Estate protection: Plan early, plan often

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Estate planning may not be the first item on the to-do list once physicians complete residency and start practicing, but it should be.

Physicians have similar concerns and needs when it comes to estate planning as non-doctors do, but they accumulate wealth to a greater degree and more quickly than most people, says Kara Rademacher, JD, an estate planning and administration attorney with New York City-based law firm Douglass, Rademacher and Brown. Furthermore, physicians work in a profession with a high likelihood of getting sued, hence the more urgent need for estate planning that protects assets and puts in place direction for transitioning or unwinding a medical practice.

But one of the main obstacles in conducting due diligence in estate planning is contemplating death, a task no physician enjoys, says Lori Anne Douglass, JD, an estate planning attorney and colleague of Rademacher at the law firm. So she suggests that her clients to reframe their perception of estate planning.

It is, she says, about protecting assets for future use before death as much as it is for leaving a legacy. “People think of estate planning as planning for your death, but it’s really planning for your own future.”

To ensure effective protection, physicians must put in place basic estate planning documents and consider going above and beyond those with some asset protection strategies.

Core estate planning documents, dictating what happens to a person's assets after death or incapacitation, include a last will and testament, a financial power of attorney, and a medical power of attorney.

There are do-it-yourself services for creating a will, but a physician's estate is complicated enough to warrant hiring an attorney, says Rademacher. "Physicians should look for an attorney who has expertise not only in estate planning, but in asset protection and business succession planning as well," says Rademacher.

Finding the right assistance

One way to find a reputable estate planning attorney is to ask for a referral from another attorney, such as a real estate attorney. Attorneys, Rademacher says, tend to be well connected with each other across practice areas and often have a good sense of expertise and quality. Financial advisers or other service professionals, such as accountants, could also be resources for a referral.

Other sources for finding an estate attorney include the local bar association and a lawyers' rating service called the Super Lawyers directory for the geographic area where the physician lives or works.

Physicians should identify two or three potential estate attorneys and call each to learn what their services cost, how the bill is calculated, and when payment is expected, says W. Ben Utley, CFA, president of Physician Family Financial Advisors in Eugene, Ore. Utley often gets estate planning conversations started with his clients and then connects them to estate planning resources.

After selecting an attorney, physicians should make two key appointments at the same time: the first to discuss what should be in the will and the second to execute what was discussed in the first appointment, he says.

To save money, there are steps physicians should take before meeting with the attorney, Utley says, such as deciding who will be named guardians of any children or what happens to assets in the event of the death or incapacitation of all beneficiaries

named in the will. Physicians should also make lists of all assets, all debts, any life insurance documents, and beneficiaries (such as for 401(k) plans).

“It’s better to do this thinking when you’re at home than when you’re sitting in front of an attorney at $300 an hour,” he says.

The will: the heart of estate planning

The will is the centerpiece of an estate plan. It dictates how and to whom assets are distributed after death. It also designates an executor—the person who will administer the estate.

An effective will not only sets forth the wishes of the testator (the person making the will) but also provides for contingencies, says Rademacher.

For example, if, at the time the testator signs the will, he or she is married without children and has assets below the federal and state estate tax exemption amounts, the will should set forth how the estate should be administered if a spouse survives or predeceases him or her and what to do if there are surviving children.

A will also should designate someone to manage digital assets, Rademacher says. That person will have the authority to close social media profiles, shut down blogs, or transfer them to someone else. Without legal designation in the will—or in a financial power of attorney in case of incapacitation—online accounts often can’t be touched, she says.

Some states have regulations about digital asset management after death or incapacity. If a physician only takes one estate planning action, the last will and testament is the way to go because it ensures the testator’s wishes dictate what happens rather than the state being in control and it will save the surviving family a lot of hassle.

Thomas Leitner, MD, JD, a Wisconsin-based attorney specializing in estate planning, was about a decade into his career in internal medicine when his father, living in New York, died unexpectedly. While his father was in his early 80s and had “reasonable” financial resources, he hadn’t set up a will. A concentration camp survivor, Leitner’s father was intensely private and reluctant to discuss personal matters—even with his

family—and distrusted lawyers intensely. Without a will, his estate went into probate. “It was an eye-opening experience to say the least,” Leitner says.

It took over 18 months and $30,000 in legal fees to resolve his father’s estate. Having an estate plan in place is important, he says, “… because if you don’t and you pass away early, you will introduce unwanted complications for your family for a process that should be fairly smooth.”

PLANNING FOR INCAPACITATION

The second core estate planning document is a financial power of attorney. An effective one grants an assigned person the authority to manage the finances of an individual who is alive but incapacitated.

Upon death, this document (and the medical power of attorney) becomes null and the will takes precedent. A financial power of attorney is particularly important for physician practice-owners, says Douglass, because the designated person will be able to guide what happens with the practice—for example, whether to keep it operating if there is a short-term incapacity or unwind it if it’s permanent.

As with the will, someone familiar with the practice should be selected as financial power of attorney due to the particularities of running a medical practice, for instance, knowing how to handle HIPAA-regulated patient files. The third core document is a medical power of attorney. It designates someone to make healthcare decisions, Douglass says, and that applies to any health-related situation, not just end-of-life.

So, for example, if someone is in surgery and a surgeon needs permission to do more extensive surgery than originally planned or someone has become mentally incompetent and needs someone to direct medical treatment for ongoing care. A medical power of attorney appoints someone who knows and is willing to carry out the medical and end-of-life wishes of the principal.

BEYOND THE BASICS

In addition to those three core documents, physicians may want to consider other estate planning strategies that help protect their assets. One of the simplest strategies is titling of assets, says Rademacher. Assets are put in the name of the physician and that of another person or entity, such as a trust, and those assets will be protected from creditors.

A trust is also a popular option for protecting assets, she says. There are a number of different trust types, and a thorough conversation with an estate lawyer will help determine which is best. There are pros and cons to trusts, says Laura Johnson, JD, who specializes in estate planning at Baltimore, Md.-based law firm Gordon Feinblatt.

On the con side, they can be cumbersome because they have trustees and are separate tax-paying entities that require separate tax returns. On the pro side, they offer a measure of protection from creditors and some control in difficult or unusual family situations. For example, if a child has a disability and is eligible for governmental assistance for that disability, a trust can set up a support system that wouldn't circumvent or disqualify the child from receiving those benefits. No matter what protective measures are put in place, it's best to set up that protection before getting sued, she says. Physicians don't want to be accused of fraudulent conveyance—where assets are transferred solely to avoid a creditor

NOT ONE AND DONE

Initial estate planning is only the beginning, says Rademacher. "Physicians keep their estate planning documents relevant by keeping the asset protection features up-to-date," she says.

For example, if a doctor establishes a family limited partnership to transfer wealth to the next generation but fails to properly maintain it, those funds, or some of those funds, may be accessible to creditors.

As a general rule, Rademacher says, physicians should review their estate planning documents whenever there is a significant change in circumstances, such as marriage, divorce, the birth of a child, or meaningful change in wealth, or, if there are no significant changes, every five years.