Estate Planning: Wills, Trusts, and the Power of Attorney in a COVID-19 World

Ali Oromchian, Esq.

Dental & Medical Counsel
A Professional Law Corporation

As a result of the COVID-19 pandemic, many people have become increasingly concerned about what will happen if they or a loved one becomes infected or falls victim to the virus, and rightly so. You need to have a plan in place to protect yourself and your family in case it happens to you.

At times like these, many people realize that if something were to happen to them, they will leave a real mess behind for their family to sort out. For example, your family may not have the authority needed to handle your affairs at the dental practice if you become incapacitated or to manage the distribution of your estate if you pass away.

What's more, they may not know what assets you own, where they are located, who to call to gain access to them including your dental practice bank accounts or the dental office itself, or what you want to have happen to them. The bottom line is, dying without a proper estate plan in place often means that you are leaving an incredible and expensive puzzle for your loved ones to solve.

Even if you already have an estate plan in place, it may be outdated, improperly implemented, or have certain weaknesses that need to be addressed right away, which is probably why you are online looking for information.

To assist you in that regard, we have put together the following information to explain what estate planning documents you need the most during this crisis and why.

The Importance of Estate Planning During Times of Crisis

Estate planning during a crisis like the current COVID-19 pandemic is not as much about making sure that you have a Will in place, as it is about making sure that you have the right estate planning documents in place to give someone you trust the authority to make emergency medical decisions on your behalf and to handle your affairs at the dental practice if you suddenly become incapacitated or die. These documents include powers of attorney, advance health care directives, and living trusts.

Because of the current need to practice social distancing in order to stop the spread of the COVID-19 virus, many Americans are at home all day. This also means that many of us now have more free time on our hands than we did before the crisis.

Use this free time to ask yourself some very important questions about the current state of your estate plan or lack thereof. Ask yourself the following questions:

- Are the people you named in your estate planning documents to serve as your executor, trustee, successor trustee, health care agent, and the guardian of your children capable and willing to serve in these roles?
- Does your Will and/or trust provide for your assets to be distributed to the individuals and charities that you wish to benefit from your estate after you die, and in the manner you wish?
- Since the last time you reviewed and updated your estate planning documents, have you and your family experienced any major life events, such as marriage, divorce, birth, death, the sale or purchase of major assets, a change of residence, or relocation to another state?
- Are the right people designated as beneficiaries on your life insurance policies and retirement accounts?
- Do you know where the original copies of important estate planning documents like your Will or trust are stored?
- Are your advance directives up to date? Have you made copies available to those who will need them?
- Do you have a power of attorney setup to operate your dental practice and to manage the finances?
- Do the people you love know who to contact to sell your dental practice?

Without a well-implemented estate plan in place, your family will face certain difficulties if you contract the coronavirus and become incapacitated, most importantly:

- Your family may have no power to make medical decisions on your behalf while you are unable to make these decisions yourself;
- Your family may have no authority to apply for medical insurance/benefits to cover your medical bills;

- Family infighting may arise over what medical decisions should be made for you, since you left no instructions;
- Your family may have to endure long and expensive court hearings to obtain the authority to make financial and medical decisions on your behalf; and
- Your family may have no legal authority to write checks or access your bank account to pay your bills.

Important Estate Planning Document to Have in Place Now

The most important estate planning documents to have in place during the COVID-19 crisis are as follows:

A Living Will

You need a living Will or other advance directives to express, in advance, the type of medical treatment you would and would not like to receive in emergency circumstances and when you are unable to communicate. These decisions may include whether or not you want a feeding tube, to be kept alive on a ventilator, or to have your organs donated. These are very personal choices and you need to think them through thoroughly.

Warning: Think twice before signing any advance health care directive that a hospital wants you to sign as part of their admissions process. Be sure to look it over carefully before you sign it.

These types of health care directives can void other documents that you already have in place. So, you need to understand the consequences before you sign. We recommend going over them with an experienced estate planning attorney if at all possible.

Durable Powers of Attorney

Your estate plan should include both a Durable Power of Attorney and a Durable Power of Attorney for Health Care.

When you create a durable power of attorney, you are designating an agent (attorney-in-fact) who has the legal authority to act on your behalf to do the following:

- Sign your checks;
- Make deposits;
- Pay your bills;
- Contract for medical or other professional services on your behalf;
- Sell your property such as the sale of a dental practice; and
- Purchase insurance for you;

Similarly, a durable power of attorney for health care, also called a health care proxy, authorizes someone you trust to make medical decisions on your behalf when you are unable to make these decisions yourself.
In both cases, it is critical to appoint someone you can trust and rely on to serve as your agent. Of all documents that are abused under the law, these are the ones most often abused and manipulated. So, choose wisely.

A Will

A Will is the most common document thought of when we speak about estate planning. Exactly as its name implies, a Will states what you "will" or want to have happen to your estate after you die.

A Will can serve other purposes as well. For example, it can include a springing trust to ensure that a person who inherits from you has restrictions on what they receive. This can be very useful for minor children because it will provide a trustee to manage funds on their behalf. A springing trust is also a good way to manage funds on behalf of a spendthrift adult who may burn through their inheritance quickly in the absence of restrictions.

What's more, your Will can designate a guardian or conservator to care for your minor children and manage their money after you pass away. With your Will, you can also dispose of intangible property, make plans for your funeral and burial, and designate a personal representative to handle the administration and distribution of your estate after your death.

A Living Trust

If your estate is sizable or contains major assets, you may also benefit from a living trust. A living trust is a sophisticated estate planning document that must be drafted carefully.

Some of the benefits of a living trust include:

- The ability to name someone you trust to act as your trustee and to manage the assets in your trust if you become incapacitated;
- A living trust allows you to preserve your legacy by naming the beneficiaries who will receive your money, property, and assets after you pass away; and
- A living trust enables assets held in the name of the trust to bypass probate and be transferred to your loved ones in the most efficient manner. Without a trust, many of your assets will have to go through probate after you die and before your loved ones can receive them. Probate can be a long and expensive process.

The biggest thing to remember about implementing a trust is that you must transfer your assets into the trust for it to work for you. This can be a hassle, but not doing so can be costly in terms of the time and expense of having those assets probated.

Therefore, you need to make sure that your real estate is deeded to the trust and that your trust is the beneficiary of your retirement and other accounts. You can also create a pour-over Will to make sure that you are covered if you fail to transfer some assets into your trust before you pass away. Either way, it is absolutely necessary to fund your trust with your assets if it is to be fully effective.

Think About Transferring Wealth to Younger Generations

The COVID-19 pandemic has brought with it a great deal of uncertainty. But, one thing that we can all be certain of is that it will eventually pass.

Even with the current economic uncertainty, this may still be a good time to transfer wealth. Many people were able to make extraordinarily advantageous transfers during the economic crisis of 2008-2009 and we believe that the same opportunities exist in the current economic climate.

This is especially true as it relates to the transfer of wealth to younger generations (children, grandchildren, great-grandchild, etc.) under current tax laws, which can be achieved without having to pay any gift or estate taxes. Furthermore, there is no better time than now to benefit from these tax advantages, since they will expire in 2026.

What Your Family Needs to Know

Simply having the right estate planning documents in place is only one part of the solution during a crisis like this. Your loved ones also need to know where to find the information they will need and what to do with it should you fall ill or die.

Information That Matters the Most

If you have ever had to sort out the affairs of a deceased loved one, you know that searching for missing information or documents can become extremely time-consuming and frustrating. If you become incapacitated or die, your family will need key information such as your date of birth, tax ID number, social security number, and information regarding your health insurance, as well as, documents such as your Will, powers of attorney, advance health care directives, your medical records, and your insurance policies.

Your family will also need to know and have the contact information for the key people they will need to call. This might include your primary physician, lawyer, accountant, financial advisor, and closest friends.

And finally, your family will need details regarding your bank accounts, funeral and burial plans, and so on, as well as, what debts they need to manage on your behalf, including your credit card debts, car payments, mortgages, and personal loans.

But, instead of making your family hunt around for days and weeks to collect this information, you can take an hour or two and create a list of information that matters the most and let your family know where to find it. This will then act as a highlight reel of the things your loved ones need to know to take care of you and handle your affairs.

What To Do With The Information You Leave Behind

Even if your loved ones have the authority to act on your behalf and the right information, it still may not be enough. This is because your family will still need to know what to do with that information.

Depending on whether you become temporarily or permanently incapacitated, terminally ill, or die, there will be different priorities, different questions to ask, and different documents required. You should also expect that if you were to suddenly become ill or pass away, it will be very difficult for your family to read and process complex information, such as that which is contained in your list of information that matters the most.

So, what your family will really need to know is who to call, what to ask, what should be done right away, and what can wait. We, therefore, recommend that you meet with the key members of your family and inform them of the emergency estate planning solutions you have in place, who will be in charge of executing your estate plan, and the most important things you want to have happen if something were to happen to you.

This will bring your loved ones great peace of mind knowing that your affairs are well managed and that you have left instructions that will guide them through the difficult decision they will have to make.

Getting Your Estate Planning Done With as Little Contact as Possible

Many estate planning documents need to be witnessed and/or notarized to be legally binding. Depending on the state where you live, this can include Wills, powers of attorney, advance health care directives, and other estate planning documents. But, how can this be done under a stay-at-home order and when you should be practicing social distancing to stem the spread of the COVID-19 pandemic?

Traditionally, you had to appear in person to have a document notarized. But, some states have passed laws that allow documents to be notarized without you having the meet the notary in person. This is called remote online notarization (RON).

Similarly, if you must have witnesses watch you sign the document and then sign themselves, some states will allow you to sign the document alone and have the witnesses sign later. In this case, you may, for example, have your witnesses watch you sign by cell phone to avoid physical proximity and then choose a safe way to give them the document to sign.

In either case, you should check your state laws and/or consult with an experienced attorney who can advise you on the best way to meet the requirements for a valid legal document while staying safe.

Conclusion

In times of crises, like the one we are currently experiencing, when things that you cannot control threaten your health and well-being, it is important to perform a thorough review of your estate planning documents to ensure that they are up-to-date and that they reflect your most current wishes.

A properly implemented and comprehensive estate plan will allow you to, among other things, ensure that:

1. As many of your assets as possible avoid probate;
2. Plan for incapacity;
3. Provide for special needs loved ones and minor children; and
4. State your wishes for emergency medical treatment and end-of-life care

Most importantly, having a comprehensive estate plan in place will give you and your family a great deal of peace of mind knowing that you have planned well for the unexpected. Furthermore, having your wishes expressed in writing will save your family the stress of having to make difficult decisions on your behalf during a time that is already very stressful.

While, in many cases, you may be encouraged to prepare certain legal documents on your own to save money, you should never go it alone with your estate planning documents. Estate planning is too sophisticated for cutting corners.

Furthermore, there is too much at stake to trust any pre-written estate planning document or do-it-yourself kit. So, please, consult with a knowledgeable and experienced estate planning attorney.

Contact dental attorney **Ali Oromchian** at **Dental and Medical Counsel**, either by phone at **925-999-8200**, or via our contact page to receive estate planning recommendations that fit your family's needs best during the COVID-19 crisis and any subsequent crisis or emergency situation.

Best of luck to you during this difficult time. Stay safe and healthy!

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Regards,

Ali Oromchian, Esq.
Dental & Medical Counsel, PC
www.dmcounsel.com
925-999-8200

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