

PLANNING IN AN UNPREDICTABLE WORLD

Political commentator, George Will, once said “the future has a way of arriving unannounced.” Over the last 18 months we’ve seen just how unannounced our future can arrive. As a community we’ve faced great challenges, tragedies and unease with the COVID-19 pandemic impacting all of our lives. The past 18 months have also shown us the importance of planning for an unannounced future and how it’s never too early to make an estate plan.

While estate planning can be overwhelming to think about it’s also best done with plenty of runway to set your plans in motion. This is particularly true in planning for nursing home care. On average, nursing home care in Kentucky costs approximately \$6,000 per month. Due to the high costs of this care, many rely on Medicaid to pay for these services. However, you must qualify for Medicaid from a financial standpoint. Medicaid has very low asset and income requirements that without proper planning may be difficult to meet. Medicaid also uses a five year look back period, meaning any transfers or gifts made during the five years previous to seeking eligibility may create a penalty and deny you eligibility. When planning for potential nursing home care the most effective

planning strategies are done at least five years prior to any nursing home care being needed.

Prior planning is also essential when it comes to other areas of estate planning. Here are a few examples to consider:

- A last will and testament directs how your estate is distributed upon your death. Obviously you have to execute your last will and testament prior to your death but you also have to have capacity at the time of execution. **If you don’t execute a last will and testament while you have capacity, a Kentucky statute will establish how your property is divided.** This statute is rigid in determining who would receive your property and could lead to your wishes not being fulfilled. For example, you may not be able to leave what you want to your grandchildren, great grandchildren, charities, churches, or friends if you do not define these wishes in your will.

- If you become unable to make decisions and do not preemptively designate someone to make financial and healthcare decisions on your behalf, then your family would endure a lengthy court process that may re-

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quire a jury trial to determine your competency. This can all be avoided by naming a Power of Attorney or Health Care Surrogate ahead of time.

- If you become unable to direct your medical treatment at the end of life, you need a living will/advance directive to inform medical professionals of your wishes related to life prolonging treatment and artificially provided food, water, nourishment or fluids. Failure to have a living will/advance directive could leave your loved ones with difficult decisions at a vulnerable time. For example, your loved ones may be forced to make a decision to remove or continue life support. While estate planning may seem daunting, prior planning is essential and an attorney can help you navigate the process and develop an individualized plan to protect your assets and document your wishes.



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