What do I need to know about estate planning before I meet with an estate planning attorney?

A.

Estate planning is a chore that most of us put off whenever possible. Not only do physicians usually find it uninteresting, expensive, and even worse, it can force us to face our own mortality. However, it is an important aspect of financial planning and, when done poorly (or not at all), can really cause a mess for heirs.

There are three purposes to estate planning:

- Ensure our minor children, our things, and our money go where we wish them to go at the time of our death.
- Minimize the amount of our assets that have to pass through the expensive, time-consuming, and public process of probate.
For a select few, estate planning is also done to minimize the amount of estate and inheritance taxes paid at the time of death.

Minor Children

Daddy will you please plan your estate for me? Yes, and my business will even pay you for this photo to make it easier.

While it can be frowned upon to try to rule the lives of your heirs from the grave, one time when everyone agrees it would be wise to provide some direction is when you have minor children. The most important function of a will is to name the person (guardian) who will take care of your children in the event of your death. Your will should also name the person who will manage your assets (including life insurance benefits) on their behalf. While this can be the same person, naming a different person allows you to draw on the talents of different family members or friends and provides some checks and balances.

Assets and Probate

Another function of a will is to determine who gets your stuff and your money when you die. If you die “intestate” (ie, without a will), the probate judge will follow the laws of your particular state to determine who inherits your estate. Basically, if you don’t have a will, the state will make one for you. Typical intestate rules indicate that your spouse has first claim on your assets, then your descendants, followed by
your parents, and then your siblings. However, each state has slightly different rules, and you should read them before deciding whether they are in line with your wishes. If they are not, then even if you have no minor children, you need a will. If your family, desires, and financial situation are very simple, you may be just fine with an inexpensive will purchased through an online service. As your assets grow or your family situation becomes more complicated, a consultation with a qualified estate planning attorney becomes more and more valuable.

The process of probate involves a judge reading the will (or following intestate laws in the absence of a will) and determining who gets what. This process is public, which reveals to the world what you owned. It can also be expensive, costing as much as 15 percent of the value of the estate! Finally, it can be time-consuming. It might take a year or more for your heirs to receive what is coming to them.

**Trusts**

An important aspect of estate planning is minimizing how much of your assets must go through probate. This is primarily accomplished through beneficiary designations and secondarily through revocable trusts. Retirement accounts, life insurance policies, annuities, and many other types of financial accounts allow you to name beneficiaries. All of those assets pass outside of the probate process quickly, inexpensively, and without public knowledge. Payable-on-death accounts at a bank may also allow you to have additional FDIC coverage on your assets.

Revocable trusts are trusts that are used to pass assets outside of the probate process. Many wealthy people, particularly elderly ones, have their homes, vehicles, and even financial accounts owned by their revocable trust. Since it is revocable, they have full access to the assets at all times and can remove them from the trust if needed. But when
they die, the assets are passed in accordance with the terms of the trust.

**Taxes**

A lot of doctors worry about the “death tax” (ie, estate and inheritance taxes). However, the truth is that under current law, few physicians will have to worry about estate taxes. They simply do not earn enough, save enough, or invest well enough to build their estate to an amount greater than the federal exemption amount. In 2017, the federal exemption before the estate tax applies is $5.49 million. As long as the total value of your estate is below that amount at your death, you will not owe any federal estate tax. The exemption amount is doubled if you are married. The exemption amount is also indexed to inflation under current law, so it should double every 20 years or so. Unfortunately, some states have their own estate tax and often with a lower exemption amount than the federal law. These states include Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia. Maine, Massachusetts, New Jersey, Oregon, and the District of Columbia have particularly low exemption amounts ($1 million or less).

If you are fortunate enough to have a federal estate tax problem or unfortunate enough to live in a state with a low exemption amount, it may be worthwhile to address this with some formal estate planning. The main strategy is to give away amounts above the estate tax exemption limit prior to death.

This can be done directly by giving away up to $14,000 per year ($28,000 if you are married) to anyone you like without using any of your estate tax exemption. This is a great way to decrease the size of your estate to an amount below the exemption limit. If you have three married children, each with three married children, that’s 24 people you, together with
your spouse, can give $28,000 per year to ($672,000 total) without any estate (gift) tax implications. You can also give money to charities through various structures that may also provide you substantial income tax deductions. If you are not comfortable giving assets to your heirs at this time, you can use an irrevocable trust. The money is then out of your estate but can only be used by heirs in accordance with the rules of the trust. If you expect to owe estate taxes at death, a consultation with a competent estate planning attorney in your state could be worth hundreds of thousands or even millions of dollars to you.

Be aware that some methods of simplifying your estate planning can have unforeseen consequences. For example, placing your children’s name on the title of your investment account or home can keep those assets from passing through probate. However, they may also cause the heir to owe a lot more in capital gains taxes than they otherwise would due to the loss of the step up in basis at death.

Estate planning is a process whereby you can ensure your wishes are met, probate is avoided, and estate taxes are minimized. Physicians need a will in place as soon as they have children or begin to acquire significant assets. Most will also benefit from scheduling a visit with an estate planning attorney by the time they reach mid-career.

What do you think? What have you done so far with an estate plan? At what point in her career should a doc go see an estate planning attorney for the first time? Comment below!