

Estate Planning for the college student...Who needs it?

*by Julie A. Evans, Attorney
McDougal, Evans, and Shelton, L.L.P.*

Why in the world would a college student need estate planning? Isn't that just for old people? No, there are several reasons why young adults should think about estate planning because it encompasses more than just preparing a last will and testament.

What if you are walking out from a late night movie and get hit by a car which knocks you unconscious for several days; who has the legal authority to make your medical decisions during that time period? No one, if you are over 18 and have not planned ahead.

What if you wake up from being unconscious and the doctors tell your family that you have permanent brain damage from the accident which will require you to have assistance to take care of your daily needs; who has the legal authority to make decisions about your living arrangements and personal care? No one, if you are over 18 and have not planned ahead.

In both of these instances, an estate planning document called "Durable Power of Attorney" would be invaluable because it allows you to name another person to make decisions for you and to act on your behalf when you are unable to do so yourself. Once you become an adult, which in Oklahoma is the day you turn 18 years old, your parents' legal decision-making authority for you is terminated. As a young adult, if you want to delegate your own decision-making authority to someone else, like your parents, spouse, other relative or friend, you must do so in a Durable Power of Attorney.

A "power of attorney" is a Durable Power of Attorney if it contains special language that makes it valid through your mental incapacity. A regular power of attorney (one which is not "durable") terminates upon a person's mental incapacity and is not an estate planning tool. In estate planning you are not only creating documents which will explain how you want your money and property distributed to your relatives and friends upon your death, but you are also creating documents which will explain how you want to be taken care of if you become mentally incapacitated.

Mental incapacity does not just happen to old people who have Alzheimer's disease. The healthiest college student can become mentally incapacitated in an instant, like in the car accident example. If you have signed a Durable Power of Attorney, you will save your family the time, expense, and heartache of going to Court to appoint a guardian for you. Guardianships are the legal alternative if you do not have Durable Power of Attorney. In a guardianship proceeding, your family must testify in Court and present evidence that you are mentally incapacitated. This is usually very difficult emotionally for the family members to do to their loved ones; that is why planning ahead for mental incapacity by signing a Durable Power of Attorney is invaluable to you and your family.

What if you do not wake up after the car accident and the doctors tell your family that you will never regain consciousness? Who has the legal authority to make your end of life medical decisions which will be binding the doctors and hospitals? No one, if you are over 18 and have not planned ahead.

In this instance, if the doctors determine that you are going to die no matter what they do for you and you do not want any life-sustaining treatment if it will only prolong the process of dying, then an estate planning document called "Advance Directive for Health Care" would be a necessity. An Advance Directive for Health Care, which is also called a "Living Will," allows you to instruct doctors, in advance while you are still mentally competent, not to give you life-sustaining treatment or the artificial administration of food and water that will prolong the process of dying, if you have an incurable or irreversible condition which will cause your death within six months.

If you want to delegate the right to make those end-of-life decisions, you can also do that in an Advance Directive for Health Care by appointing a "Health Care Proxy." Your Health Care Proxy could be your parents, another relative, or a friend. You can give them the power to tell the doctors to withhold life-sustaining treatment or the artificial administration of food and water if that will only prolong your process of dying, should you have an incurable or irreversible condition that will cause your death within six months, no matter what they do for you.

What if the car accident kills you, what happens to your money and property? If you have a child, who will take care of your child? It depends.

If you own any type of assets, such as a bank account, a car, or real property, how are they set up? Is there anyone else's name on the account, title, or deed? If your assets are owned with someone else "as joint tenants with right of survivorship," then upon your death, the other person who is the joint owner will receive the property automatically as the survivor. In that instance, a Last Will and Testament, also called simply a "Will," would not be necessary. When you own assets in your name alone, with no one else as a joint owner, then you should have a Will if you want to direct who gets your assets upon your death.

It is best to hire an attorney to draft your Will because he or she will know the proper language to use to express your desires and will make certain the Will is properly signed, witnessed and notarized. However, in Oklahoma, you can make your own Will which is called a "Holographic Will." It must be totally in your own handwriting, dated and signed by you. If these three requirements are met it will be valid, although this does not mean that its content may not be subject to different interpretations because proper testamentary language was not used. Usually, the money saved by making you own Holographic Will is far outweighed by the expense of interpretation problems after your death during probate. For that reason, an attorney-drafted Last Will and Testament is advised.

There are additional reasons to create a Will other than just naming the beneficiaries of your assets. If you have a child, the Will allows you to nominate a guardian for the child if the other parent is deceased or parental rights have been terminated, nominate a guardian of the property for the child if the child is inheriting assets from you, and creates a trust to hold assets that the child is inheriting from you.

If you die without a Will, each state has a plan for distributing your assets, which depends upon who your "heirs" are at the time of your death. For example, in Oklahoma if you die without a Will and you are not married and do not have any children, your assets would be distributed to your parents. This distribution plan created by the state is called "intestate succession" and it is a logical plan which distributes assets in a fair manner depending upon the family members (heirs) you leave behind. Only when you die without a will and without any relatives will your assets go to (escheat) the State.

Even though most college students are not at the stage of their life where they own substantial assets, estate planning is important for college students because it involves planning for important medical and personal care decisions during their lifetime, and not just the distribution of assets upon their death.

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