

GONNELLA GEITTMANN, PC

Carol H. Gonnella
Admitted in WY & WA
carol@jhestatelaw.com

Attorneys and Counselors
575 South Willow Street,
Post Office Box 1226
Jackson, Wyoming 83001
(307) 733-5890 *voice*
(307) 734-0544 *facsimile*
www.jhestatelaw.com

Clay D. Geittmann
Admitted in WY
clay@jhestatelaw.com

Planning: the Gift You Give to Your Family

What if you were seriously injured and are now unable to make medical decisions for treatment. The doctors and hospitals do not know your wishes for treatment, and thus often do everything possible whether that is your desire or not. Had you signed a durable power of attorney for health care and named a trusted person to make those decisions, the doctors and hospital could then rely on that person's judgment for various types of medical treatment. If you are in a terminal state being kept alive solely by artificial means, a living will or directive to physician would convey your wishes regarding treatment in such a circumstance. These documents allow you to keep control over medical decisions about your body.

What if you were injured or had a mental condition wherein you were unable to handle your financial affairs. A living probate or conservatorship would need to be filed in court unless you had signed a revocable living trust and/or a durable power of attorney for your assets, naming a trusted person to manage your affairs until you are able to again do so. These documents will keep your affairs out of the courthouse, a process that mandates a judge to make decisions about managing your assets. Don't get us wrong, we have great respect for our judges and our court system, but they have neither the time nor the resources to know you, your family or your philosophy about life. Yet our statutes require the court to make personal decisions about your life. In addition, your affairs that you have always kept private are now part of a court file, subject to inspection by anyone who desires to go to the courthouse and look through the documents required by law to be filed.

For those of us who are parents with minor children, our office believes the most important thing a parent can do is name a guardian to raise the minor children if the parents are unable to do so. It is very simple to create a will naming a guardian and successor guardian. If you do not name a guardian in your planning documents, a judge who does not know your children or your family will be required to name a guardian to take your children. Once again, you have lost control. We have seen lengthy court litigation and bickering amongst family members fighting about who should raise the children. The court must then choose amongst a number of persons who are vying for the position. It can result in family battle wounds that never heal.

Regardless of whether you have done any estate planning, you do have an estate plan. If you haven't taken the steps to do your planning, upon your death the laws of the state where you live will plan your estate and decide when and to whom your assets will be distributed. This is called an intestacy probate. You have lost all control over the assets

you worked hard to acquire during your life. By signing a will, you have maintained greater control over your assets, as you have determined in your will how and to whom your assets will be distributed. This is called a testacy probate. And what is this probate? It is a court proceeding, and is required if you have no will or if you have a will. We have a friend who defines probate as follows: "A lawsuit you file against yourself, with your own money, to protect your creditors." The probate process can be avoided by signing a revocable living trust. Instead of a judge in an open courtroom overseeing your assets and affairs, a trusted person you name as the trustee is able to handle your affairs and distribute your assets pursuant to your instructions without probate and with privacy.

This article has not addressed the many ways estate taxes can be either reduced or eliminated upon death. The estate planner has many arrows in the estate planning quiver to legally reduce taxes and costs for the surviving loved ones. However, that discussion is for another article, as here we are addressing the basics. But the basics can include the great rewards that come from the human dimension of proper planning. The most precious things in our lives are our families and loved ones. Our clients are amazed to learn that their children can continue to run the family business, that the ranch doesn't have to be lost in a forced sale, that they can ease their children into their inheritance over a period of years, or that the property passing to their spouse and their children can be used and yet protected from the claims of creditors or unfortunate divorces. Proper planning gives peace of mind. In addition, it is a gift of love you can give to those who are important in your life.