

# 7 ESTATE PLANNING MUST DO'S DURING THE TIME OF CORONAVIRUS

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Self-isolation and quarantines have given rise to unique problems and a new way of thinking. With a global pandemic and health and wellness becoming a huge priority in people's lives, it seems like a good time for all of us to reflect on our preparedness for the future and to confirm that our families are well protected in case of sickness or even worse. This is all the more important because if you get sick and hospitalized due to COVID-19, you will be immediately isolated from any family making all of this advance planning and organization even more important. Keep everyone in the loop and make sure your wishes are heard through the chaos. Let's review the tried and true, and some new, principles for estate planning in the Age of Coronavirus.

## I. Get Your Documents In Order

Make sure your estate plan is up to date and reflects your current wishes. This commandment would seem obvious, but it is often neglected. Until now. Use these difficult times to draw attention to this need and let's get our house in order. **In addition, many of you should have been updating your estate planning documents as a result of the Tax Cuts and Jobs Act of 2017, and now the SECURE Act. There are plenty of good reasons to review and update your plans, as detailed previously in this space (LINK). Most of those were financial reasons, and now we have health reasons, as well.**

Start by performing an inventory and collect the documents in one place (whether it is a virtual or digital home or an actual physical location - we prefer both, belt and suspenders). Make sure passwords and logins are accessible by the right people.

Those documents should include the following:

- Will
- Trust documents (for more complex estates)
- Financial Power of Attorney
- Advanced Directive/Healthcare Power of Attorney
- Life Insurance Policies
- Retirement Plan Documents
- IRA and Roth IRA Documents

We will touch on these in more detail, but first, it's important to know which ones exist.

Once these documents are collected, create a "Grab and Go Package." This is an envelope that lives near the primary exit of your home and includes all your estate planning documents as well

as medication and allergy information, personal information, emergency contact, and your primary physician's information. **And again, have all those documents stored digitally, whether it is Egnyte, Emoney vault, or some other accessible digital home. And make sure that the trusted person knows how to access those documents.**

Make sure you understand not only where their assets are going, but also to whom responsibilities are being delegated. If any of the above documents are missing, make a plan to get them drafted and executed in a timely fashion. And offer to safekeep some of these documents in their digital vault.

However, there is one glitch that people in the estate planning business have picked up on: how do you get something notarized when you, your lawyer, and notary are all self-isolating? It doesn't help that this problem is arising during a time when, being faced more directly with their mortality, Americans are initiating estate planning actions at a much higher rate.

Solutions are being worked on. When Governor Cuomo (NY) declared a state of emergency, notaries were granted temporary authority to authenticate documents via video conference. Other states (CT, IL, IA, NH, WA) have executive orders to allow the same. In the meantime, make sure you are aware of your own state's laws in how they are handling this issue.

Most important, don't let the physical challenge of the Coronavirus deter you from moving forward here. Figure out a way.

## II. Everyone Needs A Durable Power Of Attorney

An ordinary power of attorney allows a designated agent to make decisions on behalf of an individual. What many of you may not be aware of is that certain types of powers of attorney can be suspended if they become mentally incapacitated (springing powers of attorney spring into effect upon disability).

**For a power of attorney to stay in effect when you are mentally incapacitated (such as being put in an induced coma to go on a ventilator while suffering from COVID-19), you will need a durable power of attorney.** We typically recommend durable powers of attorney when you have someone in your life that you can trust, as the document is more flexible and will be available when you need it most.

A durable power of attorney is among the most powerful of documents that can be created, as it will not only allow the named agent to do everything from paying the individual's water bill to making gifts and filing and paying taxes. Different agents can be named for various roles and should be highly trusted individuals, though that does not have to mean your own family. Whoever is named should be aware of their appointment and willing to take on the role. And there should be a long conversation between your client and the agent about what should happen if the power of attorney is exercised.

### III. Consider a Revocable Trust

When most people think of an estate plan, they think of a Last Will and Testament as the centerpiece. In reality, the linchpin in most people's estate plans is actually a Revocable (Living) Trust. Why? Primarily, if a trust exists, many of the assets will have been contributed to the trust and therefore the estate avoids going through probate. In addition, a living trust avoids ancillary probate, which is helpful if you own real estate in several states. Finally, a living trust is nice as it provides a seamless transition for you, particularly if you are single or widowed.

Probate can be both expensive (attorney fees, Court costs, and executor's fees), and time-consuming. When an estate goes through probate, it risks getting tied up in the Courts and distributions from the estate can take months (if not longer) to actually transfer.

**The Trust works as a separate entity that holds all of an individual's assets (a little like being the sole owner of a corporation) while she is alive. However, at death (or if mentally incapacitated), a named "successor trustee" steps into your shoes. This can be helpful in case of the unexpected.**

The trustee can be a child, friend, or professional fiduciary (so a bank or trust company counts). This last option can be a prudent choice if you feel the need to remove beneficiaries from the process of distributing assets at death.

### IV. Have an Advanced Health Care Directive

An Advanced Health Care Directive describes, in very specific detail, what type of life-saving intervention the individual would like and in what situations it is to be used. These documents are usually concerned with treatment in a situation where there is no expectation of a patient's recovery (severe brain damage, permanent unconsciousness, etc.).

**Sometimes an individual will opt for a Health Care Power of Attorney in addition to an Advanced Health Care Directive which means that these decisions will be made by an individual rather than solely in accordance with a written document. If you opt for this, you should select a single individual. This will allow doctors to communicate and take direction from one person. Sometimes, an attorney will draft both documents together, and they are subject to state law so make sure you are familiar with your state's laws and that you update these documents when/if you move to another state.**

**Any health care directive should also include a HIPAA authorization.** HIPAA (Health Insurance Portability and Accountability Act) is the law that protects your medical privacy. However, in the event of an emergency, you will want to authorize an individual to receive your medical information so they can stay apprised of the situation.

This issue arises often with college-age kids. **College kids are almost all over the age of 18 which means that their medical information is protected by HIPAA. While this rule may**

**protect privacy, it can also block parents from being able to help kids living hundreds of miles away when a medical emergency arises.** Under this rule, if a student ends up in the hospital, her parent has no right to be informed of the condition of the student or even talk to the doctor. This can make for a terrifying experience and can hinder the parent's ability to help their child navigate the beast that is the American healthcare system (a system they have likely never confronted on their own).

**To prevent this from happening, sit down with your child and fill out three documents as soon as their 18th birthday rolls around: a HIPAA authorization, medical power of attorney, and durable power of attorney.** When your child enrolls in college, make sure you fill out these documents for the state at which they are attending so any doctors or administrators who come in contact with the document will be familiar with it. Don't forget to check if the college or university has its own form and fill that out too.

Even if your child has been sent home during the pandemic, if they get hospitalized, you may want to remind them that they are not invincible. You will be in the same boat as if they were on the other side of the country, and therefore these documents are needed now for everyone. Especially with overwhelmed and overcrowded health care systems, there will be few if any spare people to deal with an issue like this on a moment's notice if it arises.

You can access the HIPAA authorization form for any state [here](#).

## V. With all This Chaos, Don't Forget To Include and Fund Health Care Accounts

You may need access to cash flow to help pay for medical treatment and that money will likely come in two forms: Health Insurance and a Health Savings Account.

**Compile a list of health insurance policies and make it accessible to any individuals who will need it in case you are incapacitated. Similarly, if you have a Health Savings Account (HSA), make sure your family is familiar with it and can access it if they must.**

If you have older parents, I encourage you to review your parents' Medicare and health insurance policies. If you have children over the age of majority but still on the healthcare plan, you should make sure their paperwork is in order. By reviewing these documents now you will address any issues with healthcare coverage while things are still fine. Dealing with an insurance issue after someone is in the hospital is challenging and stressful during an already stressful time.

## VI. Update Your Beneficiaries And Include Contingent Beneficiaries

We bring this up to address any contradictions between documents. In the review of your documents, you should also review the beneficiaries of trusts, 401(k) plans, IRA, Roth Accounts, pensions, and Life Insurance. If there are any disagreements between these documents and a Will or Revocable Trust, you should point them out to your client.

It is important to note that beneficiaries, as named on these documents and policies, will supersede any beneficiaries of these assets as outlined in a Will or revocable trust. There may also be a good chance that NO beneficiary has been named for some of these plans. **A beneficiary should be named promptly if this issue is discovered, and best practices require a contingent beneficiary, as well. This can come in handy if a beneficiary (say a wife) wants to disclaim the asset in favor of the children, particularly where it could save taxes under the SECURE Act.**

## VII. Communicate Clearly and Get it Done Now

The continuing idea and final step in this process is communication. **We cannot stress enough that if you get sick and are hospitalized due to COVID-19, you will be immediately isolated during their treatment from any family making all of this planning even more important.** Understand the risks involved with neglecting this important area of your life and forward through the chaos.

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