

Hindsight in 2020: The Biggest Reasons Relatives Wish Their Loved One Had An Estate Plan



David Bingham

dbingham@mwlaw.com

(501) 688.8846

01/30/2020

We have all heard the phrase that hindsight is 20/20. Often, going through a situation is one of the best ways to learn how to navigate it, or help others, if one encounters a similar scenario in the future. But what about when the difficulty of a situation falls on others, who have no power to address the difficulty they've received, or take advantage of any lessons learned in hindsight? This is unfortunately what happens when a person lacks an estate plan.

First, let's start with a basic truth: while you're healthy, aware, and alive, you don't "need" an estate plan. (Although there are many situations even when you're healthy, aware, and alive that make it a good idea). Estate plans, primarily, are for your loved ones who, in the event of your passing, have to sort your affairs after you've gone. For many, contemplating any situation in which they suddenly (or gradually) become unhealthy, unaware, or no longer living is very unnerving, and this anxiety leads them to avoid thinking about planning in whatever way possible.

An alternative thought process can help. Most people, on signing up for car insurance or homeowner's insurance, don't dwell on a potential future car wreck, or on a house fire or lightning strike. They're glad they have protection in place should the need arise (I wish there were commercials about the helpfulness, friendliness, and omnipresence of Estate Planning Attorneys).

So, if what you're really doing is purchasing coverage when the need arises (and for all of us it will arise at one time or another) - what are you protecting your loved ones from? And that's what leads us to the Biggest Reasons:

1. **Shortcutting a Giant Mess:** The process of settling the ownership of your assets after your passing is what the law refers to, generally, as "probate" or "estate administration." The items of feedback I universally hear from clients is that probate is long, complicated, and expensive. No client has ever enjoyed it. That is not to say that it is not sometimes necessary (but necessity is not the norm). Rather, most clients, on learning that their loved one could have paid a few thousand dollars and had documents prepared that shortcut and streamlined the majority of this process, wish they had.
2. **Keeping it in the Family:** Let's hone in on one aspect of probate that I mentioned above, expense, and one additional one, publicity. Every court-filed probate document is a public document available to any member of the public who might want to look. On top of that, probate requires that notice of your death be published in case you have any creditors. And back to expense—in addition to the court-filing fees, there are the expenses involved in simply going through the process, marshalling the deceased's assets, and dealing with any disgruntled

family members. Most clients, on learning that a loved could have prepared documents that keep everything confidential, and, at least minimize the cost inherent in the probate process, think the privacy and extra money are a good trade for the expense of an estate plan.

3. **Clarity About Ownership:** While not everybody has specific cares about what happens to their property when they can no longer use it, most people, when pressed, can at least describe what they don't want. One of those things would be the inability of their loved ones to access their assets because third-party asset custodians won't let them. Have you ever tried to access investments that aren't in your name, or sell land you don't have title to? It's quite difficult. The brokerage house will not speak to you, and no one will even look at your land until you can produce clear title. While probate can solve these issues, *eventually*, most relatives are distressed to learn that they'll have to foot the bill before anyone can make use of the loved one's high-value assets. When I tell them a set of documents could have avoided that problem...you get the gist.

So, as you head into 2020, remember the old adage, "an ounce of prevention is worth a pound of cure." You may not feel like the cost of an estate plan produces much in the way of a direct, present, tangible benefit. But then again, neither does that insurance premium. Saving some trouble for your loved ones, in multiple ways, is certainly better than any lesson learned in hindsight.