

## You Already Have an Estate Plan ... Do You Like It?

You may not realize it, but you already have an estate plan. Everyone does. If you have not developed a conscious estate plan and signed the documents necessary to put it in place, then your estate plan is the one that the state and federal governments have supplied for you. That raises an obvious and important question: do you like the estate plan you have now?

If you are one of those people who thought they did not have an estate plan yet, let's take a look at your "estate plan by default," and you can decide whether it might be wise to change it.

First, let's consider what will happen if you become incapacitated during your lifetime. In order to put someone in a position to act on your behalf in making and carrying out decisions for you, guardianship (and, in Missouri, conservatorship) proceedings will need to be filed for you in court. Not only will that involve thousands of dollars in expense, it will mean that you will be stripped of your fundamental right to make your own decisions, and your incompetence will be a matter of public record for all to know. Not only will someone else be making your decisions for you, but in the case of any conflict between what the laws provide and what you would have wanted, your wishes will have to be ignored.

If you think you have protected against that possibility by adding someone's name to your bank accounts as a joint tenant, think again. Yes, someone will be able to write checks for you, but that person won't be able to dispute any bills. If there is a problem with your Social Security, retirement or other benefits, he or she will not be able to address them. If you need nursing home care, that person will be able to spend your money to pay for it, but won't be able to protect your money to keep you from going broke. When you die, your check-writer will be legally entitled to keep everything that's left, with no obligation to share it with anyone else you would have wanted to get a share of your estate.

Under your default estate plan, no one will have any right to access your medical records, to tell a doctor not to keep ordering expensive tests which seem unnecessary, or to change doctors or hospitals if concerns arise regarding the management of your care. If you near the end of life and would die naturally except for extraordinary measures being taken to artificially prolong your life, no one will be able to act on your behalf to prevent that from happening.

When you die, your estate will be more likely to end up in probate than if you had acted to change your default estate plan. Your probate will be more expensive and will take

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longer than it might have. Your estate will incur a considerable expense for a surety bond for the person who is placed in charge of settling your affairs. That person will be chosen by the court, and it could turn out to be the last person you would have wanted to be in charge.

The state will decide how your estate will be distributed. People to whom you would have wanted to leave part of your estate may get nothing; people to whom you would not have left even a penny may instead get a substantial share. If any beneficiaries are under 18, a guardianship or conservatorship will have to be put in place, at considerable additional expense, to manage their share of the estate. If you are divorced, your ex-spouse will likely be the one placed in charge of the children's money.

If your estate is large enough that estate taxes are a problem, you will have done nothing to address that problem, and your estate will pay the highest possible amount of taxes. If there are any tax elections that could have been made to soften the blow, you will have chosen to miss out on those opportunities.

When most people learn about the estate plan they have chosen by default by not acting to put a conscious estate plan in place, they are generally alarmed.

*Nevertheless, as many as 70% of all Americans choose this "estate plan by default."*

The culprit? In a word, procrastination. Most people intend to put an estate plan in place "someday," but for procrastinators, "someday" never comes.

**It is a core concept of Better Estate Planning that everyone would be better served to have their own estate plan than the default estate plan they are stuck with by failing to act.** Our responsibility, as we see it, is to help make the process accessible and understandable, and to help people realize the real savings and peace of mind that investing in a well-constructed, personalized estate plan will bring them.

It will be our pleasure to help you address your estate planning needs and realize your planning goals. But first, you need to make an important decision: **Are you satisfied with your "estate plan by default," or do you want to act *now* to take control of your future?**

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