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ESTATE PLANNING FOR WOMEN

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There is good news for women: they will outlive men by almost five years longer on average. And women control more than half the country's wealth.

To ensure this wealth is distributed as intended, women need to plan. Single mothers must determine if they want to choose a guardian for their children in the event of death or incapacity. Women business owners need to establish a business succession plan. Working women can control who receives their retirement accounts and other employee benefits.

In other words, women of all ages and socioeconomic situations can design their own future.

Estate planning

Estate planning is so much more than just a last will and testament. A will is important because it states who you intend to receive your assets upon your death. A will, however, governs only those assets in your sole name, called “probate” assets. Your non-probate assets may have greater value than your probate assets, so you must also plan for the disposition of them.

For example, joint assets will automatically pass to the joint owner rather than under the will. Assets such as individual retirement accounts (IRAs), 401(k)s, life insurance policies and annuities also typically do not pass under the will. Instead these assets pass to whomever your beneficiary designation form lists.

If there is no will, probate assets will be distributed according to the laws of intestacy. This may not be as straightforward as you think. For example, in New Jersey, if you die leaving a surviving spouse, the entire intestate estate passes to that spouse only if 1) all of your descendants are also descendants of your surviving spouse; or 2) you have no descendant or parent surviving you.

In other words, if you have children from a previous marriage and you do not have a will, your surviving spouse will receive a portion of your estate and your descendants will receive a portion of your estate. If you have no spouse and no descendants, your estate will pass to your parents. If you also leave no surviving parents, your estate will pass to your parents’ descendants (i.e. your siblings or nieces and nephews). This may not be what you want.

Through your will you get to appoint your executor, the person (or trust institution) that will administer your estate. You may also choose a guardian for your minor or incapacitated adult children. Many of my clients consider the choice of who will care for their children after they are gone to be the most important estate planning decision of all.

You should consider whether to set up a trust within your will for younger children. A trust can prevent the share of an estate passing to a minor from being held in a surrogate account. Such a trust could provide for asset distributions according to the child’s need for health, education and support. A trust could also provide for additional distributions to the child based on age or life events (i.e. marriage, college graduation). You would need to choose a trustee to administer the trust. The trust would set forth the ultimate distribution of your assets.

Lifetime planning

Just as important as planning the distribution of your assets on your death is lifetime planning. Although most lawyers, accountants and financial planners recognize the importance of estate planning, they do not always advise their clients to engage in lifetime planning to deal with the serious legal and management problems that result from aging, illness or incapacity.

The failure to plan for incapacity takes an emotional toll on women, who most commonly are the caregivers. They often must turn to the courts to address issues that could have been resolved before the person became incapacitated with the appropriate planning documents in place.

The primary goal in planning for incapacity is to avoid court-imposed surrogate decision making. In the absence of planning for incapacity, the court may appoint individuals or entities to make financial, legal, medical and residential decisions for the incapacitated person. The cost of a guardianship or conservatorship proceeding may well exceed the cost of planning and may result in the appointment of individuals or entities that the incapacitated person may not have chosen.

A power of attorney gives legal authority to a third party, called an agent, to manage your financial matters. The power of attorney can provide the agent with as much authority as you want. Broad powers of attorney give the authority to conduct banking transactions, sell real estate, buy and sell stocks, make gifts, handle

insurance and beneficiary designations, as well as any other powers you want to include. For that reason, it is crucial to choose a very trustworthy person to serve as agent.

There are two types of powers of attorney. The first, known as a durable power of attorney, is effective immediately upon signing and continues regardless of your subsequent disability. The second, known as a springing power of attorney, does not become effective until you become disabled. It is often a problem to get financial institutions to accept springing powers of attorney because the agent must prove that you have become disabled. As a result, many attorneys do not prepare springing powers of attorney.

Some people set up a revocable living trust to establish a plan for ongoing management of your assets in the event you become incapacitated. Typically, you serve as the trustee of your trust until you can no longer do so and then your successor trustee can take over the trust administration. Revocable living trusts are particularly helpful if you own real property in a state other than your state of residence.

For medical decisions, an advance healthcare directive can accomplish several things. It can give legal authority to a third party, called the health care representative, to make personal and medical decisions at any time that you cannot. It should also include a statement of personal wishes regarding healthcare in the event of loss of decision-making capacity. An important part of an advance healthcare directive is stating your wishes as to life-sustaining treatment should you be in an end of life condition.

For example, do you wish to withhold artificial administered nutrition (feeding tube) or hydration (intravenous fluids)? You may also indicate whether you wish to be an organ donor in the advance healthcare directive. Talk to an estate planning attorney. You might be pleasantly surprised at how planning can ease your mind—and you will be doing your family a great service as well.

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