by fame, and a man of action by all accounts, 1706-1790.

ⁱⁱⁱ Richard Ivan "Dick" Winwood, Author, religious leader, and business executive with Franklin-Covey, 1943-.

^{iv} Peter Ferdinand Drucker, was an Austrian-born American management consultant, educator, and author, whose writings contributed to the philosophical and practical foundations of the modern business corporation, 1909-2005.

^v Dr. Graeme Edwards, Specialist in Occupational and Environmental Medicine at Medibank Health Solutions, Australia.