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PEACE OF MIND:

Planning for All of Life's Contingencies

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ABOUT THE FIRM

As an estate planning firm in Sioux Falls, South Dakota, Thompson Law, Prof. L.L.C. provides a wide range of estate planning services to clients. Our primary focus is to help our clients provide for the security of their families, reduce estate taxes and avoid or at least minimize the costs and delays of probate, all with a well-crafted estate plan. The mission statement for Thompson Law, Prof. L.L.C. is defined as "helping people leave a legacy for their loved ones, not solely in terms of financial means, but also with a reflection of the values and the beliefs that can be shared for generations to come." The attorneys at Thompson Law, Prof. L.L.C. understand the growing importance of estate planning and dedicate themselves to helping clients address their personal circumstances in a way that best fits their goals and family needs.



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PEACE OF MIND: PLANNING FOR ALL OF LIFE'S CONTINGENCIES

As citizens of a culture that worships youth, most of us find it nearly impossible to admit our own mortality, much less make plans for that eventuality. Denial, however, offers no protection from the inevitable. And, as it turns out, we have far more to gain than to lose by sitting down in advance to plan for every contingency life may throw at us. To help you begin this important process, here are the essential items that should be on your list of basic estate planning objectives.

PRE-NEED FUNERAL PLANNING

For survivors, the hours and days following a loved one's death is no time for weighty decisions. For many Americans, however, this will be the first time they think about preparations for the loved one's funeral. Given the expense and painful emotions often involved, survivors may be in no condition to make choices for themselves or their loved one. With funeral expenses increasing every year, it is an expense that can quickly escalate as survivors confront a bewildering range of options on everything, from the kind and quantity of flowers, to the quality of their loved one's casket. A premium casket alone, for example, can exceed \$15,000. Add in the expense of roses over carnations and live music over recorded, and survivors can end up paying triple or quadruple the average funeral's cost. Yet, without advanced planning to guide them, survivors may feel guilty about saying anything but "yes" to the best for their loved one.

A study conducted by the National Funeral Directors Association found that although 62.5 percent of consumers felt it was very important to communicate their funeral plans and wishes to family members prior to their own death, only 21.4 percent had done so in 2017.¹ Leaving these emotionally charged decisions to grieving family and friends can pose an unfair burden on them in their time of loss. That's why a growing number of Americans are choosing to take matters into their own hands with pre-need funeral arrangements.

Today, most funeral homes offer several pre-need planning options. Generally, the process begins when individuals sit down with a funeral director to discuss the plans available to them. Once they've reviewed their plans with their spouse and their loved ones, they purchase a funeral package that reflects their wishes down to every possible detail. Consumers have several alternatives for prepayment for their funeral plans. One is to purchase a life insurance policy with the funeral home named as beneficiary. Or consumers can make payments in installments over months or years. With yet another alternative, they may work with a licensed funeral director to establish a regulated trust which will pay their funeral expenses. Lastly, consumers may prepay for their funeral in an account which earns interest, and which can be designated "payable on death" to the funeral home.

¹ <http://www.nfda.org/news/media-center/nfda-news-releases/id/2419/nfda-consumer-survey-funeral-planning-not-a-priority-for-americans> (2017)

After death, if there's more money in their fund than required to pay for their funeral, the family will receive a refund. The benefits of a prepaid funeral package go beyond cost savings, however. For many families, it provides an important opportunity to talk about sensitive issues and concerns that might otherwise have gone unspoken, and it allows the family to decide together which funeral options will be most meaningful to them. In many ways, prepaid funeral arrangements allow families to lay the foundation for a faster process in the future.

For many Americans, the discussion of their own funerals conjures up unwelcome thoughts of death. But once they overcome their initial resistance, most will find more peace of mind than discomfort in knowing that all the details of this important task have been handled as they want them to be.

CONTROLLING THE HEALTH CARE WE RECEIVE

As important as funeral arrangements might be, this task represents just one in a whole series of essential estate planning issues that we should settle well in advance. Of great concern to many consumers is the medical treatment they will receive in the event of a serious injury or illness. With today's great advancements in medical technologies, health care providers have at their disposal a wide range of costly and invasive life-prolonging treatments that may be the last thing you want yourself or a loved one to endure. That's why, for many consumers, taking steps to control when, how and why they receive medical treatment ranks at the top of their list of estate planning priorities.

One tool commonly employed by individuals to achieve that goal is the Living Will, also known as a healthcare directive. This simple document allows you to describe the kinds of treatments you do — and do not — want, should a life-threatening illness or injury befall you. Unfortunately, Living Wills can be ineffective in some cases. Those patients who do see their directions followed may have to first endure the medical intervention they sought to avoid while the doctors make a decision. Americans who want to control their destiny and the manner in which they die have no choice but to take matters aggressively into their own hands. And the Living Will may not be the best tool for doing that.

A Living Will is typically a simple one-page document that directs medical providers to limit your care under certain circumstances. While it's a convenient tool, its brevity may well be reason doctors refuse to recognize it. Many cite, for example, its ambiguous language and limited scope as reasons to disregard it. Further, not all states have laws recognizing the power of Living Wills. One final drawback: A Living Will does not empower anyone to act on your behalf, should you need an advocate on the scene to speak for you.

For these reasons, a better alternative to a Living Will alone may be combining it with an Advance Health Care Directive, also known as a Durable Power of Attorney for Health Care, or Health Care

Proxy. It provides extensive directions governing everything from what life support measures you want to whether you want to donate your organs. It also allows you to name someone to serve as your Attorney in Fact for health care matters. Also, the privacy provisions of Health Insurance Portability and Privacy Act, or HIPAA, became effective in April of 2003.²

To assure that your loved ones can access health care information in the event of your incapacity or to assist with health care decisions, you and every other member of your family should execute a HIPAA Authorization form. That's an important advantage to bear in mind. Having someone legally authorized to make such decisions for you will ensure that your wishes are carried out.

AVOIDING CONSERVATORSHIP

As we age, serious disability is an increasing likelihood. That's why you should probably plan in advance to have your personal care and financial affairs managed, as you would want should you become disabled. If not, you could find yourself the focus of a Conservatorship proceeding — known in some jurisdictions as a Guardianship. In a humiliating public trial in probate court, you'll be declared legally incompetent and a court-appointed guardian will be granted authority over your care. In some instances, your financial affairs will be managed by one person, while someone else will make decisions regarding your personal care.

If the humiliation isn't reason enough to avoid conservatorship, then this should be: the courts have wide discretion regarding who they assign responsibility for your care. There are no guarantees that your court-appointed conservatorship will be someone of your choosing, or for that matter, even someone you know. Many conservators are professionals who receive payment for this service. And guess who foots the bill for the court costs and the conservator fees? You do.

Some consumers attempt to control their fates with tools such as a Property Power of Attorney. But these don't afford consumers with the greatest possible degree of protection. In contrast, estate planning options such as the Revocable Living Trust coupled with a Durable Power of Attorney for Health Care give consumers a much greater ability to control their health care and financial affairs in the event of incapacity.

HOW TO ENSURE YOU'VE COVERED THE BASICS

One thing should be clear by now: we do our families and ourselves a great disservice when we fail to plan for every contingency. That's why a crucial first step in this entire process should be a consultation with an estate planning attorney. He or she will help you evaluate your family's needs and financial situation, and will draft a comprehensive estate plan that may include such tools as a Durable Power of Attorney for Health Care and Revocable Living Trust. In addition, your estate planning attorney will show you how to reduce or eliminate estate taxes and how to

² <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>

ensure that after your death your estate will go to whom you want, when you want and how you want without the expense, delay or publicity of probate. Of course, confronting your own mortality is a process that makes most people uneasy; but that's nothing compared to the anguish that often befalls the families of those who make no plans at all. So, even though the process can often be emotionally challenging in the beginning, the payoff in peace of mind for both you and your family will make it worth your while.

ABOUT THE ACADEMY

This report reflects the opinion of the American Academy of Estate Planning Attorneys. It is based on our understanding of national trends and procedures, and is intended only as a simple overview of the basic estate planning issues. We

recommend you do not base your own estate planning on the contents of this Academy Report alone. Review your estate planning goals with a qualified estate planning attorney.



The Academy is a national organization dedicated to promoting excellence in estate planning by providing its exclusive Membership of attorneys with up-to-date research on estate and tax planning, educational materials, and other important resources to empower them to provide superior estate planning services.

The Academy expects Members to have at least 36 hours of legal education each year specifically in estate, tax, probate and/or elder law subjects. To ensure this goal is met, the Academy provides over 40 hours of continuing legal education each year. The Academy has also been recognized as a consumer legal source by *Money Magazine*, *Consumer Reports Money Adviser* and Suze Orman in her book, *9 Steps to Financial Freedom*.

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