Plan for Eternity

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The regrettable situation involving Terri Schiavo, the 41-year-old brain damaged woman who became a pawn in the battle between her family members, is a grim reminder of the importance of having an advance directive. This is either a living will or medical power of attorney which can state whether or not, when appropriate, you wish your life to be artificially sustained through life support, artificial feeding, or the like. A medical power of attorney is used to identify a person to make such decisions. Federal law requires healthcare facilities, such as hospitals receiving Medicare funds, to ask on admission whether you have an advance directive and, if so, to request a copy of it.

A living will, which is also known as a natural death declaration, customarily specifies the kind of care desired when a person is unable to make that decision. While it is impossible to determine what situation will trigger its implementation, it is nevertheless important to determine whether you would wish to have your life sustained by artificial means, such as life support systems or artificial feeding. The decision can be made by an individual consulting with family, clergy, or an experienced attorney. If a medical power of attorney is to be used, then the person identified, usually a relative or very close friend, should be educated as to your wishes.

The advance directive should be accessible so that it is available when needed; copies should be given to your primary care physician, retained by your attorney, and placed in your safety deposit box or with other important papers.

These documents can be updated, changed, or even revoked if desired. You can obtain a sample advance directive, free of charge, from the National Hospice and Palliative Care Organization (NHPCO). It can be reached by calling (800) 668-8898 or writing to: NHPCO, 1700 Diagonal Road, Suite 625, Alexandria, Virginia 22314.

It is important to have a properly executed will or will substitute in place as well. Shortly after the singer/songwriter John Denver died, his ex-wife, Casandra Delaney, an Australian actress, threatened to go to court to obtain a controlling interest in the Denver estate. Unfortunately,
John Denver died without having made a will and, therefore, left his estate vulnerable to attack by his ex-wife, three children, and a host of individuals who claimed some interest in the late singer’s assets. While most individuals will probably not die with as complex a situation as John Denver, the lesson is clear.

Most individuals are reluctant to consider their mortality and, therefore, feel uncomfortable about planning for the disposition of their property after they die. Yet, death is inevitable, and in order to deal with another inevitability, namely taxes, estate planning is important.

An estate plan can be as simple or as complex as you desire. A frank discussion with an attorney who has expertise in this area will aid you in evaluating what best serves your needs and objectives. A will (or will substitute) can provide you with the ability to determine what will happen to your property after death, as well as a means to reduce the cost of administering your estate. As mentioned before, another benefit of consciously and intentionally planning the disposition of your assets after your death is that taxes can be minimized.

Wills can also fill special needs. For instance, for a creative person, it is essential to identify an individual who will preserve the integrity of his/her creative work after death. This is especially important since some individuals may be willing to exchange integrity for greed. A well known tale of greed is the story about Clement Greenberg, who, after the death of the artist David Smith altered the sculptor’s work to attempt to take advantage of Smith’s posthumously popular polished works over Greenberg’s own painted sculptures. Ironically, it was David Smith who had been quoted as saying that altering a work of art is akin to destroying it.

Estate planning may prevent your assets from being dissipated in stressful, costly, and time-consuming litigation. The plight encountered by John Denver’s estate is by no means a unique situation, although, of course, he may have more assets than most. Your belongings may, however, be greatly valued by those who survive you. A well planned estate, with appropriate safeguards, will prevent the likelihood of a posthumous war among heirs, the Internal Revenue Service, and others who may have some claim to the estate of one who dies without a will or valid substitute.

The expense associated with preparing an appropriate estate plan and implementing it is far less than the expense of having to defend against viable claims and can also be weighed against the anguish that heirs may experience when property winds up being distributed in ways which are clearly inconsistent with the wishes of the decedent.

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