




## The Importance of a Comprehensive Estate Plan

by Laurie A. Watson

A front page article in the *Toledo Blade* highlighted the importance for everyone — regardless of age — to have a living will in place (see the *Toledo Blade*, November 9, 2008). The article described the struggles now facing the family of a 38-year-old mother of three who has been in a persistent vegetative state since early September 2008. It discussed how a living will would have communicated the woman's wishes to have her food and water maintained if she ever succumbed to a vegetative state.

The article briefly mentioned a durable health care power of attorney, the companion document to a living will. A health care power of attorney allows any adult over age 18 to designate another person to make medical decisions on his or her behalf if the principal cannot make those decisions. Unlike a living will, a health care power of attorney is not limited to end-of-life situations. An agent appointed under a health care power of attorney is authorized to make all health-related decisions for the principal during a period of incapacity, regardless of the cause, timing or duration of the incapacity.

A living will and health care power of attorney (often called advance directives) are just two of the basic documents that comprise a comprehensive estate plan. While these documents express a person's wishes about his or her future health care treatment, individuals should take similar steps to plan for their financial wishes in the event of death or disability.



In addition to advance directives, a comprehensive estate plan includes a financial power of attorney, a will and frequently a trust, all of which play a role in the transfer and management of assets upon an individual's disability or death. The appropriate transfer of wealth is often affected by a number of factors, including family circumstances, estate and income taxes, and the type and location of an individual's assets. These three factors, among others, often guide the process of generating an estate plan and determine what techniques are appropriate for each individual. A will, although popular and well-understood, is often not the vehicle of choice for achieving an individual's wealth transfer objectives.

A will may not meet an individual's needs because it frequently does not govern all the assets comprising an individual's estate. A will provides instructions to distribute only the property that was individually-owned at the time of death. Property owned as a joint tenant with right of survivorship (such as a home or a bank account) or assets that have beneficiaries (such as life insurance policies, annuities, payable-on-death bank accounts or transfer-on-death brokerage accounts) will not pass according to the terms of the will. These so-called "non-probate" assets will instead pass to the co-owner or beneficiary of the account — regardless of the terms of a will. In Ohio, it is even possible to add a beneficiary to real estate, further reducing the assets that could pass under a will.

An additional consideration when planning for the distribution of assets at death is the treatment of family members and loved ones who are important to the individual. It is not uncommon for individuals to leave everything to a spouse, and then to children. However, the family unit does not always consist of a husband, wife and children of one marriage. Planning for a blended family requires considerable forethought and legal knowledge. Both Ohio and Michigan have enacted laws to provide a surviving spouse certain rights in and to the assets of the deceased spouse — independent of what a will may provide to the contrary. And under federal law, a spouse often has legal rights to employer-sponsored qualified plan assets, such as 401(k) accounts (unless the spouse waives those rights). These rights are unaffected by the terms of a will.

Yet another consideration when preparing an estate plan is the income and estate taxes that could be due following a death. Individuals who own tax-deferred assets (such as IRAs, 401(k) plans or annuities) must understand how income taxes, which are paid by the recipient, may substantially reduce the amount a beneficiary will ultimately receive from the tax-deferred asset. If an income tax-deferred asset is also subject to estate tax, a beneficiary's inheritance could be even further reduced. For individuals who intend to leave something to charity, the estate plan should ensure that all available charitable income and estate tax deductions are maximized.

Finally, for individuals concerned that a child or other beneficiary is young or irresponsible, and may therefore "waste" an inheritance, techniques are available to defer or restrict an inheritance as assets are

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transferred to the next generation. Through the use of a trust, an individual may establish a level of control over how assets are used — and who may benefit from those assets — after his or her death. Further, trusts are frequently used to defer or eliminate the payment of estate tax (for married individuals) and avoid probate (often reducing attorney fees and maintaining privacy).

To summarize, a multitude of issues must be considered as individuals prepare to express their financial and medical wishes through their estate plans. While advance medical directives and financial powers of attorney are recommended for nearly everyone, a will alone is often not the right vehicle for an individual to achieve all his or her asset transfer objectives in the most tax-efficient manner possible.

*For more information on advance directives or estate planning, please contact Ms. Watson. She can be reached by calling our Toledo office (419-241-6000).*



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