

It Doesn't Have to be Fancy, Just Clearer Than Clancy

Lessons from the Fight Involving Tom Clancy's Estate

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The situation involving Tom Clancy's estate, valued at approximately \$83 million, has been closely observed by estate planning practitioners. The case is between Clancy's widow and the adult children from Clancy's first marriage and involves a will that may not have reflected specific provisions as to the payment of estate tax. Both sides argued that the estate tax should be paid by the other, each relying on their reading of the "Savings Clause" in a codicil to the will, in the absence of specific and unambiguous language indicating the intention of Mr. Clancy. Clancy's widow prevailed ultimately in the battle (for now). The important lesson to be learned here is: When creating an Estate Plan, specificity and proper planning are critical.

The estate tax owed by Clancy's estate totals \$11.8 million and, based on the decision, will be paid out of the \$16.7 million trust set aside for Clancy's four adult children. Thus, the lack of specificity in favor of the Clancy children, if this was Mr. Clancy's intention, will have an enormous impact on them. Simple, boiler-plate estate planning documents may not provide specific guidance and do not typically address unusual issues.

There are three basic Estate Planning documents that everyone should have, regardless of their net worth: a Last Will and Testament, a Personal Financial Power of Attorney and an Advanced Medical Directive. Below are some brief descriptions of these three important documents:

1. Last Will and Testament. A Will is a written document that controls the disposition of a decedent's probate property, which is property titled solely in the decedent's name, or owned by tenants in common. If the Will meets legal and statutory requirements, it sets forth the decedent's wishes. The Will can also include instructions on the payment of taxes, funeral arrangements, the creation of Trusts to hold assets for beneficiaries (called Testamentary Trusts), guardianships for their children, and other provisions. The Will also appoints a Personal Representative, who oversees the administration of the estate. If desired, you can appoint more than one individual as Personal Representative.

It's important to note that if an individual dies without a Will, the disposition of their property is controlled by the intestate succession statutes. Through intestacy, an individual's relatives, through blood, marriage or adoption (called heirs) would inherit the decedent's property. This situation is the epitome of poor planning, as the disposition of property is completely out of the control of the decedent.

2. Personal Financial Power of Attorney. This powerful document allows an individual (called the principal) to appoint someone else to act as their attorney-in-fact (called an agent) with the authority to exercise financial powers on the principal's behalf. More than one agent can be appointed to act in this capacity. The principal can decide whether they wish to delegate broad powers or specific powers. In Maryland, Powers of Attorney are construed narrowly, so the principal must expressly provide provisions that are not addressed by statute, such as allowing for gift-giving. In 2010, the Maryland General and Limited Power of Attorney Act was enacted, which codified the relationship between the principal and agent, and requires that the agent's actions must align with the principal's known reasonable expectations and in the principal's best interest.

3. Advanced Medical Directive. In Maryland, under the Health Care Decision Act, this document reflects an individual's health care decisions, in the event that they are unable to express their wishes directly. An individual (the declarant) appoints someone else to act (called an agent) with the authority to make medical decisions on behalf of the declarant. The agent is also given the authority to confer with the declarant's medical professionals and to review and request medical records. If you wish to, you can appoint multiple agents to act in this capacity. This document also reflects the declarant's wishes on withholding of and/or withdrawing of life-sustaining procedures, when the declarant is in a terminal condition, persistent vegetative state or an end-stage condition. The declarant's choices involving pain management and organ donation may also be indicated.

All three of these documents, crafted by an experienced estate planning attorney, represent the basic foundation of planning that every individual should have in place, regardless of their net worth, wealth, or status.

Although not failsafe, as shown by the fight amongst Clancy heirs, taking the time to meet with an attorney, crafting a plan and ensuring that your specific estate planning goals will be met may avoid conflict that will outlive you.

For any of your transactional tax & estate planning needs, please contact an attorney in our Tax & Wealth Planning group:

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