

Heavy decisions and final arrangements

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WALHALLA — The cold fingers of death are waiting for us all, like rawboned vultures patrolling the periphery. While thinking about your own demise or that of your family members is a bummer, leaving loose ends until postmortem will just add red-tape to the sorrow.

Located in Seneca, the Toussaint Law Firm handles wills and power of attorney, among other legal matters. According to Toussaint office manager Tonia Watson, there are four documents everyone should have together before they die: a will, durable power of attorney, health care power of attorney and living will.

The Toussaint Law Firm handles estate planning for approximately 50 clients a year.

“Unfortunately, for a lot of the calls we get it’s too late,” Watson said. “We can’t do a will for them if the person they’re calling about is someone who has become incompetent. They’re past the stage we can help.”

Seneca-based attorney Jeremy Poindexter also handles estate planning.

“I always tell people to not wait because you never know what’s going to happen. You could be in perfect health and some idiot could hit you in a major car accident,” Poindexter said.

THE BASIC FOUR

By penning a will, clients are able to decide how their assets, including property, financial accounts and possessions, are distributed after their death. Without a will, those decisions are left up to the government. Although there are statutes that determine how the government



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proceeds, “you won’t have any control,” Poindexter said.

A durable power of attorney allows the client to appoint a person to make financial decisions for them in the event the client becomes incapacitated. Obviously, trust is a heavy factor here. However, without a durable power of attorney, those decisions go to the courts, and a guardian or conservator could be assigned to your estate.

“That can put a significant financial strain on your family and be very time-consuming also,” Poindexter said.

A health care power of attorney designates a person to make decisions for an incapacitated client in scenarios involving feeding tubes and other such medical decisions. Meanwhile, a living will names a person to be responsible for making heavy choices such as those involving breathing apparatuses.

All these decisions are bigger than buildings. Watson said leaving summation to the courts can not only skew the deceased’s real wishes, it can also instigate family feuds.

Although the probate process is usually as welcome as a case of chicken pox, Poindexter said the process — which transfers the assets from the deceased to their heirs — is “not one of those things to avoid at all costs.” Probate also allows any creditors to receive their due before the estate is divided to any heirs.

Poindexter named the infamous Terry Schiavo case as a prime example of drama that can befall those without proper estate planning. Schiavo collapsed in her Florida home in 1990 after experiencing cardiac and respiratory arrest, resulting in extensive brain damage and a persistent vegetative state. In 1998, husband Michael Schiavo petitioned the courts to have his wife taken off her feeding tube. In 2005, the tube was removed and Schiavo died — after 14 appeals and five suits were unsuccessful in preventing the tube removal.

SPECIAL REQUIREMENTS

Some individuals may require more than the basic four estate documents. Emerging trends in estate planning include special needs trusts, which set aside money for a special needs beneficiary in a trust to prevent them from becoming ineligible for any benefits their condition warrants.

Estates of persons with large estates may also require alternative trust measures, Poindexter said. Although make-your-own-will kits exist, it’s best to pursue estate planning with an attorney with experience in the field.

“There are lots of different tools out there depending on your specific situation. If you meet with an attorney, it will help you make the right choices for your estate,” Poindexter said.

Davenport Funeral Home Director Terry Hendrix also emphasizes looking forward. Located in Walhalla and in business since 1949, Davenport allows clients to lock-in current funeral prices by putting money towards the service in advance. By law, those funds are placed in individual accounts, with the interest going towards cost inflation. A full service traditional funeral at Davenport runs approximately \$4,540.

The funeral home issues a checklist of five questions persons should ask themselves regarding their services ... if they died tomorrow. The queries address funeral location, funding and arrangements.

“It’s never too early to have your wishes written down,” Hendrix said. “It gives your family something where they can say, ‘This is what they wanted us to do.’ Because most people want to do whatever the person who passed away would have wanted. But if you don’t have it written down ... ‘Well, they talked about it, but I’m not too sure.’ If you have these things written down it helps your family.”

Funeral work sheets address items from the obscure (favorite Bible passage, favorite songs) to the mandatory (vital stats for death certificate; more on that later).

Some people place their funeral plans in safe deposit boxes, also a frequent vessel for wills, for safekeeping. However, Hendrix warns decedent safe deposit boxes aren’t usually opened until after the funeral. Instead, he recommended giving a copy of funeral wishes to any children, or if you’ve decided on a funeral home, there.

“Most people perceive you have to pay for those things — you don’t,” Hendrix said.

Death certificates — which funeral homes must file within five days — require a bevy of ho-hum information: birthplace, mother’s name, mother’s maiden name, etc. Death certificates must be filed in the county in which the death occurs. This information is also used to write the person’s obituary.

“Just gathering the information is the biggest thing,” Hendrix said.

South Carolina now allows death certificates to be completed online; however, there are not yet enough doctors participating to make electronic submissions absolute, Hendrix said.