

# HERE'S THE PLAN

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*How To Tell Loved Ones  
What You'd Like To Happen*



You need to tell your family about your plan.

The best time is NOW!

Read this book to learn how to get started.

# **HERE'S THE PLAN:**

How to Tell Loved Ones What You'd Like to  
Happen

**By Jackie Bedard**

Estate Planning & Elder Care Attorney

First Things First: This booklet is for *you*.

Dear Reader:

Before we begin, I want to tell you I wrote this book to help people just like you. I hope the booklet will help make it easier to have an important discussion with your loved ones. I hope that discussion will help bring you even closer to the people you care about. Most importantly, I hope this booklet will help you get what you want—both in terms of your health and well-being near the end of life and in terms of what happens when you die.

### **Did you know that only 4 in 10 American adults have end of life planning in place?**

If you are one of the 40%, congratulations! You're already most of the way toward the peace of mind of knowing that what you want to happen will happen. This booklet will help you explain your plan to the people you have nominated to help carry out your wishes.

Even if you don't have a plan yet, this booklet is for you.

6 out of 10 Americans are vulnerable. They do not have a plan in place to safeguard their assets and loved ones—or themselves, which is a tragedy. If you are one of the 6 in 10 Americans without an estate plan, I want you to know that it isn't too late to start the process. This booklet will explain the importance of creating an estate plan and how to share your plan with your family.

### **Don't Leave It to Chance!**

We understand estate planning is a sensitive subject. Many individuals find it uncomfortable to discuss a future in which a loved one has passed or become disabled. However, opening the lines of communication and reviewing your estate plan with your family can help avoid surprises down the road, lead to better financial planning, and ensure all parties stay on the same page.

This resource will give you helpful insight into the estate planning process and strategies you can use to share your plan sooner rather than later. We will go over what to address with your loved ones when talking about your estate plan. But before we cover those estate planning basics, let's begin with how to start this meaningful conversation with your family.

## Starting the Conversation

Having a conversation about your estate plan is one of the wisest things you can do for your family. It will allow your family members to understand your wishes, what their roles and responsibilities will be, and ensure that all your affairs will be handled accordingly. We recognize that approaching this subject can be a bit daunting; therefore, we have created five tips for starting the conversation. Keep these five tips in mind when discussing your plan with your loved ones.

### 5 Tips to Prepare Ahead

**1) Plan ahead.** When will you have the conversation? Will you have individual discussions or discuss your plan as a group? Once you have an event or date and time in mind, invite your loved ones. Explain to them that this is an important topic to you, and you would like to discuss it with them.

**2) Understand your plan.** It's imperative that *you* are clear on what you want and how your estate and end-of-life plan will help accomplish what you want. At our office, most of our planning documents begin with a 4- to 5-page summary that provides a brief explanation in plain English of who does what and what should happen. Review the summary before you have the conversation. It may help to take notes while you're reading.

**3) Start with why.** Remember why you've made the decisions you've made.

**4) Get comfortable.** We have found that it is easier to have a tough conversation if everyone is physically comfortable. Choose your surroundings so you feel comfortable speaking openly and your audience can listen carefully.

**5) Remember: this is about YOU,** and what YOU want for your life, your family, and your legacy.

### Scripting the Conversation: Start with Your Objectives

When people first call our office to begin planning, often their initial focus is on who gets what. While that is certainly something estate planning covers, we find it is much more effective—and a much better way to understand your planning—if we start with what you want your plan to

achieve. It's just as true when you're explaining your plan as it is when you're making it in the first place.

Consider what philosophies and values are the most important to you. Many people believe estate planning is only about protecting assets, but in truth – it involves much more. Perhaps most importantly, creating a comprehensive estate plan is about the values of an individual or couple and how these values should be carried forward when they are no longer able to provide guidance to their family members.

## **Start with Why**

Open the conversation by addressing why it is necessary to have this discussion, and why now is the right time. Describe the values and philosophies that have guided you in making the decisions you have made and the actions you would like carried out in the event you become incapacitated or die. If you're unsure of what a planning philosophy might look like, one example might be: "I don't want my family to have to decide what I would want if I am in the hospital without any chance of recovery." Or: "I've set this up to ensure my grandchildren don't have to worry about paying for college, no matter what."

Every family has a different estate planning philosophy. Perhaps, you are looking to the future, and your number one concern is the physical and financial well-being of your spouse. Maybe you have a niece or nephew with special needs and want to make sure they receive adequate care after you are no longer able to provide care for them. Whatever your objectives are, your estate planning attorney should ensure your plan embodies your philosophy every step of the way.

## **"I set up this plan because..."**

Your attorney should discuss with you the many goals your plan can help you accomplish. The following are some of the topics we discuss at our first meeting with clients—we call it a Vision Meeting—at Carolina Family Estate Planning:

- Delegating individuals who can make decisions on your behalf if you become incapacitated or chronically ill.
- Paying for Long-Term Care for you or your spouse, if you should need it.

- Providing financial support for your spouse.
- Ensuring your assets—including those that use beneficiary designations (for example, retirement accounts and life insurance policies) will be distributed according to your final wishes.
- Providing financial support to charities or other worthy causes.
- Minimizing taxes and unnecessary expenses, including **probate**.
- Preserving assets for future generations, even in the face of divorce, remarriage, creditors, and lawsuits.

Before moving on to “who does what?” and “how your plan works,” let’s talk about avoiding probate and asset preservation since those are two topics that resonate with almost every one of our clients.

## Why you probably want to avoid probate

Probate is the process of determining if a will is valid and administering the estate of a deceased person according to the terms of the will. It’s also a process we advise most clients to avoid, if possible. Why?

Probate is expensive and very time-consuming.

Formal probate procedures usually include the following steps:

1. Your will is filed with the local probate court (and is made public record).
2. Your executor inventories your property.
3. Your property is appraised.
4. All debts, including death taxes, if any, are paid.
5. The court validates your will.
6. Court costs, attorneys' fees, and executors' fees are paid from your estate.
7. Finally, the remainder of your estate is distributed to your loved ones.

Probate can often lag on for 9-18 months and deplete between 2 and 5 percent of the value of the overall estate.

If you created a Living Trust in your plan, it's likely that one of your goals was to avoid probate. Unlike a will, which only distributes your assets upon death, a living trust puts your assets and property "in trust" during your lifetime. This allows you to appoint a trustee to manage these assets for the benefit of your beneficiaries—or even for your own benefit if you become incapacitated - if set up properly. A Living Trust enables you to avoid probate because the property and assets are already distributed to the trust.

**Your Living Trust will only work if your assets are appropriately titled into your trust.** We often meet with clients who created a trust before working with our firm and discover that they never funded the trust by retitling their assets and updating their beneficiary designations. If they were to die at that point, unfortunately, many of their assets would still have to go through probate. For that reason, at Carolina Family Estate Planning, we provide funding assistance with our trust plans.

Regardless of whether you rely on will-based or trust-based planning, you want to make sure your beneficiary designations are up to date. Investments, bank accounts, and retirement accounts all allow the account holder the ability to name his or her beneficiaries. Keeping these accounts current can ensure these assets transfer seamlessly to the individuals—or to the subtrusts (continue reading!)—whom you have named to receive them upon your death.

## **Asset preservation: Passing things down protected from divorce, remarriage, creditors, and lawsuits**

Many of our clients want to protect against unexpected circumstances that could affect their lives and the lives of their children in the future. When widows and widowers remarry, sometimes the new spouse is not enthusiastic about carrying out the previous spouse's legacy. While your son or daughter may be happily married today, the percentage of marriages that end in divorce is staggering, and so are the financial ramifications. And unfortunately, we live in a society that is increasingly saddled with credit card debt and frivolous litigation.

Is there a way to safeguard an inheritance from these situations?

The answer is yes. A special kind of trust known as a “Protection Trust” can shield your beneficiaries—and for some purposes, yourself—from losing your assets or your legacy through divorce, remarriage, creditors, or litigation. Once assets are held in a properly drafted and funded Protection Trust, they may be excluded from being available for purposes other than those intended by the trustmaker. You may choose to use a Protection Trust to accomplish any of several goals, such as:

- Ensuring that a spouse’s inheritance does not disqualify him or her from receiving benefits to cover nursing home care.
- Ensuring that you maximize your available assets if you, yourself, need long-term care.
- Keeping your wife’s or husband’s new spouse, if they remarry, from disinherit your children.
- Keeping your son-in-law or daughter-in-law from receiving half of the inheritance if your son or daughter’s marriage ends in divorce.
- Making sure your son’s or daughter’s credit problem or drug or alcohol problem doesn’t deplete your grandchildren’s inheritance.
- Protecting your home and other assets from lawsuits involving a rental property or malpractice liability.
- Protecting a special needs beneficiary from being disqualified from receiving SSI and Medicaid benefits.

Depending on your goals, you may use a Protection Trust while you’re living or after death during Estate Settlement. At Carolina Family Estate Planning, we often distribute assets upon death from a client’s Revocable Living Trust (and in some cases their will) into one or more Protection Trusts.

## **One more asset preservation goal: Passing assets down in the most tax-efficient way possible.**

Good planning can help prevent wealth wasting due to taxes as well. While the amount of assets you can pass free of estate taxes is \$5.6 million in 2018, the tax problem is bigger than first meets the eye.

- First, are you aware that your real estate holdings, bank accounts, retirement accounts, business interests, life insurance policies and any other assets you have control over all count as part of your taxable estate? Some families have larger estates than they realize, and while they've never considered themselves wealthy, their estate could be susceptible to a heavy tax burden.
- Second, if you're taking required minimum distributions (RMDs) on your retirement accounts, your beneficiaries are required to continue those RMDs when they inherit your accounts. That inheritance could push them into a higher tax bracket. Some gift!

The good news is that effective planning can help maximize your estate tax exemption and stretch out the distribution of your retirement accounts. I've never met anyone who would rather their assets go toward taxes than to their intended beneficiaries. Make sure you're using your plan wisely!

## Who plays what role in your plan?

Once you've discussed what you want your plan to accomplish, you may wish to share some details about who you have chosen to act on your behalf. There are a number of people named in your estate plan who you will count on to make decisions on your behalf. Here is a list of roles you might have in your estate plan and what they are responsible for:

- The agent you appoint in your **Financial Power of Attorney** (also known as a Durable Power of Attorney) handles your financial and legal affairs while you're living. Once appointed, they can make any decisions pertaining to those areas on your behalf.
- The agent you appoint in your **Health Care Power of Attorney** will make health care decisions on your behalf in the event you become incapacitated or terminally ill. You may also explicitly direct your agent to make decisions based on your **Living Will** and a supplemental letter to health care agents. Since HIPAA strictly protects who has access to your medical records, your Health Care Power of Attorney should include specific language granting your health care agent access to your medical records. This will give them the ability to make informed decisions regarding any treatment you may require in the future.
- Your **Beneficiaries** are the people you nominate to receive assets from your estate or trust.

- The **Executor** is the person named in your will (and later appointed by the probate court) to oversee settlement of your probated estate.
- If you have a trust, your **Trustee(s)** will be in charge of managing the property and assets owned by the trust for the benefit of the trust beneficiaries.

It is essential that when considering people for these roles that you select individuals you believe are the most capable of carrying out critical financial, legal, and medical decisions on your behalf. You *should* tell the people you've named that you've named them and what you expect of them. You may feel pressured to explain why you chose or did not choose the people you have chosen, or to change your selection to a family member or friend you'd rather not choose. **Keep in mind that this is your legacy. It is your choice what you do or don't tell your agents, beneficiaries, and specifically excluded individuals about your plan.** This is your plan and your life. You have the right to have your last wishes fulfilled to the fullest capacity.

## How does your plan work? What needs to happen if you are incapacitated or if you die?

The people you've chosen as your agents need to know what to do if something happens to you. Your documents are the playbook that gives them permission to act on your behalf, and that explains what you want to happen.

Your agents need to know where your documents are stored. We recommend our clients keep their original documents in a fireproof safe, as your powers of attorney, your will, and trust documents are essential for allowing your chosen representatives to act on your behalf.

Your agents also need to know how to get to your documents. If they *are* in a fireproof safe, there needs to be a way for your agents to get the combination in an emergency. We've seen all kinds of methods, ranging from putting the combination in the back of a picture frame to storing it in a Ziploc bag in the freezer. Pick any system that works for you, as long as your agents know where your planning documents are and how to get to them.

## Then What?

Once your power of attorney agents have your documents, they need to know what to do next. To execute health-related decisions, they will need your Healthcare Power of Attorney, HIPAA

Release, Living Will, and any other end-of-life decision documents. Before giving these documents to a healthcare provider, *they should make a copy*. In a time of crisis, these documents are too valuable to lose in a record-keeping snafu.

If you're incapacitated, your financial power of attorney will need to be recorded with your county of residence before your agents can perform any financial or legal actions on your behalf. But before making any changes, your agent should consult with your attorney. Your attorney can help your agent establish guidelines to preserve your estate for your benefit and your beneficiaries.

## **When a Loved One Passes...**

After a loved one passes away, many people aren't sure what to do next. Your friends' and family members' first priorities should be taking care of one another during a time of mourning and carrying out your wishes. Once again, your agents—your Executor and Trustees—need to know where your estate planning documents are and how to get to them. Memorial instructions are often stored with these documents, and based on your instructions; family members should make arrangements for your funeral and your remains.

We recommend that Executors and Trustees do *not* rush to close any bank accounts or retirement plans or remove any household furnishings. There is plenty of time to settle the estate, and there is no need to try to do everything right away. Our advice to agents and beneficiaries is to take some time to properly grieve and schedule a consultation in a few weeks so that we can guide you through this process. The most important thing is to honor the decedent and give themselves and the family time to come to terms with the loss before making any legal or financial decisions.

## **Get started. Get peace of mind.**

I hope this booklet has helped you decide how to present your plan to your family. We have found that clients often feel anxious about starting the conversation with their loved ones. However, once they have had the conversation, those clients have felt relieved knowing that their plan would be carried out according to their wishes. As with so many things, it is often better to communicate ahead of time than to simply hope for the best.

## But what if I don't have a plan yet?

If you do not have an estate plan yet or you are unsure that the plan you have will accomplish your goals, please contact Carolina Family Estate Planning to schedule a Vision Meeting. During the meeting, we will discuss your goals and values and advise you about your options to make your plan work for you. If you provide prior planning before your meeting, we will review that plan in light of your goals at the Vision Meeting. Seminar attendees have an opportunity to receive a **FREE** Vision Meeting within 30 days of their seminar, so if you haven't already, don't miss this chance to get your affairs in order.

*I sincerely hope this guide has helped you approach this important topic with your loved ones. If you have additional questions, please call our office at 919-694-4701 so we can help.*

## About Jackie Bedard

Jackie determined early on that traditional estate planning has primarily focused on what happens upon death, but a far more pressing concern for many families today is—what happens if you don't die suddenly, but instead need long term care for several months or years? A comprehensive estate and long term care plan should address both of these concerns.

Jackie is a member of WealthCounsel, ElderCounsel, Lawyers With Purpose, Lawyers For Wartime Veterans, and Leading Lawyers on Planning & Protecting (all of which are national organizations of attorneys committed to excellence in estate planning and elder care planning). Jackie is also a VA accredited attorney with the Department of Veteran Affairs.

Locally, Jackie is a board of director member of the North Carolina chapter of the National Academy of Elder Law Attorneys, a former board of trustees member of Hospice of Wake County, a board of directors member of the Guiding Lights Caregiver Support Center, and a member of the Elder Law Section Council of the North Carolina Bar Association.

Jackie was named Honorable Mention in the 2016 Cary Magazine Maggy Awards for Best Attorney (and was the top estate and long-term care planning attorney in the category). In 2015, Jackie was named as one of Cary Magazine's Movers & Shakers Award recipients. Jackie has a Superb 10.0 rating by Avvo, a legal rating system as a Top Attorney for both Estate Planning and Elder Law.

Jackie earned her Bachelor of Science degree in Economics at the Massachusetts Institute of Technology (MIT) and graduated law school magna cum laude in the top 7% of her class at the University of Richmond, School of Law. Jackie resides in Cary with her husband, Dan, and their two dogs, Nala and Nelly. Jackie also enjoys CrossFit, reading, cooking, music, and more.