

How and Why to Discuss End of Life Decisions with Parents

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Talking to parents about estate planning can be difficult. Oftentimes, parents aren't interested in the discussion. So to open and maintain a positive dialog, the approach taken makes all the difference.

First, acknowledge that no one likes to talk about their death or most issues associated with their death. We can all understand this. So naturally, when the most common question is asked – *What's going to happen when you pass?* – the walls go up.

So, instead of broad, open ended questions that conjure far ranging thoughts on death, try approaching the subject from three separate perspectives: medical, financial, and legacy planning.

Medical Planning

Oftentimes, it helps to approach loved ones from the perspective of concern that their medical wishes are respected and they receive the best medical treatment in the event their unable to advocate for themselves. You could ask, *can you nominate someone, or a few of us, to be your health care advocate(s) in the event you're not able to advocate for yourself. This is something everyone — me included — needs. Who would you like that to be?*

In Ohio this nomination is made through the appointment of an "Agent" in a Health Care Power of Attorney. This document needs to be in writing to make sure that the advocate has the needed authority to talk with doctors about the parent's health, with the appropriate HIPAA releases. This document must also be in place before the need actually arises because, at that point, it's too late. If there's a need for a medical advocate and no documentation has been put in place, there's no recourse except to go through the court system.

Another important health document is a Living Will. Different from a Last Will and Testament, a Living Will contains a persons' end-of-life decisions. The question you could present to your loved one to open the door for this document is, *if your brain has stopped working, and you are just being kept alive by machines, do you want to keep living like that for a long time – perhaps years?*



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Financial Planning

Similar to how a Health Care Power of Attorney Agent empowers another to make medical decisions for an incapacitated loved one, a Financial Power of Attorney empowers another to make financial decisions for a loved one. This includes paying bills, filing taxes, and caring for property. While particularly important for aging loved ones, a Financial Power of Attorney is recommended for everyone.

Consider a 30-year-old client with a rental property in the US who became sick in a foreign country and was unable to return to the US for three months. His mother attempted to contact the mortgage lender during this period, but the bank would not speak to the mother about the account. When the client returned home the property had gone into foreclosure.

The most important thing to understand is that it's necessary to put ***this documentation in place before the need arises***. Once the need arises, it's too late. If you don't have the planning in place, you're left with going through the judicial system to get the court to appoint you as a "guardian." This is difficult, time-consuming, costly, and often won't provide the desired outcome. It's common to see the state step in and reject individual requests to be an advocate.

Legacy Planning

This is another area where how the discussion is approached is key to success. Instead of asking - *What's going to happen when you pass?* consider asking - *What kind of legacy do you want to leave?*

Switching the question in this way changes the focus to the root of what's most important to your loved ones. Their assets are only a byproduct of their actions and motivations. It's a lifetime of those actions and motivations that will form their desired legacy goals.

It's common for estate and death planning to be oversimplified into a discussion on what items go to certain family members. While this should still happen, perhaps there are family heirlooms or jewelry your loved ones want to go to specific people, the more important question is their legacy.

Keep in mind that the die-and-distribute approach can hurt certain beneficiaries more than it helps. Statistics show that recipients of windfalls (large inheritances or winnings) have an exponentially higher likelihood of declaring bankruptcy. In some cases the likelihood of

bankruptcy goes up 30,000% (lottery winners). For inheritances, statistics have shown that for every \$1 of inheritance, only \$0.16 will remain after five years.

The takeaway is this: If your loved ones want to make a lasting difference and leave a major impact on their descendants, they can and should choose to define their legacy. If this is appealing to them, then it's important to not approach the conversation about estate planning with from the perspective of *Who gets the stuff?* That discussion isn't likely to proceed with positive collaboration, and they may even view your motives with suspicion. Instead, ask them: *What kind of legacy do you want to create?*

When talking to parents about the legacy they want to create, the point is to get your parents thinking about what they value. Maybe they value education, travel, entrepreneurship, or love. Each of these values can be specifically accounted for as part of a lasting legacy through using a basic revocable living trust that also happens to cover – *who gets the stuff?*



Josh Didion is a partner at Semro Henry & Barga. His focus is on trust and estate planning, business, and real estate. To Josh, the best part of serving as the trusted advisor for his clients is the chance to be a problem-solver and help his clients reach their goals by providing creative solutions and responsive assistance.

Josh is a Board Certified Specialist in Estate Planning, Trust and Probate Law and particularly enjoys working with clients to identify their estate and business planning needs, tailor a plan to meet those needs, and participate as the go-to advisor to implement the plan. From complex dynastic tax planning to simple children protection plans, Josh helps his clients formulate a plan that works. Josh also regularly advises the 'next' generation, providing the support needed to carry out the administration of their ancestors' trust and estate plans.