
What Breaking My Leg Taught Me About Estate Planning

By Michelle C. Harrell

It is easy to procrastinate about your estate plan and other important steps that you should take to protect and take care of your family if you die or become incapacitated. You may tell yourself that you have plenty of time, you will get around to it eventually, you are young and healthy, or nothing is going to happen to you. I used to tell myself some of those same excuses to delay finishing and then updating my estate plan. That is, until I severely broke my leg, needed surgery and then months of recovery, and became mostly unable to care for myself or my family as I had done pre-accident. I was one of those people who thought “it won’t happen to me” until, of course, it did. Luckily, I was still around to speak with my family as they pulled together to take over my various functions at home, and my law firm partners jumped in to help at work. Some people are not that lucky and are simply gone in the blink of an eye.

While recovering, these lessons about why you should prioritize your estate planning emerged:

1. Estate Planning is “Life Happens” Planning.

Many people believe that estate planning is only for those people with significant assets to worry about if they were to die. Others think that if they have a will or a trust that they have completed what will be needed. Although having a will or a trust is important, they likely are not sufficient to address all of your family’s needs. Estate planning is not only for any estate that you may leave behind upon your death, and is not solely for when “death happens.” Instead, estate planning has much broader objectives because “life happens” and needs to go on. The idea is to prepare a complete “Plan B” that includes the usual important documents (like a will or trust) but also instructions and information about your family’s needs, bills, schedule and related matters.

2. Although They Want to Help, Your Family Does Not Know Everything that

They Need to Know to Help.

When an accident happens, and if you are fortunate, you will have friends and family who can take over all aspects of your family's daily life and keep the household running. Of course, your family's needs – from getting the kids to school, paying the bills, buying groceries and doing other household chores – continue even if you are incapacitated or pass away. Part of your Plan B should include basic information about your bills, assets, liabilities, family schedules and needs, and other information that someone would need to step in and help.

3. You Do Much More For Your Family Than You Realize.

Many of us do not keep a complete mental inventory of the many things that we do for our families on an ongoing basis. Some of these activities are automatic and routine. Jot down a list of all of the things that you do for your family. Chances are that the list is longer than you expected. Looking at your list, who would be able to perform all of these activities if you could not? What would they need to know to complete them? When you prepare your plan, include notes about the extent of your activities, including recurrence, timing, and any special considerations.

4. Merely Having a Will or a Trust is not Enough.

A will or trust should be one of the main aspects of every estate plan, even if you do not have substantial assets. In the event of your death, these documents will govern the disposition of your assets, payment of your final expenses and other similar matters. However, it is also critically important to remember to update any beneficiary designations for other benefits, such as life insurance policies or retirement plan accounts, that are payable upon your death. Also, it is equally important to execute documents that would govern your affairs if you did not die but instead became incapacitated. First, you need to have a Durable Power of Attorney (DPOA). The DPOA designates a person to have decision-making authority for you in the event of incapacity or unavailability, and does not take effect until you become disabled. The designee under a proper DPOA will effectuate your wishes regarding your financial affairs and related matters. You should also sign a Patient Advocate Designation (PAD) or Durable Healthcare Power of Attorney so that your designee can act on your behalf in the event of your incapacity regarding your medical decisions and treatment. If you do not have these documents, your family will likely need to go to court to have a person

appointed and empowered to act on your behalf. Although courts attempt to determine your intent and wishes, the results may not comport with what you would have truly wanted. Your family may also have to endure the turmoil of a court proceeding, in addition to the upset associated with your medical situation.

5. You Can't Kick Yourself with a Broken Leg.

Plan ahead and create your Plan B. After an accident happens, you will be out of time, and no amount of wishing you had prepared a plan can replace good, advance planning.

There is much more to estate planning than deciding how to divvy up your assets upon your death. Instead, good planning involves creating a comprehensive plan for not only death but incapacity that would enable your friends and family to carry on using not only the easily-accessible information that you have gathered but with peace of mind that they are carrying out your wishes.

Maddin Hauser has extensive expertise in preparing estate plans and can assist with documenting your wishes and preparing your Plan B.