

Service

Private Wealth

Estate Planning Questions and Solutions in the Context of COVID-19

There is plenty to be concerned about during the coronavirus (COVID-19) public health emergency, but one topic that individuals and families can think of as a practical outlet for their concerns is estate planning.

Consider the questions below. They are likely to be timely for you and your family, and fortunately, there are estate planning documents that can serve as solutions for all of them. Especially if you have more time at home together than you normally do, now is a good time to have the deeply personal conversations needed to make your estate planning effective and aligned with your values.

It is natural to have some anxiety during a crisis, but you can channel the anxiety you are experiencing into positive actions that can help you be more prepared for whatever comes next. Beyond the practical benefits, it can be empowering to know that you have an estate plan in place—and such empowerment can be comforting in times of adversity.

How will medical decisions be made if I am not able to communicate my wishes?

A **Health Care Directive** makes your health care wishes known, should you become incapacitated. It is a useful tool because it eliminates the added stress upon your loved ones of guessing what you would want for your health care in dire situations. You help your loved ones (and yourself) even more by adding a **Health Care Durable Power of Attorney and HIPAA Authorization** to your estate plan, as well.

The three health care documents work together: your Health Care Directive states your wishes, your Health Care Durable Power of Attorney names the persons who can act on your behalf to fulfill your wishes, and your HIPAA

Authorization is needed to ensure that health care providers can share your private health care information with such persons. Each of these documents is a common and brief document that medical facilities and professionals are very familiar with. Accordingly, if you have them, there will be fewer roadblocks to receiving timely care that matches your wishes.

What will happen if I can't manage my own finances due to illness?

A **Durable Power of Attorney** for financial matters names trusted persons to maintain your financial matters when you are incapacitated. That authority can include paying your bills, managing investments, and even operating businesses. Financial institutions and professionals are familiar with these; having one in place can help prevent an illness, temporary or otherwise, from destroying your wealth or stranding your loved ones financially.

What will happen to my minor children if I pass away?

A **Will** enables you to name the guardians and conservators that you would like to take care of your minor children, should you pass away. If you were to die without a Will, each state has its own default rules for the guardianship of minors. But the choice is much too meaningful to leave up to state laws. Having a Will in place empowers you to make the decision yourself.

How is my estate administered after my death?

Many people also think of a Will as the document that controls how a person's property is distributed upon their death. While the Will has historically served this role, using a Will for this purpose is antiquated for many reasons. Although a Will is essential for the appointment of a guardian, relying on a Will for estate administration typically requires your loved ones to complete a **probate proceeding**.

Probate proceedings are entirely public proceedings, meaning anyone can examine the nature and value of the property you own at your death by simply requesting to review the court file. Probate proceedings also have a creditor-friendly claims period and a requirement that all creditors be given notice of your death and the probate proceeding. Finally, a probate proceeding generally requires at least six months of time between beginning the process and making a final distribution of property (and we do not know how much that typical timeline will be changed by the COVID-19-related court closures).

Fortunately, there is a much more powerful tool that can be used to dispose of your property in a more efficient, private manner, while also providing protections for your loved ones after you pass away – a **Revocable Trust**. A Revocable Trust is a vehicle you form during your life that you control and can change, amend, or revoke at any time during your life – a Revocable Trust is like your alter ego, but a Revocable Trust is an entity, and unlike humans, it does not die. Accordingly, any property

you transfer to the Revocable Trust during your life or at your death through a beneficiary designation should entirely avoid a probate proceeding.

Through the Revocable Trust, you instruct the Trustee of the Revocable Trust on how to administer your assets. This allows your assets to be transferred to your loved ones in a totally private proceeding. Additionally, you can incorporate lifetime trust planning into your Revocable Trust, which allows you to express your wishes and desires for how the Trustee should manage the assets for your loved ones after your death. A properly drafted lifetime trust plan can instruct the Trustee how to hold, maintain, invest, and distribute the property you own, including any business interests, without interference or required consent from third parties or the government. Further, even after your death, the Revocable Trust can continue family values, such as charitable giving, the importance of education, or the avoidance of vices like drugs and alcohol.

A Revocable Trust gives you the ability to provide for your loved ones in more sophisticated ways than a Will alone – with potential benefits such as protection from creditors, divorcing spouses, and estate taxation. You can add certainty back to your family’s future by implementing a thorough and well-crafted Revocable Trust plan.

Other important considerations

After going through the main questions, take a minute to consider these as well:

What are my spouse’s answers to the same questions above?

What about for each of my children who are 18 or older?

Where are the originals and copies of my estate planning documents?

Does my family know this?

Do my typical health care providers have copies of my health care related documents?

Do my financial services providers know about my estate planning?

These questions have various solutions, but a common theme: be thorough and communicate. Every adult family member should have the estate planning documents discussed above, keep them in a safe and memorable place, and tell their loved ones about them.

The COVID-19 outbreak has been swift and staggering, but adversity often comes upon us that way, reminding us to use our time wisely. The Private Wealth Advisory Group at Husch Blackwell specializes in helping individuals and families find the best solutions to estate and succession

planning questions like these. Please contact any of our group members to begin or update these crucial legal documents to protect yourself, your family, and your legacy.

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and employment, retailing, and supply chain management, among others.