

HOW TO TALK TO YOUR PARENTS ABOUT ESTATE PLANNING

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WILLS - TRUSTS - PROBATE ESTATES - GUARDIANSHIPS

Disclaimer

This booklet provides general information and is not legal advice. Please consult with an estate planning attorney about your specific needs.

HOW TO TALK TO YOUR PARENTS ABOUT ESTATE PLANNING

Wills, Trusts, Powers of Attorney, and other estate planning tools are designed to 1) control how property is distributed according to a person's wishes when they pass, 2) control who is in charge of carrying out the person's wishes, and 3) ensure the right people are in charge if a person experiences a serious injury, illness, incapacity, or death. Sometimes plans are designed to avoid probate court or protect young, incapacitated, or irresponsible loved ones as well.

While we all need to take steps to get our own affairs in order, it is also important to encourage loved ones to do the same. First, we want our parents, children, siblings, aunts, uncles, etc. to be protected. Also, we don't want to be left with a mess to clean up.

Without a good estate plan prepared by an experienced estate planning attorney, the risk of costs, hassle, and family conflict is much higher.

The holiday season is a great time to sit down with family to make sure that they are protected.

BUT WHAT DO I SAY?

START WITH:

- I've been looking into a Will or Trust for myself. Have you taken care of that yet?
- I want to make sure you are protected if you were to get into an accident or something. Do you have a medical and financial power of attorney?
- You know how you were concerned about X if something happens to you? You need to talk to an estate planning attorney to make sure you that is taken care of.

Their response: "I'm not worried about it/don't like to think about it."

Estate planning isn't just about what happens when you die. If you are in a bad car accident or have a serious illness, you may need someone to handle your medical and financial decisions. An estate planning attorney can give the right people the ability to act on your behalf and exclude the wrong people from getting involved. Without this planning, you may end up subject to an expensive court process called a guardianship.

Without an estate plan, you lose control over who is involved and how things are managed and distributed.

Even your spouse or children are likely run into roadblocks without the right paperwork.

Their response: “You already know what I want.”

The family meeting won't be good enough for the bank, mortgage company, or title company. These days, certain paperwork is essential to making sure everything goes as planned.

You don't just have to worry about someone going against your wishes (which is a real concern), but if they become incapacitated or pass away, they may not be ALE to carry out your instructions without the right documents.

Their response: “I'll just gift it to you now.”

Do NOT do this without talking to an estate planning attorney. There are a lot of things that can go wrong when you give property away.

Their response: “I don't have enough money or property to worry about it.”

The size of an estate rarely affects the legal hoops families have to jump through to gain access to bank accounts, deposit uncashed checks, and transfer title to real estate. The legal process (probate) that is usually required when there is no Will or Trust is often more expensive and complicated. Those extra costs and delays are harder on families with smaller estates.

As part of Ramsey Law's estate planning process, we also provide information about avoiding probate when it is appropriate.

Their response: “Everything is co-owned, so I don’t need it.”

Just because you co-own property or accounts doesn’t mean it will pass to the surviving owner. It is possible to set things up that way, but only with the help of someone who understands how the law works and what paperwork is required. This also doesn’t affect the importance of having documents to protect you during your lifetime.

Their response: “I didn’t need that when my parents/spouse died.”

Times have changed, or maybe you just got lucky or haven’t run into issues yet. Banks and title companies are becoming more cautious. Banks will not let anyone into an account, even to pay the owner’s bills, without certain paperwork and different paperwork is required when you are alive and after you pass. Title companies are more strict about what they will accept to allow the sale of a house after an owner has passed. Even doctors are less willing to work with families for fear of being sued.

Their response: “It’s too expensive.”

Not nearly as expensive or unpleasant as a guardianship or complicated probate case. If you cannot afford an attorney, there may be low or no cost options available through the State Bar.

Their response: “YES! We did that years ago.”

Great! A few follow up questions:

- How long ago? Has anything major changed since then? (E.g. minor kids are now adults, additional children or grandchildren have been born, falling out with people who may be named in the documents, change in how they want property to pass, significant change in financial circumstances or property owned.) If so, it might be time to have a conversation with your attorney.
- Who did you use?
 - An estate planning attorney
 - Do you have their contact information written down somewhere? You (or we) may need it one day.
 - Divorce or criminal attorney or attorney who does a little bit of everything
 - You may not be fully protected if the attorney isn't experienced in probate law. You should have an estate planning attorney review and/or put together a better set of documents.
 - Someone I know who is a notary, used to work in a legal office.
 - It is illegal for non-attorneys to prepare legal documents. These documents often look good but have major issues because these non-attorneys know just enough to be dangerous. You should have an estate

- planning attorney review and/or put together a better set of documents.
- Legal Zoom, other website, or fill-in-the-blank forms.
 - These forms may not have asked enough questions to fully protect you and your family. You should have an estate planning attorney review and/or put together a better set of documents.
 - I just copied someone else's Will.
 - You need to consult with an estate planning attorney immediately. Those documents were not prepared for your specific needs and who knows what problems might come up because of the wording or the way it was signed.
 - Where do you keep your originals? Have you checked recently to make sure the ORIGINALS (not copies) are where you think they are? Does anyone have copies or know how to access the originals?
 - If the originals are missing, get new originals done ASAP!

Download these helpful forms to make sure your important information is accessible when needed:



www.ramseylawtexas.com/downloads

YOUR PLANNING IS MORE COMPLICATED THAN YOU MIGHT THINK

An experienced estate planning attorney knows what problems can occur and how to avoid many of those problems through estate planning documents. Asking the right questions is just as important as having the right kinds of documents.

Here are some factors that can affect how an estate plan is structured or how documents are worded:

- Types and amount of property and debts
- How you own property (co-owned, etc.)
- Age and capacity of loved ones
- Who you want to take care of
- Whether you want to protect someone's inheritance from debt, spouse, or government
- Whether you have a blended family, young, disabled, or incapacitated beneficiaries, or other factors that require special planning
- Family dynamics (what things people are going to fight over, who will honor your wishes, who will keep the peace, etc.)
- What worries you

Contact an estate planning attorney to discuss your family's specific needs.