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YOUTH—BIG JOBS, WEDDINGS...AND AN ESTATE PLAN

AN ESTATE PLAN—THE GIFT THAT KEEPS ON GIVING



By Lauren Maddente

The honeymoon is over. The wedding gifts are all unwrapped. Packers season is here. So is fall. And I'll soon be (gasp!) 28 years old.

After unwrapping all the kitchen utensils, plates, blankets, and pillow cases, not to mention the Fiestaware, I thought I had it all. Turns out there's one thing my husband and I are missing—an estate plan.

As a new lawyer and newlywed, an estate plan seems like something I wouldn't need to think about for years to come. After all, unless you count a few of my childhood items such as my American Girl doll, Ray Allen jersey, or impressive rock collection, I don't really have anything of value.

I'm not even 30, don't have a bunch of money, haven't bought a house, and haven't had kids yet.

I couldn't possibly need an estate plan....right?

Wrong. As I recently learned from my FOS colleagues, this is a misconception. My husband and I need an estate plan. Unfortunately, we didn't ask for one on our

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AN EXTRA HOUR TO CHECK YOUR ESTATE PLAN

For many, the end of Daylight Savings Time—November 5 this year— signals an extra hour of sleep and an excruciatingly early nightfall.

There's not much anyone can do about Wisconsin's months of darkness.

But that extra hour can be used for something more important, if less enticing, than continuing your dream of winning the lottery.

Take that extra hour and pull out your estate planning file.

Then jot down your major life changes over the past couple of years.

Divorced? Widowed? Remarried? Adopted a child? Make sure your will, trust and beneficiary designations are up-to-date with your current, not your past, circumstances.

How's your health? Planning any significant medical procedures? Make sure your

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FOS associate and newlywed Lauren Maddente, whose article appears immediately to the left, doubtless received many, many gifts celebrating her recent nuptials.

Vases. Picture frames. Dishes. Cookware.

Lauren may have five unboxed toasters sitting on her kitchen table as you read this article.

As Lauren's article confirms, one valuable gift which she and her new husband did not receive, but one which they sorely need, is an estate plan.

No one, especially a young newlywed, wants to think about illness, much less an unexpected or untimely death.

True, Lauren and her husband are just starting their newly joined life. True, they do not yet have children. And true, they do not yet own the amounts and types of assets which take years to acquire.

But they have each other. Which is why, more than anything else, they need Health Care Powers of Attorney.

This document will allow Lauren, for example, to designate her husband (or anyone else she wants) to act as her proxy if she cannot act on her own behalf for medical reasons.

It will also allow her to state her wishes as to specific medical matters, such as feeding tubes and resuscitation, and to spare her husband (or other designee) from making difficult decisions as to those is-

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HONEY, DID YOU CHANGE MY PASSWORD — AGAIN?

Email. iTunes. Online access to financial accounts. Online genealogical accounts. LinkedIn. Facebook. The Cloud. And the President’s favorite — Twitter.

Each of these constitutes a form of digital property.

While not tangible, like a car or house, digital property is nonetheless property. It has value, both financial and sentimental. And its management and “distribution” at death must be considered in the creation and review of every estate plan.

Wisconsin’s recently enacted Digital Property Act recognizes the importance of digital property. The Act expands and details the authorized disclosure of digital property to fiduciaries, such as personal representatives, trustees, power of attorney agents, guardians and conservators. FOS of-counsel **Kenneth Barczak** was a member of the committee which helped craft the statute’s language.

The statute is a good step forward in streamlining the administration of a deceased’s web-based assets. However, it will be useless to a family if the deceased is the only person who knows (or remembers) the password to access a digital asset.

Lesson 1, then, is to make a list of all digital passwords, keep the list in a secure place or in a program which keeps them digitally (remember, you will need a password to access that program) and let a *trusted* friend or relative know where to find the list. Be sure to *update the list as your passwords change*.

Lesson 2 is to evaluate the disposition of your digital assets just like you evaluate the disposition of your tangible property. Should your music-loving daughter get your iTunes account? Your brother your digital photos? Your mother your digital family tree?

Include these assets in your estate plan. Then go check your Instagram.

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Health Care Power of Attorney is all signed and set.

Open any new financial accounts? Take out any life insurance? Make sure your beneficiary designations are up-to-date.

Child off to college? Have him or her complete and sign a Health Care Power of Attorney so you obtain health care information and can act on his or her behalf if a medical emergency occurs.

Buy some property? Confirm the title and property are consistent with your existing estate plan.

And if you don’t have an estate plan? Make a list of your assets and liabilities. Consider who you trust to handle your financial and medical affairs if you can’t do so. Consider how and to whom you want your assets to be distributed if you die.

Email your FOS attorney for an appointment.

And *now* go take a nap.

FOS’s ESTATE PLANNING ATTORNEYS



**FOS shareholder
Allan T. Young.**

A Certified Public Accountant (CPA), Al worked at the Big 8 Arthur Andersen accounting firm before joining FOS.

Al is a member of the Greater Milwaukee Foundation’s Herbert J. Mueller Society. He is a past Chair of the Wisconsin Bar Association’s Taxation Section and a former Chair of the Milwaukee Bar Association’s Taxation Section.

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Greg worked at the Big 8 Arthur Andersen accounting firm before joining FOS. He is a CPA.

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Bailey worked in the Business Tax Services department of Big 4 accounting firm Deloitte Tax, LLP before joining FOS.

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AVOID PROBATE—IMPLEMENT YOUR ESTATE PLAN

One frequent purpose of a well-crafted estate plan is to keep your assets out of “probate” when you die.

Probate is a formal proceeding in which a court oversees the disposition and distribution of a deceased person’s assets. It is public, which means that the provisions of your will, once filed with the court, will no longer be private. It can be costly, through filing fees and inventory fees based on the value of your publicly listed assets. And it can be cumbersome, involving court hearings and approvals.

To avoid probate while achieving the same dispositional result, many estate plans create a trust, which is private, which you control during your lifetime, and which is administered outside of probate upon your death. Such a plan involves transferring property to the trust during your lifetime or at death by attaching a beneficiary designation to property naming the trust as beneficiary.

To further avoid probate, insurance policies and financial accounts, including 401(k) and retirement accounts, may be titled or contain beneficiary designations which transfers their assets to a trust or other person or vehicle outside of your probate estate upon your death.

The best planning, however, will be useless if it is not implemented.

For example, a house titled in your name, as opposed to your trust’s name, will go through probate upon your death. Similarly, the proceeds of an insurance policy on your life will go through probate if your estate is the named beneficiary. And if you haven’t even filled out a beneficiary designation for your retirement accounts? Off to the probate court your family will go.

It is not always easy to tie up the “loose ends” of estate plans. But dotting the “I’s” of deeds and the “T’s” of beneficiary designations can make or break an effective plan. Your FOS estate planning attorney can help you create and implement an estate plan which serves your family’s needs both during and after your lifetime.

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wedding gift registry.

As I’m learning, life is full of surprises. Since it’s impossible to predict what the next day holds, I’ve learned we need a solid plan in place, addressing health care and financial decisions, as well as asset bequests.

What happens if I suddenly become ill? My husband passes away? Or worse—we both pass away? What if we buy a home? Or buy real estate outside of Wisconsin? What about when we have a kid or two? If we do have kids, who will be their guardians?

So many things to think about. I need a professional to guide me to the answers.

So, while I have already gotten a lot of use from the new knife set, pillow cases and toaster, it’s time to check one last thing off the list—an estate plan.

Just as I have done, contact your FOS attorney today about drafting or amending your estate planning documents.

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sues.

In addition, while Lauren may not yet have amassed a fortune (that we know of), she still owns property. Checking, savings, and retirement accounts. Jewelry. Furniture. Family mementos.

Not to mention her marital property rights in those five toasters.

Without a will, these assets will automatically go to Lauren’s husband if Lauren dies.

But what if Lauren and her husband, for whatever reason, don’t want to share in some or all of the other’s assets?

What if, for example, Lauren wants some money to go to a relative who has been particularly kind to her?

And who should handle Lauren’s financial affairs if she can’t?

These and other matters can and should be determined through a full estate plan, including a will, trust (if applicable), powers of attorney and beneficiary designations.

So, next time you open an important wedding invitation, forget about the china.

Give the lucky couple a jumpstart on their estate plan.

After the gifts of dishes have broken and towels have stained, they’ll still be thanking you.

And you may find a toaster on your doorstep.



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POWER OF ATTORNEY PITFALLS — BE CAREFUL IN OBLIGATING YOUR PRINCIPAL

This newsletter recommends the use of various powers of attorney as a basic but important component of a complete estate plan.

A power of attorney gives the "attorney" the authority to act on behalf of the principal in financial and/or medical matters.

With such authority, however, comes the responsibility to act in the principal's best interests.

One acting on behalf of a principal under a power of attorney may be faced with signing complex contracts or giving significant consents.

One acting under Health Care Powers of Attorney may be asked to sign consents to invasive procedures.

Similarly, one acting under a financial power of attorney may be asked to sign contracts regarding assisted living facilities or nursing homes to which a principal may be transferred.

Because one acting under a power of attorney is acting on behalf of his or her principal, signing such a contract can subject the principal to significant financial obligations or waive the principal's rights under the contract.

The U.S. Supreme Court re-

cently addressed this issue in regard to the arbitration of nursing home disputes.

The Court, in *Kindred Nursing Ctrs. LP v. Clark*, held that a nursing home contract which required the arbitration of a wrongful death claim against a nursing home was valid and binding, even though the contract was signed under a power of attorney and even though the power of attorney did not explicitly authorize the "attorney's" power to agree to arbitration.

As a result of this decision, the estate of the principal—the nursing home resident—lost

the "right" to have a court / jury resolve its claim that the nursing home caused the principal's death.

The estate was limited to private arbitration, which occurs outside of the courts, involves privately retained decision-maker(s), can reflect more informal evidentiary procedures, and allows only very limited appeal rights.

It is critical for one acting under a power of attorney to understand what obligations the "attorney" is incurring on behalf of the principal.

FOS can help review and draft such contracts.