

# Confessions of a CELA: Uncomfortable but Necessary Considerations During the Estate Planning Process

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With the new year underway, society at large is motivated to finally tackle the various personal matters that have been put off for far too long. For more than a few, one of those matters is estate planning. Often individuals or families realize that estate planning is an important item to which everyone must eventually attend, but some are not aware of the considerations and decisions that must be made throughout the process. Some of these considerations at face value may be uncomfortable to confront and honestly assess. However, doing so is paramount to having a comprehensive estate plan that works for your family. This article will discuss two often unconsidered areas that clients must confront, assess, and finally decide a course of action when creating their estate plan.

## 1. Facing Your Mortality

Unfortunately, everyone will one day pass away. While on a cursory glance this is common knowledge, it is not uncommon for clients to have some level of denial of this fact. Estate planning documents such as a Last Will and Testament and/or a Trust agreement require a client to make legal decisions in the present as to who will handle their affairs and where their assets will go upon their death. Documents such as a General Durable Power of Attorney and Health Care Power of Attorney requires the client to assess and decide who would best handle their affairs should they become incapacitated and no longer able to advocate for themselves. A Living Will requires a client to make decisions as to which medical treatments they would wish to receive or refuse should a doctor diagnose them at end of life, and they can no longer advocate for themselves. These considerations and decisions regarding one's own mortality are not the most pleasant thoughts to consider. Sometimes these thoughts and discussions overwhelm clients if they had never truly considered that incapacity and/or death will one day be something they face.

However, it is of the utmost importance to the client and their family to confront these questions and make proactive decisions and plans. Related to mortality, many individuals believe that there will always be more time to create their estate plan and continue to kick the can down the road and procrastinate beginning the process. However, it has been my experience that life throws unexpected and unanticipated curveballs and an incapacitation or a death can render one unable to undertake the estate planning process and thereby cause possible irreparable damage to one's life or estate.

## 2. Family Dynamics

For certain clients and their families, all members get along and no individual member has issues that could compromise the client or their estate. However, there are also many clients that have minor or significant familial issues that must be assessed and addressed when going through the estate planning process. As stated above, a client must consider advocate roles should they one day be incapacitated. These advocates would speak and act on behalf of the client to make major medical and financial decisions that will impact the client's life and affairs. Many clients desire a family member(s) to serve in the various advocacy roles. To determine the appropriate family member for the job, a thorough analysis of each potential advocate's personality and the relationship dynamic with that member must be considered. If a child has spendthrift issues, is untrustworthy or unreliable, they are likely not recommended for the role as an advocate. The client must also consider who will handle their affairs after said client's death. Again, the client must trust in the individual appointed as successor Trustee or as a personal representative and have the utmost faith that their wishes will be honored in a competent fashion. In consequence of this assessment, one or several family members may be selected over others, which may lead to feelings of unfairness or exclusion. But the analysis and making these decisions are necessary to ensure the integrity of a client's estate plan is upheld.

For many clients, creating their own estate plan presents the first time that they must deal with the two subjects above in a direct fashion. This can create some difficult conversations amongst themselves, their family, and their legal counsel. However, in life sometimes the hardest path is the most rewarding. To feel better prepared, perhaps begin thinking about these topics prior to meeting with your Certified Elder Law Attorney. That way your attorney can help you in finalizing your analysis to get you a comprehensive estate plan that brings peace of mind to you and your family.