

Friends and family

Timing plays a critical role in estate planning

Broaching the subject may be difficult, but it's vitally important.

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Contributing Writer

It was a dire diagnosis, but Nancy Roberson thought she had more time.

Roberson's husband, David, was diagnosed with Hodgkin's lymphoma in February 1976 when the couple's daughter was just 1 year old.

"He was given a prognosis of 10 years," Roberson said.

But he died just over a year later, in July 1977, at the age of 28. Roberson was a widow at the age of 27 with a toddler in tow.

It was that life-changing experience that sparked Roberson's interest in the fields of estate planning and probate law.

She received her degree from the University of Dayton Law School in 1981 and is now board-certified by the Ohio State Bar Association as a specialist in the area of estate planning, probate and trust law.

"We didn't have wills when David was diagnosed," Roberson said.

"During that time when he was in remission, I started feeling uncomfortable about that fact and I screwed up the courage to talk to him about it, so I know how awkward that conversation can be."

A survey by Harris Interactive for Lawyers.com found that half of all Americans don't have any of the most basic planning documents including a will, living will, or financial and medical powers of attorney.

Of those surveyed, only 35 percent have a will directing

3 dangers of do-it yourself wills

1. You get what you pay for. DIY wills leave room for error, and there is something to be said for sitting down and talking to a lawyer who can examine issues specific to your individual case, rather than having a standard will that could work for anyone.

2. You pay now or you pay later. If the DIY will is prepared incorrectly, the cost of correcting the problem later will usually wind up costing far more than seeing a lawyer in the first place.

3. One size does not fit all. Every family is different and has its own issues. Seeing a lawyer can help eliminate family conflict by encouraging careful thought regarding issues such as unequal distributions of the estate among children, only naming one child as executor, and whether or not named parties will get along. Careful estate planning can help avoid putting a rift into a family down the road.

SOURCE: Jill Miller & Associates, P.C.

who gets their assets.

Taking control of finances is a common New Year's resolution so now might be an ideal time to think about establishing an estate plan.

"The new year is a time when people tend to think about bringing order to their lives and this is one way they can do that," Roberson said.

Starting the conversation

"Most people are in denial about death," Roberson said. "And in some families, it's a taboo subject, they just won't talk about it."

"The reality is that most people spend more time planning weddings and vacations than they do for their death."

Roberson suggests the direct approach when broaching the subject with a spouse, parent or

child. Acknowledge that it is a difficult topic to talk about.

"It takes tact and diplomacy," she said.

This conversation is especially critical if there are minor children involved. In such cases, parents will need to decide who should have physical custody of the children and become their guardian.

This person, may or not be a family member. This decision will likely involve discussions with the potential guardian as well as the children.

This can be one of the most difficult decisions a parent can face, but it is preferable to the decision being made by a probate court.

By choosing a guardian, you ensure that your children will be raised by someone who you trust and whose values are most closely aligned with your own.

Starting the process

While Roberson and her husband did establish simple wills before David's death, the estate planning process wasn't optimal.

"We could have used some other legal documents, but we didn't know that at the time," Roberson said.

Timing plays a critical part in the estate planning process. Waiting until a spouse or family member is ill or incapacitated is not ideal.

"How can you think clearly at that point," Roberson said.

Roberson contacted the Dayton Bar Association to get a referral when she first looked into establishing a will.

The bar association maintains lists of lawyers who handle various cases including estates. You may also get a referral from a trusted adviser such as an insurance agent, financial adviser or accountant.

When selecting a lawyer, look for someone who specializes in estate planning, trust and probate law. Interview several lawyers before settling on one.

Make sure you have clarification of all fees before hiring a lawyer and get that information in writing.

"When it's a couple, if you're both willing to do it, you need to both be present when you meet with your lawyer," Roberson said. "But if your husband or wife won't go — go by yourself. Do what you need to do for your piece of mind."

Estate plans should include

A will: A written document that describes how you want your probate property to be distributed, who you name to be in charge of your probate estate,

and who you name as the guardian of your minor or disabled children.

Right of disposition of remains (RODOR): A written document that identifies who will be in charge of your body upon death. The RODOR may include funeral and burial instructions that detail what you want and don't want, as well as who should be in charge of carrying out those wishes. Include your obituary if you so choose.

General durable power of attorney: A written document authorizing another person, called your "agent" or "attorney-in-fact," to perform acts on your behalf during your life.

Health care directives: These can include a durable power of attorney for health care, a HIPAA consent form and, possibly, a Do Not Resuscitate Order (DNR) and a living will.

Estate road map letter: A letter of instruction to the people who will assist you during disability and after death, so they can find your documents, advisers and assets.

Ethical will: A written document for future generations about your values, ideals and dreams.

Optional inclusions

Trust: A written document that describes how your property will be managed and distributed.

Buy-sell agreement: A written document that spells out the rights and responsibilities of business owners upon the death or other event terminating an owner's interest in the business.

Current beneficiary designations: Coordinate payable on death (POD) and transfer on death (TOD) assets with your overall estate plan.