



## Estate Planning Part 3 of 3

In the first two articles in this series, we discussed the general importance of estate planning and why ACCFS would be involved in this topic. We shared that it is because of the resulting relationship difficulties we see that arise from improperly planned and poorly communicated estates. In the second article we explored the health care aspects of estate planning. We conclude this series by discussing asset distribution and child guardianship.

### **Asset Distribution**

Much like our discussion on health care began with the importance of having a health care power of attorney in place; we want to mention the necessity of having a durable power of attorney in place also. This individual(s) is given the authority to make financial decisions if you are incapacitated. This person may or may not be the same as your health care power of attorney. Having this individual in place simply ensures that your financial obligations can be addressed if you are unable to do so. He or she may be given complete control of your assets, or you may limit their control as you see fit. The authority of the durable power of attorney ends upon your death.

*“For where a testament is, there must also of necessity be the death of the testator. For a testament is of force after men are dead: otherwise it is of no strength at all while the testator liveth.” Hebrews 9:16-17*

As this Scripture indicates, a Last Will and Testament has no power while the testator, the individual writing the will, is living. At the point of death, the executor of the will or the trustee of the trust has some limited authority based upon the laws of the state of the deceased. The point to realize here is that in the absence of estate planning or a properly completed will, the courts will assign someone to execute the laws of the state. Every state has its own process for the orderly distribution of an estate for which there has been no last will and testament written. As we have mentioned in earlier articles, it is highly unlikely that the state's succession process will provide what your wishes would have been so foresight and planning in this area can help alleviate much potential difficulty.

In addition, special consideration needs to be given to minor children who may not be old enough to manage their portion of an estate. In such cases, trusts may need to be established for guardians to use as they raise your surviving children.

We will not go into the many details in which estate planning can be done. However, there are four main ways you can direct the distribution of your assets upon your death:

1. Do nothing.
2. Place the bulk of assets into joint tenancy (co-ownership usually with a spouse).
3. Execute a will detailing asset disbursement.
4. Establish a revocable living trust.

Perhaps the only time when the first option has any validity is in the case of an elderly individual with no assets and no minor children. Otherwise, one of the remaining three options should be considered according to individual needs and preferences.

*“...keep and seek for all the commandments of the Lord your God: that ye may possess this good land, and leave it for an inheritance for your children after you for ever.” 1 Chronicles 28:8b*

The principles of fairness and equity in the disposition of assets can scarcely be overstated. As this Scripture indicates, we generally leave an inheritance for our children as well as giving to charities of our choice. However, when children or other relatives are treated unfairly in a will without just cause, irreparable harm can result. We mention “just cause” because there may be extenuating circumstances (health issues, special needs, etc.) where an individual may be treated differently, but those cases are rare. Much heartache and family dissension arises from inequitable or poorly written wills and the lack of open, frank communication with family members ahead of time. Put yourself in the place of the child who was “forgotten” or “slighted” in Grandpa’s will or, worse yet, in Dad’s will. One way to avoid this difficulty is to make distributions by percent by lineage. For instance, “20% of the estate is to be divided equally among all grandchildren and 80% equally among my children.” A good biblical example to review is the story of Joseph and the consequences of his father showing favoritism to one of his sons over the others (see *Genesis 37:4*). Without over simplifying, it is important to think through potential stumbling blocks and long term relational difficulties which can result from the practice of favoritism.

*“Then shalt thou understand righteousness, and judgment, and equity; yea, every good path.” Proverbs 2:9*

## **Child Guardianship**

*“...for the children ought not to lay up for the parents, but the parents for the children.” 2 Corinthians 12:14b*

This final area is perhaps one of the most difficult to discuss. No parent wants to consider the fact that he or she might be taken out of life before the children are raised. Unfortunately, it happens. As with the distribution of assets without a will (intestate succession), the courts will also decide guardianship of surviving children in the absence of a will and final directive. This arrangement may or may not be the most favorable. However, giving the court officials due credence, they will generally seek out the advice of family members before issuing directives. That advice, however, may be in conflict with your wishes and can cause dissension among families.

Any last will and testament needs continual updating as family dynamics change, but especially the part which pertains to guardianship as families grow and children age. Friendships evolve and someone who may have been considered a right fit to be a guardian for your children may have moved or are no longer deemed as the best fit. This is a very private decision between parents, but one that needs to be put in place for the welfare of their children. Additionally, the guardians should be aware of your intent and give their permission.

Perhaps this series of articles has raised more questions than it has given answers. Our intent was to raise awareness of potential issues we see in these areas. *There are many potential long-term problems which are easily preventable with proper forethought and proper communication with all of the parties involved.* There are many professionals who can provide the resources and advice you need to make informed decisions. If you are among the many who haven’t yet taken the necessary steps to plan your estate, do so quickly. Your family will thank you.

*“Grace be with you, mercy, and peace, from God the Father, and from the Lord Jesus Christ, the Son of the Father, in truth and love.” 2 John 1:3*

Next month we will begin a series of articles entitled 'Healthy Communication,' reviewing the principles of healthy communication and the methods used to achieve it.



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