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# Ensuring Your Legacy

You want to be remembered, make a mark, have someone notice that you are gone. There are as many ways to do this as there are individuals, but you must take certain steps to ensure your legacy will be available to those you care about. Without taking legal steps to designate what should happen if something happens to you, it will be difficult or impossible to accomplish your goals in the way you want. So what should you do? There are some documents everyone over the age of 18 should have, and then some additional strategies that make sense in certain circumstances. I will outline what steps you should take, and some questions you should be asking yourself and your advisors. My advice is focused on residents of the United States, but there are equivalent planning strategies wherever you live, so please look for local resources if you are living outside the U.S. (residence and citizenship are not always the same, and can have a very big impact, so if you are living in a country where you are not a citizen, or if you have multiple citizenships, please check with advisors with international law and tax experience.

## HEALTH CARE

First, the document that has the greatest impact on your own experience – a health care directive. This can go by many different names, but whatever it is called in your location, it should accomplish two important things; appoint a health care decision-maker, and inform that person of what you would choose regarding end-of-life care or extraordinary care (measures to save your life if not intervening would mean the end of your life).

The person you authorize to make medical decisions for you if you cannot participate in your own health care decision-making is sometimes referred to as a Health Care Power of Attorney, or Health Care Agent. (Note that a general power of attorney is for financial decisions, and does not grant health care decision-making authority.) Whether the agent you name steps in because an accident has rendered you comatose, or because dementia or mental illness prevent you from understanding what is happening, if you cannot effectively decide for yourself, you should choose who will make those decisions for you. This may not always be the person closest to you, because you want someone who will

be most likely to decide in the same way you would decide. If you would not want a feeding tube, for example, and you know that your spouse/partner/parent/oldest child would be unable to agree to this for whatever reason, that person should not be your health care decision-maker. Similarly, if you want to make sure you get all the care

possible until it is clear you will not improve, you probably don't want to appoint someone who believes strongly that this is wasteful or wrong. In addition, you probably want to name one person who has this authority, and someone else (or two others) who will replace your first choice if he or she is unavailable. It can be tempting to name two or more people, but if there is conflict between them, they will not be able to decide and it then becomes less likely that your wishes will be followed.

In addition to appointing your agent to make medical decisions, you want to give direction, so that your agent understands what you would be likely to decide for yourself. This is tricky, because you don't know exactly what your agent will face or what specific choices will have to be made, but based on experience and medical knowledge, there are many resources to help you frame the directions you give. This part of the document is sometimes called a "Living Will," and in some states, is a separate document from the appointment of an agent. If you want direction on what to include, look for your state's form, or your state's medical association may have a form. Or consult an experienced estate planning attorney and ask what language they include in any forms they draft.

**FINANCES**

The second important document is a Power of Attorney for Finances. This document should be durable, meaning that it can be used by the person you appoint even if you are incapacitated. With a power of attorney for finances, you are giving someone else the same ability you have, to manage your assets. This includes taking money out of your bank account, or selling your house. Choose your agent carefully! You are giving someone the ability to spend your money, and the authority to do this even if you are unable to act for yourself. One way to limit the possibility someone will take advantage of this power is to sign the power of attorney, but not give a copy to the agent. Keep it in your own possession so you can change it if your relationship with the agent changes, but make sure someone knows where it is and how to access it if you are incapacitated. If no one can find it, it isn't going to be useful.

Why should you have a power of attorney with this risk? Because without giving someone the authority and access to your assets to make decisions and pay for care if you are incapacitated, the only alternative is for someone to go to court, with all the cost and delay that involves, and ask for the court to appoint a guardian or a conservator for you (these roles have various names in different locations, but someone who has decision-making and financial authority over an incapacitated person). With a court proceeding, you do not get to decide who is appointed, and it can be someone not related to you, and someone who will be paid out of your assets for their work.

## WILLS

Most people know that a will states who should receive what after your death. That is true. But there are other things to keep in mind about a will as well. Probably the most important is that if you do not write a will, the state has already written one for you. State law will determine who can claim your property, and it will be based on their degree of relationship to you. Spouses and kids, parents, siblings, cousins, second-cousins, and so on. Without a valid will, the property will be divided up and shared with those individuals, without regard to your actual relationship with them. You will not have an opportunity to recognize any non-family relationships, or support charities you care about.

Also, a will decides who is in charge of the process of paying any remaining debts and taxes, and then distributing your property as you choose. This can involve a court proceeding (probate) or following whatever process your state provides for smaller estates. Even if you don't think you own enough to make a will necessary, there is still a process to be followed, and you should choose who is in charge, and who gets what. Someone might care about your collection of sheet music, or your favorite frying pan, and deciding who will benefit is part of shaping your legacy.

If you have minor children, you can state in your will who you want to care for them.

Every state has its own rules about what makes a will valid. It is very important to follow the rules, or you will be left with the state-imposed will.

## OTHER STRATEGIES

If you have a heath care directive, a financial power of attorney, and a valid will, you have taken the most important steps to ensuring your legacy. Depending on where you live and the value of your assets, there may be other things to think about.

If you have minor children, your will can state who you want to care for them if you die, but what if you are incapacitated? Your will has no authority during your lifetime, so it is important to provide direction in another document, in addition to your will. You can use a nomination of guardian form, or include this information in a trust, discussed below.

Some states (California, in particular) have an especially slow, expensive, and burdensome probate process (probate is the court process to oversee either the appointment of a conservator or the distribution of assets after death). Other states have estate taxes that make tax planning valuable if you want to maximize what you leave to others. Large estates may be subject to federal estate taxes. In these circumstances, using trust planning will benefit you and those individuals and charities you want to support with your assets.

Trust planning can take many forms, some relatively simple and some much more complex. In any case, a trust is a contract between you as the owner of an asset and whoever is the trustee of the trust. For some trusts, you can be your own trustee, meaning you are still in control of the asset, but have designated who will take over for you when you are no longer able to act for yourself. For more complex trusts, you will have to choose someone else to be trustee and oversee the trust assets, or the trust document might limit your beneficiaries' ability to make decisions about when to spend trust assets. An estate planning attorney will discuss your goals, and consider what planning strategies will best meet your needs.

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