

LEGAL ALERT!

ESTATE PLANNING FOR THE NOT SO RICH

In February 1990, Terri Shiavo, a Florida native, was placed on life support after suffering a cardiac incident. Eight years later, her husband sought permission from the courts to remove her life support. Mrs. Shiavo's parents vehemently opposed. As of the writing of this article, the case is still in litigation. Sadly, the Shiavo scenario is not uncommon. The parties could have prevented litigation, preserved the familial relationship, and avoided unnecessary medical bills if Mrs. Shiavo had a **basic** estate plan.

A basic estate plan should:

- address your wishes regarding life sustaining medical care;
- establish a means of transferring assets from one party to another;
- appoint a person to take custody of minor children (children under the age of 18) and safeguard their assets; and
- appoint a person to take charge of your finances in the event that you become temporarily or permanently incapacitated.

CLEARLY CONVEY YOUR WISHES REGARDING MEDICAL CARE

Many estate plans tend to ignore the importance of a healthcare power of attorney (healthcare proxy). A healthcare proxy is a document that gives someone you trust (defined as an agent) the authority to make healthcare decisions on your behalf in case you are incapacitated, and thus, unable to make such decisions yourself. To be effective, you need to inform your agent about your preference regarding artificial life support, and under what circumstances you would not want to be resuscitated. In the event that you become incapacitated, your agent would communicate your healthcare preferences to your doctors, who would be legally obligated to follow them.

A complement to the healthcare proxy is a Living Will. This document works similarly to a healthcare proxy without utilizing an agent. Specifically, your healthcare wishes are contained within the document. It is advisable that you give

your primary care physician a copy, keep a copy for yourself, and, when utilizing both a Living Will and a healthcare proxy, give your agent a copy.

AVOID STATE INFLUENCE OVER YOUR CHILDREN AND ASSETS

Most people who have an estate plan usually have a Will. Experts say that all adults should have a Will regardless of economic position. Among its many important functions, a Will allows a person to designate who will receive his or her assets at death. In the event that a person dies without a Will, the laws of the state where that person resides will designate the beneficiaries of his or her estate, which may not be the outcome that you want. Most states have laws that allow the state to be a beneficiary!

Moreover, a Will allows parents with minor children to appoint a guardian(s) for the minors. Clearly, the last thing that a child needs who has just lost a parent(s) is to be the center of a custody battle. By stipulating in your Will who you want to have custody of your child(ren), you will avoid any unnecessary court battles for custody.

About Florestal Law Firm

Since its inception in 2001, Florestal Law Firm (FLF) has been committed to providing our clients and their families with comprehensive legal advice concerning their **tax and estate planning** needs. In addition, the firm is dedicated to offering guidance on matters related to **elder law planning, probate and non-profit law**. For more information, please contact us at **646.375.2132** or visit our web site at **www.florestallaw.com**.

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TAKE CONTROL OF YOUR FINANCES

Lastly, another frequently overlooked estate planning document is a power of attorney. This document gives your agent authority to make financial decisions on your behalf while you are alive, i.e., pay your bills, make deposits and/or withdrawals to and from your bank account, sell your assets, etc. A power of attorney may be used if you are incapacitated or just for convenience. Also, the person used here as your agent need not be the same person used in the other documents.

DON'T RISK IT!

While many people in the lower middle class to middle class categories recognize that estate planning is an important part of life, the vast majority do not have an estate plan for various reasons ranging from superstition to a lack of knowledge. It is **imperative** that you make a commitment to create an estate plan that suits your particular situation. Similar to insurance, an estate plan is something that you need to prepare for the unforeseen. Don't risk going another day without a basic estate plan before it's too late.