

## BECKER'S HIERARCHY FOR LEGAL WELL-BEING (Planning for Murphy's Law)

### 1. **Your and your family's personal health and finances:**

What happens to you - Health care directives and Personal Management. These simple documents eliminate delays in addressing medical issues, family disputes and pressures, and unnecessary legal proceedings (guardianship or contests over who makes decisions for you). **You** should determine who is authorized to act in your place if you become unable to communicate, whether because of an accident or medical condition. And... did you know you have no legal authority to make decisions for your 18 year old child - or your own spouse? It could be necessary for you to become legal guardian over your own spouse or adult child and report to a court for everything you do. If you are in a vegetative state or terminal condition with no hope of recovery or improvement and do not want to be maintained on machinery, you need to make it clear in a living will. The more specific your instructions the better. Also, if you or a family member needs nursing home care, to collect insurance benefits, or to apply for government benefits, you need to be sure someone has authority to make the applications and to transfer assets or establish trusts to see that you or they qualify.

Appropriate Documents:      Designation of Health Care surrogate - for medical authority  
   Living Will - for directives  
   Durable Power of Attorney - for financial authority  
   Pre-Need Designation of Guardian - for minor children or you

### 2. **Your and your family's livelihood:**

What happens to your income - Business agreements: There are many business agreements and plans that can ensure your income during your working life, utilize pre-tax dollars and save income or capital gains taxes, provide for disability, and see that you receive the benefit of what you've built when you're ready to step down. The key is to set these plans up before you need them, when you and your partners or potential purchaser/key employees are still on your "honeymoon". People tend to be more objective then and it's easier to achieve an acceptable quid pro quo. Once someone's sick, disabled, or simply tired (of you, the business, or *WHATEVER*), then stresses, conflicts and money problems arise; trust and good faith often go out the window. Also, if you objectively set up valuation/incentive/disability plans in advance, you and your family know ahead of time what your duties and rights are, and what your opportunities are, *as* you build your company. Do you *really* want to be in business with your partner's spouse or children, or have your family dependent upon your partner's generosity?

Appropriate Documents:      Buy-sell agreements  
   Deferred compensation plans  
   Executive bonus plans  
   Key person incentive agreements  
   Insurance plans

### 3. **Your estate:**

What happens to your "stuff". Although this is still important, it is the least important, in my mind. Florida statutes will distribute my estate (anything I own, anywhere in the universe) to my family whether I have a will or trust or not. (See the other side for details on *how*.) However, if you have a spouse, step-children, nonmarital life partner, minor children, or beneficiaries with special needs, charitable beneficiaries, or simply, friends you would like to leave something to, you *must* have a last will & testament or trust. And, if you and your spouse are both incapacitated or killed, who will have custody of minor children? Do you want your spouse to be able to leave your estate to his or her next spouse? Who is the person you want to settle your affairs? Who is emotionally and best equipped to handle the task, who is available, and who will exercise the best judgment and be able to "keep the peace" in the family? A cynical note: It's often the person who is the worst choice who fights the hardest for the authority.

Appropriate Documents:      Last Will and Testament  
   Pre- or post nuptial agreements  
   Contracts for wills  
   Pre-need designations of guardians  
   Revocable living trusts  
   Special needs trusts, irrevocable trusts

4.      **Your rights as a survivor - according to Florida Statute** (most states have similar provisions)  
         Spousal Rights. Spouses usually leave their entire estates to one another in what we call “I Love You” wills. But, the surviving spouse may or may not maintain the same distribution plan upon his or her death. In later years, with isolation, possible diminished capacity, and sometimes actual mental illness, people are often influenced by new spouses with step-children, neighbors, caregivers - anyone upon whom they’ve become reliant. The planning devices above address that issue.

What a spouse *cannot* do is disinherit the other completely. Spouses may mutually agree to a pre- or postnuptial agreement that obligates themselves to whatever terms they agree upon. If there is no nuptial agreement, the following Florida statute rules apply: (Note: these rules apply only to property that is held by the decedent only. Anything held in joint names automatically passes to the joint owner)

If: Decedent dies intestate (without a will) or with an old will executed prior to the marriage:  
     Surviving spouse is entitled to 100% if there are no children or only joint children, or  
     50 % if either decedent or spouse individually had one or more children.

If: The bum or witch executes a will after the marriage which either omits the survivor or says the survivor is not to receive any of the estate, the survivor may claim a *spousal elective share*: 30 % of the decedent’s estate.

In all cases, the survivor is *also* entitled to:  
         if the homestead is in the decedent’s name alone, a life estate  
         a “reasonable” family allowance of up to \$ 18,000  
         Two motor vehicles  
         household furnishings and appliances valued up to \$ 20,000

These entitlements are governed by strict procedural rules and can be lost if you fail to file a timely formal claim. It is essential that you obtain legal counsel if you think any of these situations apply to you.

Dealing with these issues may seem overwhelming, unpleasant, and too expensive. But living with the consequences of *not* dealing with them will be far more unpleasant and costly, financially and emotionally. Working with advisors who understand your total circumstances and who know how to accomplish and safeguard your goals can be the best investment you’ve ever made. There is no better investment than protecting you, your livelihood, your estate and your rights. Peace of mind is invaluable.

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