

By Alexis Martin Neely

Estate Planning for Younger Attorneys

Even recent law school graduates may need to address important estate planning issues

If you have been practicing law less than five years and have a significant amount of student loans, you may think that you are not wealthy enough to need to plan your estate, but if you are a Southern California homeowner, you should think again. Almost any homeowner in Southern California has an estate that is large enough to need planning. This is especially true for those who are parents, those who are contemplating or in a second marriage, those who are living with a partner in a committed relationship, and those who are living alone—in other words, almost everyone.

In the past many attorneys (or at least women attorneys) delayed parenthood until after they attained partnership. Look around your firm now and you will realize that is no longer the pattern. Associates are becoming parents at the same time they are becoming lawyers. Becoming a parent carries with it a number of important responsibilities, not the least of which is ensuring that your children will be well cared for in the event of your death or disability. The best way to provide your family with peace of mind is through careful and professional estate planning.

When a person without a will dies, the estate is distributed according to the estate plan that the state of California deems appropriate. This default plan is unlikely to meet the needs of surviving minor children. If you die before your children attain the age of 18 and you have not provided otherwise, your children may obtain their share of your assets as soon as they graduate from high school. I ask my clients to calculate the value of their assets, including life insurance, and consider whether this is an amount of money they could have handled responsibly at the age of 18. I urge you to make the same consideration now. If you believe that your estate will be too large for your children to handle wisely at age 18, then you must plan.

Additionally, when parents with custody of minor children die intestate, the courts are left to decide guardianship issues. If your family or friends disagree about who should raise your children, there could be a legal battle. Even if no dispute occurs, if you have not nominated a guardian your children could be held in foster care while the court decides who is to be their guardian.

Being married does not guarantee that guardianship issues will not arise in the future. About 40 percent of marriages end in divorce, and some sociologists argue that rate is even higher for practicing lawyers. If you have children from a first marriage and expect to remarry, you must plan to protect your children and the relationship between those children and your new spouse. If you do not plan for the distribution of your assets upon your death, your new spouse will have the opportunity to leave all your assets to the children from his or her first marriage, or to friends, relatives, or a future spouse. Estate planning can ensure your ability to provide for your surviving

spouse while also ensuring that any assets remaining upon his or her death are distributed in accordance with your wishes.

Financial issues are not the only consideration. Are there certain items, for example, that you have always wanted someone in particular to have upon your death? If so, you must make your wishes known. I have seen many situations in which the biggest family dispute after a death is not over major assets but instead over a personal item of no great monetary value, such as the decedent's cherished cigar cutter. In a professionally crafted estate plan, you can provide who will receive items of significant sentimental value.

For many attorneys, estate planning will involve not only traditional families but nontraditional ones as well. If you are in a committed relationship but not married, estate planning is an absolute must. For unmarried couples, estate planning includes consideration of a potential dissolution of the relationship or the death of a partner. There are enormous benefits to planning for the dissolution of a relationship while it is healthy and loving as opposed to trying to settle issues at the devastating time of its end. A well-drafted estate plan will address issues of property ownership and support. In addition, if an unmarried couple has children, the plan should address custody, child support, and the parenting relationship. Finally, a plan for unmarried couples must address incapacity, because an unmarried partner lacks a spouse's priority in conservatorship.

Many lawyers find themselves married to their work. Unmarried individuals need estate planning too. An unmarried individual must plan not only for his or her death but also incapacity. All too often, trust and estate attorneys see how unmarried, incapacitated people can be taken advantage of by caretakers. These situations may be avoided if single people take the time for some planning. Many of my unmarried clients who do not have children have significant charitable goals that can only be achieved through proper planning, and many of the single parents that I work with have a strong desire to ensure that their child's other parent does not become the unintended heir of their estate.

Lastly, I will mention tax savings as a reason to plan your estate. For many people, tax savings (and they can be substantial) are the least important reason to engage in estate planning. Planning your estate is about more than saving money—it is about providing peace of mind for your family and yourself. ■



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