

TRUSTS & ESTATES



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Catholic Considerations and Estate Planning

Taking into account religious issues

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Pope Francis recently concluded a 10-day tour de force in the United States. He was met by huge crowds in spite of massive security efforts and followed on television no

doubt by tens of millions of others who couldn't see him in person. Almost every aspect of his visit was a testament to his vision of Catholic values, from his choice of vehicle to his outreach to inmates, those with disabilities and others. His impromptu speech and the testimonials at the Vatican-sponsored World Meeting of Families was a veritable checklist of values and aspirations. Catholics transfixed by the Pope Francis and his visit can integrate many of these values and aspirations into their estate plan.

Religious issues are too often overlooked in the estate-planning process. For the nearly 70 million Catholics living in America, about one in every five Americans, this is unfortunate and unnecessary. For many clients, their Catholic religious issues are important, especially when facing a crisis, such as a terminal illness or the impending loss of a loved one. What can be done to infuse legal documents and planning with these values?

Each aspect of a plan: financial, retirement, insurance, death (dispositive scheme) and post-death (for example, trusts for heirs) can be tailored with the Catholic values that may be important to a client's life generally. Small changes, however, can make a tremendous impact to the client, his heirs and the causes he believes in. Each change can be planned and implemented to be consistent with the client's particular beliefs and wishes.

Letter of Instruction

Clients wishing to infuse Catholic values into their planning should make a centerpiece of this effort a personal letter of instruction to heirs, fiduciaries and others affected by their plan. No doubt, professional advisors will caution against certain precatory language being incorporated into formal legal documents. But those same guidelines or thoughts may achieve the client's wishes best by being included in an informal non-binding letter of instruction. Guidelines for how a child should be raised may be contained in such a side letter as guidance and suggestions for a trustee, while the actual trust instrument includes broad discretionary standards.

Selection of Fiduciaries

If a client wants religious values to be reflected in his estate plan, he should carefully consider selecting fiduciaries who can carry out those wishes. While this might be obvious to every practitioner, it may not be so to every client. Clients may view fiduciary selection as the confirmation of the obvious family relationships instead of a more thoughtful consideration of who can really carry out their wishes. Certainly, guardians must be selected to care for their children in the manner they wish, including raising the children with the values the clients want, sending the children to schools that they would wish and perhaps even living in the neighborhoods that the parents might feel appropriate. Clients should give the selection of trustees, trust protectors and other fiduciary positions similar consideration. Will the trustee understand how to expend trust funds to foster the values and lifestyle the client wants for his children and other descendants? Is the trust drafted with sufficient flexibility to provide the discretion to do so?

Charitable Giving and Estate Planning

A religious client near the end of his life often might become more reflective and focus on spiritual matters. The client might feel compelled to donate to his Parish, church or other cause deemed worthy beyond what might he might have donated at earlier times. It's important for estate planners to facilitate this by giving clients the opportunity to accomplish these goals. This might include incorporating provisions into a durable power of attorney (POA) and/or revocable trust permitting a fiduciary to make charitable gifts

Testamentary gifts, even if there are no estate tax benefits, are essential for Church functions and other institutions to continue. Many of these bequests are from people who grew up in a particular Parish and were schooled there, but moved away. Often, they find comfort in their last days in making bequests to the Parish where they grew up. Language in a durable POA, for example, should permit gifts in accordance with "historic practices"

From a religious perspective, it's always recommended that one use some of his wealth to help not only the present but also the future. When Jesus looked at the widow's plight, he recommended you should give not only of your surplus, but also of your substance (principal) as well. You can't understand Christianity without understanding charity. St. Paul, while traveling, heard of the needs of the Church in Jerusalem, and said "G-d loves a cheerful giver."

Ideally, people should think about charitable giving while in good health and not wait for testamentary gifts. An attorney's cooperation in helping and encouraging clients to structure charitable gifts and to help the poor is itself a graced activity.

A bequest to a charity in the client's will, with an accompanying statement of intent to assure the client's heirs understand the purpose and lesson of the bequest, can have a profound impact in transmitting values, not merely wealth.

POAs

As discussed above, charitable giving is a basic tenet of faith, and POAs should permit even direct charitable gifts. Your client may send children to private religious school. Identify what religious oriented expenditures your client would like an agent to be able to make if the client is incapacitated. Even if the broad language of a general form might permit these payments, specifying them in the document or a letter of instruction may provide an agent guidance and prevent a family member with different views from derailing your client's wishes.

Doctrines and Guidelines for Inheritance

Always consider general guidelines of charity and justice. But specifically, how that would apply will vary based on the circumstances of the family. To the extent you can help guide clients to make their estate plans charitable, just, fair among heirs and consistent with the many Catholic doctrines, you'll be providing a service to your clients and your client's families.

Living Wills/Health Care Proxies

Living wills raise a host of Catholic religious issues. It's advisable for a Catholic to sign a living will clarifying that Catholic religious observances should be respected. It puts the client in control of decision making when he can't be in physical control. It can also be of great help to the family, which is always torn at such difficult times.

Unfortunately many Catholics assume the Church will mandate that they be kept alive no matter what. As a result, many don't sign living wills in accordance with Catholic religious principles. But this is an unfortunate misunderstanding. Catholics can secure living wills that are not only consistent with their personal wishes, but also are consistent with their religious heritage. Advise clients to consult their priest to confirm any provisions to be used.

Recitals: Use introductory clauses to inform any reader that the particular living will is to be interpreted in accordance with Catholic tenets. These particular clauses, if added, should be integrated into the "Recitals" component of the standard living will.

WHEREFORE, God is the creator and preserver of life. Since life is a journey from God and back to God with death as part of that journey, it follows that life is sacred, but not an ultimate value. From this perspective, death is not a failure or an absolute evil, but the culmination of the journey.

WHEREFORE, My Catholic heritage holds that life is the gift of a loving God. I see life as a sacred trust over which I can claim stewardship, but not ownership. Therefore, I believe that euthanasia and suicide constitute an unwarranted destruction of human life and are not morally permissible. I understand, as a Catholic, that I may never choose to cause my death as an end or a means.

No heroic measures: The Catholic Church doesn't mandate that a person be kept alive no matter what. A Catholic can decide to avoid overly invasive and experimental procedures, but not ordinary means of care. "Ordinary means" could

include feeding someone, assuring they have air to breathe, etc. The Church believes that a patient must continue to receive ordinary care, otherwise you are effectively acting to cause the patient's death. The extraordinary means go beyond this and seek to reverse a process that's already underway. Extraordinary means can be antibiotics or surgery, among others. The following is a "no heroic measures" directive, as it's understood based on various interpretations of the Catholic Church. It can be added to or substituted for the general "No Heroic Measures" directive found in a typical living will to conform a living will to reflect the Catholic beliefs.

If I (i) have an incurable or irreversible, severe mental or severe physical condition; (ii) am in a state of permanent unconsciousness of profound dementia; (iii) am severely injured; and in any of these cases there is no reasonable expectation of recovering from such severe, permanent condition, and regaining any meaningful quality of life, then in any such event, it is my desire and intent that heroic procedures and extra-ordinary maintenance or medical treatment, as understood in the moral tradition of the Catholic Church, be withheld and withdrawn. It is not my desire to prolong my life through mechanical means where my body is no longer able to perform vital bodily functions on its own, and where there is little likelihood of ever regaining any meaningful quality of life. The condition and degree of severity and permanence contemplated by this provision are of such a nature and degree of permanent illness, injury, disability or accompanied by pain such that the average Catholic person might contemplate, in the moral tradition of the Catholic Church, the decisions addressed herein (regardless whether such person would make the decisions I have made herein). In any such event, I direct all physicians and medical facilities in whose care I may be, and my family and all those concerned with my care, to refrain from and cease extraordinary or heroic life-sustaining procedures and artificial maintenance and/or medical treatment, as understood in the moral tradition of the Catholic Church. The procedures and treatment which might be withheld and withdrawn may include, without limitation, surgery, antibiotics, cardiac and pulmonary resuscitation, ventilation or other respiratory support.

Nutrition and hydration:

Withholding nutrition and hydration for a Catholic should only be done if in accordance with Catholic religious doctrines. Generally, nutrition and hydration will be considered ordinary means and shouldn't be withheld. To withhold nutrition or hydration could be equivalent of starving a person to death. Attorneys must exercise care with using "standard" living will forms because many of them may authorize withholding nutrition and hydration contrary to the wishes of some Catholic clients.

The following is an example of a clause that could be included in the "Nutrition and Hydration" section of a living will to conform your client's will to his Catholic tenets:

Withhold Nutrition and Hydration Only If Permissible Under Catholic Religious Doctrines. Any artificially administered nutrition and hydration (feeding and fluids), if considered extraordinary and heroic measures in accordance with standards and principles as set forth by the Catholic Church, may be withheld or withdrawn. For purposes of this provision, nutrition and hydration shall include, by way of example, and not limitation, tube feedings, Corpak tubes, nasogastric tubes, Levin tubes, gastrostomy tube, or hyperalimentation.

Pain relief: When the objective is to relieve pain, any action may be proper. If the objective is to actively hasten the onset of death, it's inappropriate to authorize such an action in the Church's view. The Church believes that we are always safe in God's hands because he loves us more than we love ourselves. Therefore, to actively hasten death would be a violation of these fundamental beliefs.

An example of a possible directive to be integrated into your living will to address the issues of pain relief is:

Provide Pain Relief To The Extent Permissible Under Catholic Religious Doctrines, I wish that all treatment and measures for my comfort, and to

alleviate my pain, be continued, so long as they do not actively hasten the onset of death.

Pregnancy: Catholic women should consider Catholic religious issues concerning pregnancy in their living wills. If there's a health challenge the mother faces and if to treat her, the fetus, incidentally and by accident dies, that may be permissible. But you can't take any affirmative action that would likely cause the death of the fetus. You can't choose the life of the mother over the life of the fetus. This issue is important to address since it can differ from what many people might assume if uninformed.

The following clause is an example of a possible directive concerning pregnancy. It should be integrated into the "Pregnancy" provision of a living will to address Catholic doctrines regarding pregnancy and end of life situations:

Issues of Pregnancy Should Be Resolved in Accordance With Catholic Religious Doctrines. My life shall not have precedence over the life of my fetus if a choice must be made between my survival and the survival of my fetus. My fetus' life shall not have precedence over my life if a choice must be made between my survival and the survival of my fetus. I direct that no action be taken which would likely lead to the death of either myself or my fetus, even if such action is necessary to the saving either myself or my fetus.

Organ donation and the definition of death:

The Catholic Church's position in regard to the definition of death mirrors that of many state statutes. Death is the irreversible cessation of all brain functions. This definition facilitates the possibility of organ donations. The Church leaves the decision up to the individual to do what his heart desires. There's no right or wrong in the eyes of the Church when it comes to organ donations. It's enough to have a simple directive stating your client's desires. For example, "I am (not) willing to donate any organs that may help others."

Anointing of the sick: The anointing of the sick (last rights) is a sacrament intended to bring spiritual and physical strength during an illness, especially near the time of death. It's a rite performed to convey God's grace to the recipient, through the power of the Holy Spirit. To avoid any confusion given the diversity of today's society, it's advisable to specify in the living will that your client wishes to have this rite.

Funeral provisions: While some Catholics have dispensed with a religious service and use a funeral chapel's service instead, the religious service is the traditional approach. The service at the Parish Church for a funeral mass, which is very important, is thus missed. This service is important, not only for the deceased who can gain from the prayers of the congregation and the grace of the sacramental action, but also for consoling the deceased's family and friends. When the bereaved pray together they can experience their own grace-filled strength and the support of the others who pray with them. This experience is so important for the solace of the survivors. For Catholics, the Mass in church is the appropriate way to say farewell to a loved one. Clients should consider including an express request for such a service in their living will.

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