

If Tragedy Strikes, Are You Prepared?

A STORY OF THE CONSEQUENCES OF TYPICAL ESTATE PLANNING

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Everyone seems to have a different idea about what “estate planning” is and when it is important to have an estate plan. Part of the problem is that there is so much misinformation about estate planning that few people really understand what it is all about. Another problem is procrastination. Death is not a pleasant subject so it is easy to put off until later. This probably explains why 70% of adults in the United States do not have any type of estate plan, and many of those who do have a plan have not updated it for many years. Whatever their reasons are, those without a good, current estate plan are gambling in a dangerous and potentially expensive game.

Consider this scenario: Jim and Jane were a typical suburban couple in their early 40's with three active children. John, age 18, was Jim's son from a prior marriage and just graduated from high school. Mary, age 12, and Bob, age 9, were Jim and Jane's children from their current marriage.

Jim and Jane both had good jobs that provided their family with a nice home and a comfortable, but not extravagant, lifestyle. They had accumulated a modest net worth of about \$500,000.00, most of which was equity in their home and their retirement plans at work. They did not have any life insurance, mainly because they hated the idea of spending money on insurance premiums.

Like many couples, Jim and Jane did not have any estate plan. They did not consider it a priority because they did not think they were “rich” enough, and they were far too young to worry about death. Besides, they were just too busy to deal with legal details right now.

One day tragedy struck. Jim and Jane were involved in a serious automobile accident. Jim was killed instantly. Jane was rendered mentally incompetent, and spent nine months on life support before the family could eventually obtain a court order to allow her to pass away peacefully. Needless to say, the children were thrown into emotional turmoil with the sudden loss of their parents. The nightmare only got worse when the family had to settle all of the parents' legal affairs.

Let's consider the unintended consequences of their lack of planning. First, imagine the enormous waste of time, money and personal agony that the family suffered trying to get a court order while Jane lingered on life support for nine months. Two basic estate planning documents – a health care power of attorney and a living will – would have avoided all of the legal headaches of turning her inevitable passing into a formal court proceeding.

To make her situation worse, the probate court had to appoint a guardian for Jane to handle all of her financial affairs because she was not competent for nine months to do so on her



own. Simple things like paying the mortgage and utilities on the house and buying groceries for the kids soon became a complex legal matter involving attorneys and probate court oversight. This is another instance where a basic legal document – a durable general power of attorney – could have saved significant expenses and frustration.

Since Jim and Jane did not have last wills and testaments, their estates had to be administered separately in probate court based upon what Ohio law provides, rather than the way Jim and Jane may have wanted it handled. In Jim's estate, the lack of a last will and testament did not cause a big expense because all of his assets passed directly to Jane through joint and survivorship titling and beneficiary designations on their assets. In Jane's estate, however, everything had to go through probate, including all of the assets she had just inherited from her husband outside of probate.

Jim and Jane had always heard that holding assets jointly with rights of survivorship was the best way to eliminate lawyer fees and to skirt around probate court. But did they really save anything by avoiding probate in the first estate with joint and survivorship asset titling? Maybe a little, but probably not much. It all ended up in Jane's estate and had to go through probate anyway. So what seemed to be a simple solution of titling assets jointly with rights of survivorship did not totally "avoid" probate, it just "deferred" it until the second death.

In reality, joint and survivorship titling produced a horrible result in this case – Jim's son, John, was completely disinherited and received nothing from either Jim or Jane's estate! All of Jim's assets automatically went to Jane because of how they were titled. Since Jane did not leave a last will and testament, all of her assets were distributed to her two natural children, Mary and Bob, under Ohio's "statute of decent and distribution." John was only Jane's step-son, so he was not entitled to anything from her estate under Ohio law. John not only lost his father, but also any hope of financial support through college. Do you think that is what Jim and Jane intended?

Another mistake of not planning correctly was the estate tax consequences. Jim and Jane believed that estate taxes only applied to people who owned more than \$2 million of assets. That is true for federal estate taxes, but Ohio also imposes an estate tax. Although Jim and Jane could have easily escaped Ohio estate tax, their lack of planning resulted in a tax bill of about \$10,000.00. While that is not a huge amount, Jim and Jane likely would have preferred that their children have that money, rather than the State of Ohio.

Probate court proceedings are rarely fast, cheap or "simple." Settlement of a probate estate without a last will and testament can be about as difficult and expensive as it gets. The court gets to decide who will be the administrator of the estate to handle all of the settlement details. The court also has to decide who gets permanent custody of the minor children, a battle that can sometimes create a real family feud. Since Mary and Bob were not 18 years old, the court also had to appoint a guardian to manage their inheritance for them until they became

adults – yet another legal proceeding that will consume time and extra expenses for nine more years! Mary and Bob will automatically get their share of whatever may be left of their inheritance when they reach 18. National statistics indicate that they will probably waste it all in as little as 18 months.

It's probably fair to say that most people would like to have control over how their personal and financial affairs are handled. Jim and Jane inadvertently left all of these decisions to the discretion of the probate judge, even though the judge was a complete stranger and had no idea what Jim and Jane would have wanted. They could have easily controlled those decisions by specifically appointing an executor of their estate and guardians for their minor children in their last will and testament, and by appointing financial and health care agents in appropriate powers of attorney. Equally important, they could have disinherited the State of Ohio instead of John just by engaging in some rather simple planning.

This story is not an actual case, but situations like this, and even worse, happen all too often. It illustrates the importance of having a good estate plan in place now, before it is too late. Even with the most basic estate plan, Jim and Jane could have spared their family much of the time, expense and turmoil of their tragedy. There are no easy short cuts or secret tricks in estate planning. The ultimate price of not planning can be extremely expensive, but the value of good estate planning is priceless.

An estate plan is simply the legal structure that you put in place to handle your legal and financial affairs if you become mentally incompetent or pass away. It assures that things will be handled the way you want, not how Ohio law or probate court may dictate. Your age, family circumstances, net worth and the personal goals that you want to accomplish determine what *type* of estate plan may be appropriate for you. It may be that you just need a relatively basic last will and testament, durable financial power of attorney, health care power of attorney and living will. Perhaps a revocable living trust would be beneficial in your particular circumstance. Many people may also need other, more advanced, estate planning. The point is, there is a plan to fit everyone, and everyone should have a plan.

An estate plan will not protect you against catastrophic events. But it can help preserve your assets, minimize taxes and legal expenses, and ease the burden on your family if tragedy strikes. After all, the goal of every estate plan is to give you peace of mind knowing that you have done your best to provide for your family if you are suddenly gone. Your most precious treasure – your family – is counting on you. That is why estate planning is important for everyone.

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