Catholic Estate Planning: What You Need to Know

This article is the first in a series about estate planning, stewardship, and end of life decisions from a Catholic point of view. The goal of this series is to highlight some of the important documents typically found in a good estate plan and to outline some of the Catholic teachings to consider when meeting with legal and financial advisors.

The first question that might come to mind is, what, exactly, is estate planning? It might be described as making decisions and arrangements about financial and family matters during one's life so that these decisions and arrangements can be carried out by others in the event of incapacity or death. Estate planning is memorializing these decisions and arrangements in properly drafted documents that are legally binding.

But estate planning from a Catholic point of view is more than that. Some people want to ensure that their end of life decisions, funeral preparations, and other matters are handled in a way consistent with Catholic teaching and beliefs. It can be difficult to incorporate these teachings and beliefs using standard forms and documents. Therefore, while one aspect of estate planning is drafting documents, such as a will, to dispose of our assets, another aspect is ensuring these documents protect the person and respect his or her moral beliefs, both in life and after death.

The Catechism of the Catholic Church states, "In his use of things man should regard the external goods he legitimately owns not merely as exclusive to himself but common to others also, in the sense that they can benefit others as well as himself." The ownership of any property makes its holder a steward of Providence, with the task of making it fruitful and communicating its benefits to others, first of all his family" (CCC 2404). This paragraph of the Catechism reminds us to consider our material possessions as merely temporary, something we can use and enjoy during our lifetimes, certainly, but also something to be passed on, whether to our family, to our friends, to the Church, or some combination of the above. The primary estate planning tool to accomplish this task is the will, the first of the basic estate planning documents. A will is a document to communicate decisions made about how assets are to be distributed upon death.

Generally, spouses want to take care of each other during lifetime and then leave the rest of the assets, if any, to the children. People often also want to make some kind of charitable gift to their parish, or the Diocese, or another charitable organization. Unfortunately, under North Carolina law, if one dies without a will, the surviving spouse might not receive all of the deceased spouse's assets and any intended gifts to charitable organizations will likely not be funded. In addition, under North Carolina law, parents may appoint another person in their wills to serve as guardian of their minor children if both parents were to die prematurely. Otherwise, presumably anyone in the family might petition a court to be appointed guardian, which may or may not be the same person the parents have in mind. A valid North Carolina will can avoid these traps and make sure the assets go to the right place, at the right time, and in the right way.

It is important to note that there are some things a simple will generally does not control. Non-probate assets, like life insurance, IRA's, 401(k)'s, and jointly-owned assets will be distributed to the named beneficiaries or joint owner. Additionally, simply leaving assets to the children in the will may not protect the assets from being improperly spent, lost in a divorce or bankruptcy, or counted against the children if they were to apply for financial aid or scholarships. In order to address these concerns, some kind of trust, either within the will or in a separate document, is needed.

It is easy to get caught up in the day-to-day grind and put off thinking about what we want to have happen to our possessions, our family members, and our bodies in the event of sickness or death, and to do so in a way that respects and protects our Catholic beliefs. Unfortunately, I have seen cases of individuals and families who have waited too long to make decisions or prepare documents, often leading to disastrous results. It is never too early for us "stewards of Providence" to ensure that our estate – whether large or small – remains "fruitful and communicating its benefits to others," as the Catechism states, even in the event of our death. In the next article, I will review the importance of a well-drafted durable power of attorney, a document that allows others to assist with one's financial matters in the event of incapacity, with often overlooked provisions that are sometimes missing from basic forms.

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Catholic Estate Planning: Power of Attorney

This article is the second in a series about estate planning, stewardship, and end of life decisions from a Catholic point of view. The goal of this series is to highlight some of the important documents typically found in a good estate plan and to outline some of the Catholic teachings to consider when meeting with legal and financial advisors.

In the first article, I reviewed the importance of a validly-drafted North Carolina will and how it can be used to pass on your temporary material possessions to your family, to your friends, to the Church, or some combination of the above. In this article, I will focus on the need for a general, durable power of attorney and how this document is an additional tool to help you take care of our possessions as stewards of Providence.

A general, durable power of attorney is a document in which you can appoint someone to make a variety of financial and other decisions for you if you are unable to make those decisions yourself. It is similar to appointing someone as an agent, with limited or broad authority depending on how the document is drafted. The term "durable" in this instance means that the power of attorney is valid and enforceable even if the person signing the document is later determined to be incapacitated. This makes the general, durable power of attorney more flexible and usable in a variety of circumstances. However, granting someone this authority also means the person appointed will have a significant amount of power and responsibility if and when the document is used. As with the other documents in an estate plan, it is therefore critical to pick the right person to serve in this role.

From a practical standpoint, one issue that I have seen in my many years of practice is people using power of attorney forms that are inadequate or insufficient to deal with the wide variety of transactions and financial matters that often must be addressed. For example, it is often critical for many of my clients to include a provision that allows the attorney-in-fact broad discretion to make gifts or transfers of assets. There are a variety reasons to include a broad gifting provision, including the ability to continue an established charitable plan for the benefit of one's parish, the Diocese, the Bishop's Annual Appeal, or the Cathedral campaign. A broad gifting provision also might be needed to help qualify for Medicaid or VA benefits or reduce a potential tax liability. Additionally, it is important to include the power to make or change life insurance or 401(k)/IRA beneficiary forms in the event the beneficiary designations are incorrect or incomplete or do not tie in with an established estate plan, such as to fund a trust for children. Lastly, the general, durable power of attorney should include provisions giving the attorney-in-fact broad authority to obtain health records and medical information when dealing with Medicare or health insurance companies because such information might otherwise be subject to various privacy laws.

I will conclude with a few final points about general, durable powers of attorney and why they are critical documents in a complete estate plan. Without a general, durable power of attorney, one might need a court to appoint an individual as legal guardian for an incapacitated family member, which can be an expensive and time-consuming process. If one has executed a general, durable power of attorney, then in most cases a guardianship hearing will not be needed. In addition, with a general, durable power of attorney in place, one might not need to add children or other family members as joint owners of real estate or bank accounts, which can have significant unintended tax and Medicaid consequences, because the attorney-in-fact can generally access and manage those assets without being named a joint owner.

Ultimately, a general, durable power of attorney is one part of any good estate plan and can be used by your attorney-in-fact to deal with just about any asset or financial matter that may arise.

Ultimately, a general, durable power of attorney is one part of any good estate plan and can be used by your attorney-in-fact to deal with just about any asset or financial matter that may arise. It can be a great benefit knowing that others are in place to manage your possessions as stewards of Providence during difficult times. In the next article, I will review the importance of a well-drafted health care power of attorney or advance medical directive, a document of extreme importance to ensure that your wishes regarding health care decisions and end-of-life matters are carried out, especially when those wishes are intended to follow Catholic teaching on the sanctity and dignity of human life at natural death.

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