

MUSIC MATTERS

Even as he faces Alzheimer's, Glen Campbell keeps singing

ESTATE PLANNING

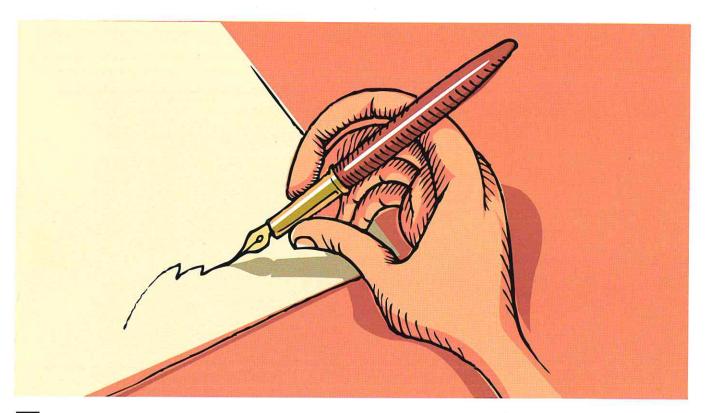
What you need to do now

WHERE BABY BOOMERS REALLY WANT TO LIVE

plus
THE DIET DIVA
RESOURCE DIRECTORY

Planning for the Inevitable

Documents speak for you when you can't speak for yourself.



Ilness, taxes and death. Since all are inevitable, it only makes sense to prepare for them. That way, you'll make certain that your welfare and wealth don't fall into the hands of the courts – or ne'er-do-well relatives.

When it comes to estate planning, Floridians are already at an advantage, tax-wise. The state doesn't levy an estate tax – or an income tax, for that matter – so only the federal estate tax comes into play. And that particular tax has been in an almost constant state of flux for the past several years.

Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the federal estate tax was eliminated in 2010. It returned in 2011, but exempted estates valued at \$5 million or less for individuals and \$10 million or less for couples.

As of Jan. 1, 2012, the exemption increases to \$5.12 million for individuals and \$10.24 million for couples. The portability provision introduced in 2011 remains in effect in 2012, mean-

ing that the surviving spouse, in addition to his or her own \$5.12 million exemption, will be able to use any portion of the deceased spouse's exemption that went unused.

Also in Florida, the state's constitution specifically exempts an individual's homestead from almost all creditor claims, except for mechanic's liens, taxes and mortgages.

Life insurance and annuities, because they vest directly to the surviving spouse and aren't subject to probate, are also generally protected.

"Florida is one of the best debtor states in the country, if not the best," says Evelyn W. Cloninger, partner in Cloninger & Files, an Oviedo law firm specializing in eldercare issues. "It sounds strange to say, but some people retire here specifically because the laws are so favorable regarding the estates of people who die while they're residents."

To protect your wealth and well being, here's a discussion of several essential estate-planning documents.

by Randy Noles

ADVANCE DIRECTIVE

What would happen if you experienced a serious medical problem and couldn't speak for yourself? Would anyone know your wishes regarding medical care, life support and other interventions?

"In my opinion, if you're going to have only one document, it should be an advance directive," says Merrell Bailey, managing partner with Bailey Zobel Pilcher, an Orlando law firm specializing in estate planning. "It has the greatest capacity to improve your quality of life. I call it the momma document. The rest are baby documents."

Advance directives are legal documents designed to ensure that your wishes are carried out. There are two types of advance directives: the living will and the Designation of Health Care Surrogate form.

In a living will, you specify how aggressively you wish to be treated if you're suffering from a terminal condition in its end stages or have irreversible brain damage.

High-profile cases such as those of Terri Schiavo and Karen Ann Quinlan – young women kept artificially alive as family members, healthcare providers, politicians and judges bitterly wrangled over their fate – demonstrate the value of living wills.

It's wise to make such arrangements at almost any age, says Cloninger, since disability or brain damage can occur unexpectedly as a result of a health problem or even a freak accident.

"Doctors and nurses will tell you that a great percentage of their patients in the trauma center come from motorcycle accidents or men falling off ladders while trying to hang holiday lights on their homes," says Cloninger.

The living will and the Designation of Health Care Surrogate form are really two sides of the same coin. The living will is a document that outlines your wishes in advance. But a document can't anticipate every eventuality. The surrogate form allows you to appoint another person to speak for you when you're unable to speak for yourself.

That person will make medical decisions on your behalf, consent to – or refuse – certain medical procedures, select physicians and advocate for you in healthcare matters.

Cloninger advises her clients to provide a copy of the advance directive to a physician and a family member, along with instructions on how to locate the original. Most people, she says, choose spouses or other family members as their healthcare surrogates.

"Clients often joke about whether the selected person will 'pull the plug' too quickly," says Cloninger. "I assure them that the patient must be suffering from the end stages of a terminal illness, or be lacking in cognitive function with no reasonable medical probability of improvement, before the question of terminating life support even applies."

Treating physicians are not going to approve disconnecting life-support systems unless the appropriate criteria are met. A bioethics committee and independent physicians must be consulted as well as family members.

"I emphasize to clients that by making advance directives and living wills, they make their own decisions," says Cloninger. "It prevents family disputes or spouses having to agonize over what's right."

With an advance directive, it's important that you specifically waive privacy and security rules outlined in The Health Insurance Portability and Accountability Act (HIPAA). Otherwise, hospitals and physicians aren't authorized to share medical information with your surrogate

DURABLE POWER OF ATTORNEY

Durable power of attorney designates someone you trust to take care of your business affairs. Such an agreement is entered into while you're still competent and, unlike limited or general powers of attorney, remains in effect if you become incapacitated.

A person with durable power of attorney is authorized to handle such matters as buying or selling property and investments, opening and closing bank accounts, filing lawsuits, paying bills, handling taxes and more.

The recipient of the power of attorney – the person who is given the power to act on your behalf – is called the "attorney-in-fact," or sometimes the "agent." However, not all agents are attorneys-in-fact.

You should grant durable power of attorney only to someone you trust implicitly, says Carla DeLoach-Bryant, a downtown Orlando attorney who specializes in estate and tax planning. Such authority can be abused – although wrongful use is actionable.

"The No. 1 problem with any power-of-attorney arrangement is appointing the wrong person," says DeLoach-Bryant. "If someone is disorganized and can't pay their bills, then they're not likely to do any better with your bills. If someone is a spendthrift, or has a spouse who's a spendthrift, then you could have a problem. Someone who's not honest won't suddenly become honest when they have your power of attorney."

Making matters more complex, the state legislature recently expanded the rules regarding power-of-attorney arrangements. "A durable power of attorney used to be seven pages, and now it's 44 pages," notes Bailey.

That's because everything the attorney-in-fact is allowed to do must now be specifically enumerated.

"Before, my power of attorney could just read, 'I appoint my husband to do anything I could do,'" Bailey explains. "Now, it has to say, 'I appoint my husband to do anything I could do, as long as it's listed in this document."

fyi / law

Although power-of-attorney agreements drawn up under the old rules are still valid, Bailey says she's encouraging her clients to have their existing documents updated.

LAST WILL AND TESTAMENT

Unlike an advance directive and a power of attorney, which are implemented while a person is still alive, a will doesn't go into effect until after death.

A will is a written legal document that specifies how you want your assets to be distributed. It must be filed with the Florida Probate Court upon death, and the court then supervises the distribution of your assets.

Many people incorrectly believe that if their estate is modest and not subject to estate taxes, there's no need for probate. However, any estate in which assets must be distributed in accordance with a will is subject to probate, regardless of whether the estate is taxable.

If you die without a will – the legal term is "intestate" – then the state determines, by statute, how your assets are divided and who your beneficiaries will be. The statutes are rigid, and no exceptions are made for unusual circumstances or exceptional needs.

"Your will speaks at death," says Cloninger. "Your power of attorney speaks during your lifetime and is terminated by your death."

Preparing a will involves making a number of tough decisions. Who will be the heirs? How much should each receive? Should they receive it outright, or in trust? If in trust, what kind, and what are the tax implications? Who should be the trustee, and who are the successor beneficiaries if an heir dies?

REVOCABLE TRUST

A revocable trust is a document created to manage your assets during your lifetime and distribute the remaining assets after your death. The person who creates a trust is called the "grantor," or "settlor." The person responsible for the management of the trust assets is the "trustee."

Assuming he or she is competent to do so, the grantor often also serves as the trustee. The trust is termed revocable since you may modify or terminate it during your lifetime, as long as you're not incapacitated.

The trust provides for a successor to take over when the original trustee becomes disabled, incapacitated or dies. The successor trustee - usually a spouse, child, friend, lawyer or professional trustee from a qualified financial institution - is authorized to continue managing your trust assets, paying your bills and making investment decisions.

Upon your death, the trustee is responsible for paying all claims and taxes, and then distributing the assets to your beneficiaries as described in the trust agreement.

A well-crafted trust is comprehensive and lengthy, detailing powers of handling assets and affairs such as buying, selling, renting, leasing, suing, hiring or firing. Disgruntled family members can challenge a trust, but it isn't easy, particularly if it has been operated effectively and efficiently over a number of years.

A will, on the other hand, is usually first revealed to the family after a death - and those disappointed by its contents are more prone to mount legal challenges.

"Your trust should be adjusted to reflect your situation in life," says Cloninger. "For instance, at age 55, you may still have a young family. So your trust might focus on providing for your children's education rather than setting them up as adults."

You might also specify a different arrangement for each beneficiary. One child might receive his or her share outright, for example, while another, who's less settled and responsible, might have to wait several years.

If you're older, and your adult offspring are well established, you might consider naming a charity as a beneficiary.

REVISIT AND REVISE

Making sure the proper documents are in place is a critical first step, but just as important is reviewing and updating those documents on a regular basis to adjust to changes in

Deaths, births, marriages, divorces, bankruptcy - any of these significant family and life events can have an impact on your estate and healthcare planning.

For example, if you're not careful, an estranged ex-spouse might end up with your worldly goods and decision-making powers over your healthcare.

Bailey says that due to the poor economy, some estranged couples are now simply separating instead of divorcing. But if a separated spouse dies without having changed his or her will - or without a will at all - then assets are distributed as though the marriage were still intact. "This is happening lot these days," she notes.

You don't have to be affluent to benefit from estate planning. Having proper documents in place before you need someone to look after your medical and financial needs will protect your interests in the ways you've specified instead of leaving you in the care of someone you may not know or trust.

Editor's Note: This story was intended to provide an overview of issues related to estate planning. But there's no substitute for legal advice, particularly regarding matters so complex and so important. Check out the directory elsewhere in this issue for a selected list of attorneys specializing in wills, estates and trusts.