

“Failing to Prepare Is Preparing to Fail”

At 5:30 a.m. my phone started ringing. I am an early riser, but I have to say that I almost never get calls *that* early in the morning. In fact, that is my quiet time when I drink my coffee, think about my day ahead, and reflect on the things for which I am thankful. When the phone rang, I knew instantly that something had to be wrong; I just didn't know what. The calls were from friends and family who had already heard the news about the terrible tornado that hit Nashville. Our oldest daughter moved to Nashville last summer and the calls were to check to make sure she was alright. I didn't know whether she was safe or not. I had not turned on the TV or radio that morning, so I had no idea what they were even talking about. My heart started beating fast, fear entered my heart, and in that moment I didn't know whether my daughter was OK. It took a few minutes to get ahold of her, but thank goodness the area of town she lives in had not been hit. Other families who received similar phone calls were not as lucky.

Natural disasters are not something we can plan for; they happen at the whim of the environment. However, in the work that I do with our elder law and special needs team, I have learned that there are definitely things that can be planned for so that loved ones are not facing a crisis with no preparation. Benjamin Franklin once said, “By failing to prepare, you are preparing to fail.” Like the moment the tornado hits is not the time to think that you should have re-evaluated your homeowners insurance, a medical or family crisis is not the time to think about the fact that you never got around to updating your estate plan. Below are some mistakes commonly seen within our practice that I encourage everyone to think about.

1. Not having an estate plan at all. I often tell people that there are two things I can tell them for sure: either they are going to die young, or they are going to die as an elderly person. This is a fact. Nobody escapes death. In our society, we are so fearful of death and aging that we often don't want to even talk about it, but not talking about it doesn't mean it won't happen. In a proper estate plan, you will decide how your personal and financial affairs are handled in the event something happens to you no matter when it happens.

2. Not updating your estate plan. I recently met with a client who said her estate plan included instructions on how to care for her minor children. Her children are now 29 and 32, which means that updating her plan is well overdue.

3. Not choosing the right person to be your power of attorney or executor. Many people automatically chose their spouse or oldest child to be their agent, but the fact they are close family members is not necessarily the right reason to choose them. It is very important to select an individual or professional who is capable of understanding the duties of these jobs and willing to execute them the way you wish.

4. Not planning for disability. Special needs legal and financial planning is crucial in order to ensure that an individual with a disability has access to public benefits, community resources, and medical care. Family members with disabilities face many complex issues in addition to those of typical families. In many instances, an adult child with disabilities will need long-term financial and care support in order to live as independently as possible. This is a specialized legal practice area that is important to plan for.

5. Not updating beneficiary designations to reflect the new estate plan. If you have done new estate planning that includes trust work, it is crucial to update the beneficiary designation to reflect those changes. We have recently seen adult children with disabilities who are receiving public benefits who also receive investment account balances through a beneficiary designation. This one action made this child ineligible for Social Security benefits, medical

insurance, and subsidized housing. Had the parent changed the beneficiary designation to a special needs trust, it could have been avoided completely.

6. Not talking to the person you appointed as your agent of your wishes. Many people feel uncomfortable discussing their estate plan, medical wishes, and finances with others. If you trust the person enough to have named them to act on your behalf, you should be able to have this conversation. Your estate planning team should be able to facilitate this type of conversation. Our team assists with this on a daily basis. Open communication is the key to a good plan.

7. Not properly planning for elder care. As an elder law team, we often discuss long-term care costs, what Medicare does and does not cover, veterans benefits, and hospice care. Many people are misinformed about the complexity of navigating elder care.

My daughter was safe, but many communities are facing devastation after the tornado hit Nashville and Middle Tennessee on March 3, 2020. If you would like to help with the Nashville tornado relief, please visit:

- [The Community Foundation of Middle Tennessee Emergency Fund](#)
- [The United Way of Greater Nashville](#)

For questions about special needs planning or updating your estate plan, please contact me, [Amy Boulware](#), or a [member of our team](#). We'll be glad to talk about your own unique situation and the options we know are available to you and your loved ones.