DOGWOOD ESTATE PLANNING

The Hitchhiker's Guide to Estate Planning

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DON'T PANIC

(That is the whole first lesson. The rest of the guide is detail.)

A note before anything else

This guide is educational information about estate planning in Alabama. It is not legal advice, reading it does not make you a client of this firm, and your situation may differ from anything described here in ways that matter. When a real decision is in front of you, talk to a lawyer, whether or not that lawyer is me.

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.

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Chapter 1. Don't panic

Nobody reads a guide like this for fun. You are here because somebody died, or somebody got sick, or a birthday ended in a zero, or you sat in a parking lot after a funeral doing arithmetic about your own house. Something put the subject on the table, and the subject is heavy.

So the first thing to know is this: the average person thinks about estate planning for somewhere between two and nine years before doing anything about it. I know because I ask, and because the answer is always sheepish. If you are behind, you are behind in the way that everyone is behind, which is another way of saying you are on schedule.

The second thing to know is that the work is smaller than the dread. An estate plan is a set of decisions about who is in charge, who gets what, and who takes care of whom, written down in the forms Alabama law recognizes. Most of those decisions you have already made in your head. You have an opinion about who should raise your kids. You have an opinion about which sibling can run a checkbook. The planning process is mostly a lawyer asking you questions you can answer, and then doing paperwork you should not have to think about.

The third thing to know is what happens if you do nothing, because doing nothing is also a plan. It is just not your plan. Alabama has a statute, sitting in Title 43 of the Code, that decides who inherits and who is in charge when someone leaves no instructions. It does not ask what you would have wanted. For a few families the statute's answer is close enough. For most of the families I meet, the ones with a second marriage, a house, a child who needs protecting, or land that has been in the family for generations, it is not close at all.

This guide will not try to scare you. Fear is a bad planner; it either freezes people or stampedes them, and neither produces a good plan. What the next five chapters will do is show you what a plan is actually for, what one actually contains, and what the handful of genuinely dangerous mistakes are, so that whatever you decide to do, you decide it on purpose.

Bring a towel if you like. It is not required.

Chapter 2. What a plan is actually for

Here is the honest version, which is not the version in most ads.

A plan will not make anybody less sad when you die. It will not fix anything that was wrong between your children before you died. It does not, for most families, exist to dodge some enormous tax, because most families are nowhere near the tax.

What it does is remove the administrative catastrophe from the worst month of your family's life.

A few months ago I got a call from a woman whose mother had died the week before. I had done her mother's plan years earlier and had not heard from either of them since, which is how it usually goes. She was calling to ask what she needed to do.

The answer was almost nothing. The house passed the way the plan said, so nobody had to open a court file to deal with it. The accounts were titled correctly, so the bank moved them in a week rather than a season. Her mother had written down where everything was, including the safe deposit box and the password to her email, which sounds trivial and is not. The whole call took eleven minutes, and most of it was her telling me about her mother.

Now run the same week without the plan. A courthouse. Letters of authority that take weeks to issue while the mortgage still comes due. A bond, because the one sentence that waives it was never written. Notice to creditors, published in the newspaper. A public file at the courthouse that anyone can read, including the child who got less. And a referee: the moment a court is involved, disagreements between siblings get a venue and a procedure, and feuds that would have burned out over Thanksgiving now have a docket number.

That second week is what the plan prevents. Not grief. Logistics. The four hundred small decisions that land on somebody at the exact moment they have the least capacity to make them, every single one of which was preventable in advance.

That is the product. Eleven minutes instead of eighteen months, at the moment your children can least afford the difference.

Chapter 3. What a plan actually contains, and the mistake that beats all of it

People say "I need a will" the way they say "I need a lawyer," as shorthand for the whole subject. A will matters, but it is one document among several, and for many families it is not even the one doing the heavy lifting.

A complete Alabama estate plan generally involves some mix of the following. A **will**, which says who gets what of the property that passes through it, names the person in charge, and, if you have minor children, names who raises them, which it decides in one line. A **revocable living trust**, for families who want the house and accounts to pass without a court proceeding at all. A **durable power of attorney**, naming who handles your money if you are alive but cannot. **Health care directives**, naming who speaks for you medically and what you want them to say. Which mix fits you depends on your family and your property, and an honest lawyer will sometimes tell you the smaller version is enough. Some situations genuinely are simple.

Now the mistake, because it costs people more than every other mistake combined, and it takes ninety seconds to understand.

Your beneficiary designations outrank your will. All of them. Every time.

If you own a life insurance policy, a 401(k), an IRA, an annuity, or a payable-on-death account at the bank, you named a beneficiary when you opened it, whether or not you remember doing it. That form controls that money at your death. Your will does not get a vote, and your executor does not get a vote. Which means your will can be beautifully drafted, signed, witnessed, and completely irrelevant to most of what you own.

Two ways this goes wrong. The form nobody has looked at since 2009, still naming the parent, the sibling, or the ex, and after death there is no undo and no arguing intent. And the form naming your minor children directly, which feels responsible and actually sends the money into a court-supervised conservatorship until each child turns **nineteen**, Alabama's age of majority, at which point the child receives the entire balance outright. Nineteen is roughly the worst possible age to hand somebody a life insurance payout.

Your homework from this entire guide, if you do only one thing: log in to every account with a beneficiary line and read the name that is actually on it. Not the name you assume is on it. Most people find at least one surprise.

And a word about the do-it-yourself route, offered with more respect than the topic usually gets. Warren Burger, Chief Justice of the United States for seventeen years, typed his own will. It was 176 words, it misspelled "executor," and the omissions cost his estate a sum well into six digits, because the document did not contain the machinery a will of that size needs. The point is not that Burger was careless. The point is that estate planning is a specialty, and being brilliant generally, even at law, is close to useless at it. If the man who ran the federal judiciary could not do this solo, the fill-in-the-blank form on your laptop is probably not the equalizer it feels like.

Chapter 4. Funding: the step that makes the plan true

This chapter matters most if your plan includes a trust, and it is the step most likely to be skipped, because it happens after the signing, when everyone is relieved and tired of the subject.

Here is the plain version. A trust only controls what it owns. Signing the trust creates the bucket; **funding** is putting things in the bucket. The house gets there by deed. Accounts get there by retitling, or by naming the trust where that is the right call. Beneficiary designations get aligned so they point where the plan intends instead of wherever they pointed in 2009.

An unfunded trust is a beautifully drafted stack of paper that your family still has to take to the courthouse. I have seen the signed binder on the shelf and the house still titled in the decedent's own name, and in that moment the binder is worth approximately its weight.

So treat funding as part of the plan, not an errand after it. When we do this together, the funding list is written down, item by item: this deed, these accounts, these designations, who does each one, and by when. Some items the firm does. Some only you can do, because the bank will only talk to you. The list exists so that "mostly funded" cannot quietly become the final state.

Two habits make this painless. Do the funding while the plan is fresh, in the first weeks, while the instructions still make sense and the motivation still exists. And when you open any new account for the rest of your life, ask one question at the desk: how should this be titled, and who is the beneficiary? Sixty seconds at account-opening beats a court proceeding later, every time.

Chapter 5. The people you name, and what you are actually asking of them

Every plan is a small cast of characters, and choosing them is the part no lawyer can do for you. Here is who they are and what the job really is, so you choose with your eyes open.

Your personal representative (Alabama's term for executor) wraps up the estate: gathers what you owned, pays what you owed, files what must be filed, distributes the rest. The job is administrative and it is real work. Choose someone organized who finishes things, not necessarily the oldest child and not the one who would be hurt otherwise. Naming this person in a will, in one line, also settles who is in charge, which is a thing I have watched families litigate at length when it was left open.

Your agent under a power of attorney handles your money while you are alive but cannot: pays the mortgage, deals with the insurance company, signs what needs signing. This is the most powerful document most people ever sign, precisely because it works while you are alive. Choose character over affection.

Your health care proxy speaks for you medically when you cannot speak. The kindest thing you can do for this person is not the naming; it is telling them, in an actual conversation, what you want. The document gives them authority. The conversation gives them peace, because a decision you made in advance is a decision they do not have to carry as theirs.

Your children's guardian, if your children are minors, is who raises them if the worst happens. This is the question that keeps people from planning at all, because no answer feels good enough. Two things help. The answer is changeable; you are choosing for now, not forever. And any thoughtful answer you write down beats the alternative, which is a courtroom deciding without you.

Your trustee, if there is a trust, manages what the trust owns, sometimes for years, sometimes for a child until an age you chose. Steadiness beats brilliance. A trustee's cardinal virtues are showing up, keeping records, and following instructions that you wrote.

One rule covers all five: tell the people you named. A surprise appointment, discovered in a drawer during the worst week, is a burden. The same appointment, discussed over coffee years earlier, is an honor. Same document; the difference is the conversation.

Chapter 6. Keeping it current

A finished plan is not a pickled plan. But the maintenance burden is smaller than people fear, so here is the honest schedule.

Most of the time, your plan just keeps. The design was built on two things, your people and your property, and those move slower than people think. If nothing large has changed, the plan you signed three years ago is still the plan.

Four things genuinely reset the drawing board. **A marriage or a divorce**, yours or a child's. **A death in the cast**, anyone the plan names for anything. **A move across state lines**, because these documents are creatures of the state law they were written under, and what Alabama recognizes and what another state prefers are not identical. **A real change in what you own**, the kind with a deed or a closing date attached: the new house, the sold business, the inherited land.

When one of those happens, the plan needs eyes on it. Not necessarily a rewrite; often the fix is one document or one designation. But the review should happen while the change is fresh, for the same reason the funding should: fresh is when it is easy.

Add one quiet habit: every few years, or when the annual statements pile up in January, spend ten minutes re-reading the beneficiary designations. Chapter 3 already told you why. The form outranks the will, forever, and forms drift.

And keep the plan findable. The best documents in the world do no good in a drawer nobody opens for a month. Your people should know that the plan exists, where it lives, and who to call. That last part is what the eleven-minute phone call in Chapter 2 was made of: not a perfect family, just a findable plan and a known first step.

That is the whole guide. If it did its job, the subject is now merely serious instead of heavy, and the next step is a free phone call that does not require courage:

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