Planning ahead a sensible way to face your own mortality

A story published in the Alameda Times Star on March 28, 2004, reminds us that we are mortals. We will someday die. And we really don't have to leave a mess behind for our survivors if we do some financial and legal planning.

The story has many tips and suggestions focusing on topics such as wills, trusts, powers of attorney, insurance, funeral arrangements, organ donation, etc.

It's not a matter of if, but when. Dying, for every last one of us, is inevitable. And yet most of us prefer to live day to day in blissful denial of that mortality.

But should you go gently into that good night without some forethought, you could be leaving behind mayhem, confusion and squabbles among your family, especially if your demise is sudden or unexpected.

There are some simple, basic steps you can take right now to settle several important matters. In fact, many of these suggestions make sense for everyone trying to keep a handle on their affairs in these increasingly cluttered times.

You could burden your family or executor with the brutal task of wading through a pile of papers - or ease the way with a thorough roadmap. And it doesn't cost a cent to prepare.

"It's what I call a gift of love," says Jeanne Smith, founder of Exit Stage Right, a Palo Alto-based estate organizing firm that sells a Survivor's Guide workbook to help people organize their vital documents.

Start with a master list of where to locate important paperwork: the original copy of your will, plus any living trusts or powers of attorney (described below), and how to get in touch with your attorney, clergy member, accountant and insurance agent.

Detail where to find it all: insurance policies (life, health, disability, homeowners and auto), safe deposit boxes, deeds, titles, tax documents, birth and marriage certificates, divorce decrees, Social Security cards, passport, driver's license, military record, vehicle title and registration.

Don't forget the little things: codes and passwords to your answering machine, voicemail, burglar alarm and computer.

Your executor will need a list of all your assets, including income, bank accounts, brokerage accounts, retirement accounts, homes, cars, boats, valuables, antiques and jewelry. Note any cash stashed in the attic, gold coins buried in the backyard during Y2K, or frequent flier miles. Assets not claimed by your heirs could end up turned over to the state treasury, an unwarranted boon even if the state is facing a budget crunch.

Also, own up to your debts, including the mortgage, car loans, business loans, student loans, credit cards and routine bills.

Finally, state any arrangements you have made for the handling of your remains, guest list and preferences for the memorial or funeral service, and information you'd like provided for your obituary.

Store the will with your attorney and keep your master list at home, with the important original documents in a safe deposit box and copies in a file cabinet or a home safe. Make sure to tell loved ones where to look and how to gain access. - Melissa Schorr

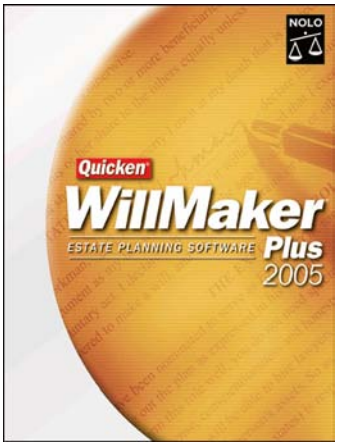
Where there's a will...

You need to have a last will and testament.

Now here's the good news about creating a will: you don't need a fancy lawyer to create a legally binding document. Here's the bad news: a lawyer could be extremely helpful.

According to Alameda estate lawyer Heather Tremain, 67 percent of adults do not have a will, which means that when they die, their estates will automatically go into probate - the months-long

legal process in which property owned by the deceased is passed to his or her heirs either by looking at the will or following laws through which the court determines the hierarchy of heirs. The state will take its sweet (and often expensive) time deciding who gets what and when.



"The whole point of a will is to take care of the people you love," Tremain says. "If you don't love anyone, don't care what becomes of your possessions or don't care about making things easier for the people you leave behind, you don't need a will."

To avoid discord, you may want to go through the house with each family member, making a list of what sentimental objects they would like, and specify that in the will. Don't be afraid to leave some special object to a close friend or neighbor. And don't forget Fido: one quarter of Americans leave something in their estate for their pets, and California allows you to authorize a trust for your pet's care.

Here's a simple way to begin a process that often scares people: write down a few of your wishes in your own handwriting. It would be extremely helpful if you named an executor, someone who will be in charge of carrying out your instructions at the time of your death. Sign the document and date it. If the document is in your own handwriting, that's it. You're done. If you type it on the computer and print it out, the State of California requires that you have two witnesses sign the document.

"A napkin in the person's handwriting that is signed and dated would stand up in court as a valid will," Tremain says. "The assumption of the court is that you knew what you were doing when you wrote it. A will does not need to be notarized, but trusts do."

Working with an estate specialist such as Tremain, who charges $235 an hour and requires 60 to 90 minutes to create a basic will with clients, can cover a lot of things you might not think of, like joint tenancy issues, trusts, taxes, capital gains and a whole host of messy details.

The Internet offers an overwhelming number of cookie-cutter will forms that can be had for $9 (www.ilrg.com/forms/) to $59 (www.uslegalforms.com), but Tremain warns that "you get what you pay for."

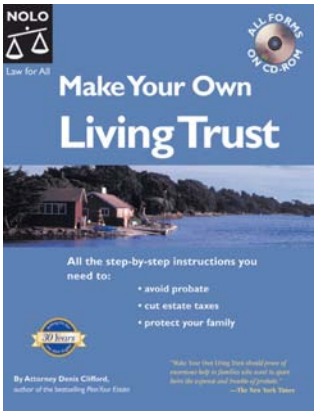
"Internet forms might not take into account that California is a community property state, and advice you get might not be solid," Tremain warns.

The reason most people give for why they don't have a will, Tremain says, is that they don't think they have an estate.

"The real reason is emotional," Tremain says. "We all have an estate. We all have a body. It is vitally important we leave instructions for both. I see a lot of baby boomers bringing in their parents. They see what a mess they'd be left with, and as soon as we take care of their parents' wills, we take care of theirs." - Chad Jones

Living trust

A living trust is another way to ensure that your property and other assets are disposed of according to your wishes after you die, says Steven Nelson, an estate-planning attorney with Nelson & Vencill in San Ramon.



Essentially, a living trust, which is also known as a revocable trust or an inter vivos trust, serves as a substitute for a will. It includes your instructions for how you want your assets managed when you die

``I think all people should have a trust unless their assets are under $100,000,'' Nelson says. ``That's my personal view. If the assets are under $100,000, they should have a will.''

The decision ultimately boils down to whether or not you care if your assets wind up in probate.

Basically, probate ``is a court-supervised process to protect the rights of creditors and beneficiaries and to ensure the orderly and timely transfer of assets,'' Nelson says, quoting from a brochure handed out by his office.

``The primary difference between a will and a living trust is that assets placed in your living trust avoid probate at your death. ... You can completely avoid probate only if all of your assets are in the living trust when you die.''

People who prepare trusts by themselves frequently fail to meet their goals ``due to technical errors or omissions, and, or, failure to effectively transfer assets to the trust,'' he says.

A trust alone is only part of an estate plan, Nelson notes. An attorney will charge $2,000 or more, depending on the nature, extent and location of assets, to prepare a complete estate plan, he says.

Even though your property and other assets are owned by the trust, you still maintain control over them. For instance, if you want to sell your house, you handle the transaction through the trust exactly as you would if you did not have it.

You can choose to serve as trustee or you can pick a professional trustee. And you can also revoke the trust at any time. If you take the living-trust route, you will still need a short will, which is also known as a ``pour over'' will. The short will makes sure that any of your assets not put in the trust when you were alive will be transferred to the trust at your death. - Barry Caine

Life insurance

Do you need life insurance? And if so, how much?

The usual reasons to have a life insurance policy are to replace your income, to pay off an obligation, to provide money (to pay estate taxes) or to create an estate for your heirs, Nelson says.

For instance, if a wife is not working and her husband dies, his income will stop and will need to be replaced.

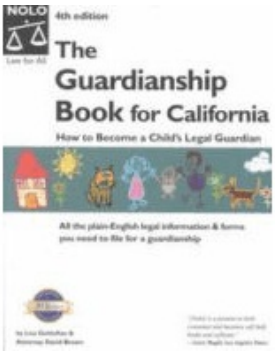
If a young married couple with children dies, there probably won't be much money left over for the kids. So the couple may want to buy life insurance to create an estate for the children.

If the person who dies has been paying the mortgage, the survivor will need money to continue to make payments.

It's up to you to figure out how much coverage you will need. First, determine how much annual cash flow will come from current investments, retirement plans and other resources. Then compare that with how much money you will need to cover expected expenses.

At that point you'll need to consult an insurance agent, estate planning attorney or other professional to help determine what kind of coverage you should buy. - Barry Caine

Guardianship of minor children



Often it's only after a tragedy hits close to home that parents of underage children begin pondering who would raise their kids if they weren't around.

``Selecting a guardian is part of general estate planning,'' says Louis J. Willette of Willett & McKay law firm in Fremont. ``People generally come in when they are settling their affairs (in the face of a terminal illness), although people now are becoming more aware of the importance of doing this before tragedy happens.''

Willett says that parents don't name a guardian, but nominate a person to take care of their underage children in their absence.

``Usually, the court abides by your selection,'' Willett says. ``But the court has the continuing power, or jurisdiction, and can make orders that it feels are in the best interest of the child.''

Willett says most parents opt for members of their own family, generally in their own age range, over their own parents as their guardianship choice.

``It usually siblings or close friends,'' Willett says. ``They prefer those over the parents, thinking that it would be a burden on their parents who might not want to raise another family.''

In the event of divorced or separated parents, Willett says the law favors the natural parent to take over guardianship of the children. For someone else to be preferred by the court over the natural parent, the court would have to find the natural parent unfit.

``If a parent hasn't seen the child in many years,

there are presumptions set forth in the law concerning abandonment of children, which would be taken into consideration," Willett says.

Willett suggests the parents talk to the guardian they nominate to make sure that person or persons are comfortable with the situation. Nominating does not mean the person has accepted the responsibility, however.

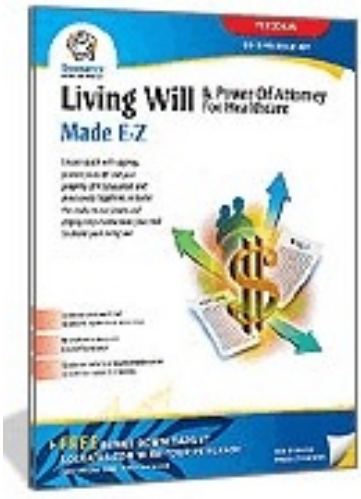
``This could be an imposition on a person. You have to think, `Are they qualified?' `Will they do it?' " Willett says. ``You can nominate anyone, but they are not (legally) bound by it.''

Family members could go to court to challenge the guardianship, so it's best to get everything out in the open early. Parents should also plan to financially compensate the guardian.

``You don't want to break up siblings, which is almost never done. But particularly if you have a large family, you need to recognize the financial burden,'' Willett says. ``To have someone raise your children, you need to take reasonable steps to provide for their financial well-being.'' - Susan Young

Durable Powers of Attorney

When considering your assets and health, it is important to anticipate any possible future disabilities. A Durable Power of Attorney allows you, the "principal," to give another person, often called the "agent" or "attorney-in-fact," the power to act on your behalf.



In the event that you are in-capacitated, the agent named will be able to sign documents, access bank accounts and have virtually unlimited powers over your property and legal affairs.

ttorney for Health Care (DPAHC) allows you to appoint someone to make health care decisions for you in the event of catastrophic illness or injury. A DPAHC is limited solely to the purpose of health care and is subject to varying state laws regarding health directives.

A DPAHC allows you to give either limited or broad rights to your health care agent, including the right to refuse or consent to treatment, the right to withdraw or withhold life-sustaining treatment, the right to make anatomical gifts and the right to access your medical records. Your health care agent does not have the authority to make legal and financial decisions on your behalf. A general Durable Power of Attorney is required for these rights.

California's Advance Health Care Directive consolidates the Durable Power of Attorney for Health Care (DPAHC), the Natural Death Act and the Directive to Physicians into one form.

Forms for both DPA and DPAHC are available for a nominal fee online at www.uslegalforms.com, but as both documents wield extensive legal powers, it is vital to choose your candidate carefully.

"The principles of a Durable Power of Attorney are conceptually easy," says James G. Schwartz, a Pleasanton-based attorney who does some estate planning. "But the meaning and consequences of the documents can be weighty."

Schwartz stresses the importance of choosing an agent that you trust, whether it be a spouse, partner, close friend or relative.

A DPA is effective immediately after it is signed, meaning that your attorney-in-fact will have the legal authority to act on your behalf even while you are still competent.

A "springing" DPA becomes effective at a later date, most often after the principal becomes mentally incompetent. It "springs" into effect once a physician or other designated individual certifies that you have lost the capacity to make decisions for yourself. Complications with springing DPAs may arise due to possible ambiguities involved in deciding when a person is mentally incompetent. For this reason some banks will be reluctant to accept a springing DPA.

Schwartz rarely uses springing DPAs. "Married couples often have joint accounts and property rights so a Durable Power of Attorney is just an extra safety precaution in the event that something happens, particularly in the event that any questions arise about joint property rights."

A DPA is also helpful for unmarried couples who do not share joint rights to property or accounts. "It's a way to make sure your estate is used the way you want it to be used," says Schwartz.

While most of Schwartz's clients are married with assets like a house and pension plan, he says that single people with assets may also benefit from

appointing an attorney-in-fact.

For a fact sheet on Durable Powers of Attorney, visit the Family Caregiver Alliance's Web site at www.caregiver.org - Jenny Slafkosky

Funeral choices, organ donation

One day, you will stop breathing. Your heart will rumble - or perhaps fade - to a stop, and the electrical signals that flash around in your brain will stop transmitting. You will go still.

And though it's hard to imagine while you are living in it, once you die, something must be done with your body.

Arranging for your funeral before-hand can reduce suffering for the survivors, says Debbie Plato, general manager of Callaghan Mortuary and Livermore Crematory, because planning a funeral is quite detailed. Do you want embalming? Visitation? Open or closed casket?

Think of all the choices your survivors would have to make if you died without a funeral plan.

"The day of death is often the worst day of (the survivors') life (and) the amount of questions is so overwhelming that sometimes we don't even get to finish our arrangements," Plato says.

Roughly 50 percent of the business at Callaghan Mortuary is pre-planned, a number that's rising all over the country. The most secure way to make sure your arrangements are set is to take out a pre-paid insurance policy to cover funeral costs. These policies, which can be purchased with the help of a funeral home, can be transferred from state to state if you move, and they are not counted as assets should you need to go on MediCal or other state assistance.

Most funeral homes will lock in the price of services, so no matter how long you live after you purchase a policy, your survivors will not have to make up the difference between today's costs and the cost of a funeral when you die.

If you plan to be buried, the major costs are the funeral services, the casket and the cost of the burial plot.

At Callaghan Mortuary, the package funeral cost is $3,500. That includes embalming, visitation, services at the chapel, transportation for the family to the cemetery. It does not include the casket - which can range from $900 to $5,000 - and the burial plot, which can range from about $3,800 to $4,500.

Plato says one trend in the funeral industry is choosing against embalming. Ten years ago, she says, nearly all of the bodies that went through Callaghan were embalmed. Now, she says, only about half are.

MDRVIf you plan to be cremated, the major costs are funeral services and visitation before cremation and the actual cremation.

At Callaghan, the cremation costs $1,495. Having a memorial service at their chapel is $550, and the traditional fee for a clergyperson is $150. Having a day of visitation before the cremation is $200 to $400 a day.

One of the reasons that cremations are more popular today than they have been in the past is the mobile nature of society. If you were born in Pennsylvania, spent your young adulthood in Chicago and now live in Fremont, what cemetery plot do you choose? Being cremated allows your ashes to travel with your family.

Another possibility is to donate your body to science. Plato says the medical school she works with most of the time is the University of California, San Francisco.

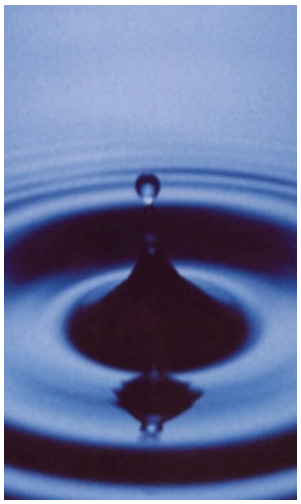
Donating the body is also an economical choice - the only cost is transporting the body to the university. Families may choose to have a funeral service, which is paid for separately.

However, the donation of bodies must be done well in advance of death. It can also be revoked by next of kin if they are opposed to the deceased's choice. To contact UCSF's Willed Body Program, write to the Office of the State Curator; University of California, San Francisco; Department of Anatomy, AC-14; San Francisco, CA 94143-0902.

Organ donation, on the other hand, can be arranged at the time of death. While a sticker on your drivers license is a good indication of your wishes, discuss that you want to be a donor with your family well beforehand, because doctors will

not harvest organs without the permission of the next of kin. Organ donation does not affect whether there can be an open-casket funeral. - Elizabeth Jardina

Leave a legacy



Now that you have a whole list of tasks to address, don't neglect the most meaningful one of all: the legacy you'd like to leave behind.

For most of us, our children will be the most tangible legacy we will ever know. Those who are teachers or artists can trust that their efforts will live on among the people their work touched.

You might want to spend some time thinking about what touched your life and was important to you: Loved the theater? Endow some auditorium seats. Avid gardener? Plant a tree. Of a scholarly bent? Endow a scholarship so others can follow in your academic footsteps.

It may be enough to leave a tangible token you were here, a bench with a simple plaque on your favorite golf course or park.

One national organization, Leave a Legacy – www.leavealegacy.org – encourages people to put some form of charitable giving within their wills, something only 6 percent of Americans do. Colleen Lukoff, director of the group's South Bay chapter, suggests looking at what you give annually to your dearest charity and give 20 times that to their endowment fund, ensuring your donation goes on in perpetuity. "Your gift would go on forever," she says. "That's a powerful action."

The gesture may also serve to remind your family how important that church or food bank was to you. "It's not just about what you end up with," Lukoff says, "but how you change the world by thinking about others when you're not here anymore."

More personally, don't be afraid to leave your family and future descendants a better understanding of your life. Preserve your old love letters, even those bad attempts at poetry. Label photo albums for future generations and have your estate cover fees to make duplicate copies for all family members.

Consider writing your family a letter, including your life story, a testament to your core beliefs, or exactly how you felt about becoming a father. Bequeath your family more than your stuff - leave them insight into your spirit.

Most of all, remember the legacy you'll leave behind is the one you're living today. So why not dare to dream? Set a world record. Finish that novel. Patent that invention.

And seek closure in your personal affairs: settle an injustice, forgive a misdeed, right your wrongs. If you strive to be remembered for your best qualities - your generosity, courageousness or kindness - make sure you nurture them now. - Melissa Schorr