

IN THE COCKPIT OF ESTATE PLANNING



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When Captain Sullenberger and Jeffery Skiles landed U.S. Airways flight 1549 in the Hudson River after a flock of geese caused both engines to fail, they were hailed as heroes. Once the excitement had passed, a review of several flight simulations revealed that if they had turned back immediately following the bird strike, they could have successfully landed at LaGuardia airport. After further review however, the NTSB determined that the simulations did not account for the time necessary for the pilots to assess the situation and weigh potential risks. The simulations, being robotic in nature, ignored the human element of intense decision-making in the cockpit.

We can often think of our estate plans in a robotic fashion, assuming that whatever happens, our plan will run on auto-pilot to a soft landing. However, this is rarely the case. Like aircraft, estate planning documents require ongoing diagnostics and ongoing maintenance. Each document we construct and execute names certain individuals to make significant decisions on our and our family's behalf. The efficacy of our estate planning documents is dependent not only on their wording, but also on the judgement and decision-making carried out by those who will handle the flight controls upon our incapacitation or death. Take for example new parents naming a guardian in the case of a common disaster. While parents can outline their wishes for their surviving child within a will, no choice of wording in a document can replace the importance of naming a capable and trusted friend or family member to make crucial decisions. No simulation can predict the intricacies of family dynamics that surface in a time of trouble or tragedy. Sadly, many families brush over the most important documents that address these intricacies, one being: a power of attorney.

While most estate planning documents articulate your wishes following death, a power of attorney enables you to delegate decision-making to an individual in case of your mental incapacitation, sickness, absence, etc. during your lifetime. Furthermore, a power of attorney can dictate what level of power is granted, when it begins, and when it ends. While

it is crucial to preserve your legacy and protect those you leave behind in the event of your death, ensuring that these matters are handled prudently during your lifetime is just as important. Many of us will become incapacitated in some manner before death. Executing a thoughtfully constructed power of attorney will maximize continuity and control of financial and healthcare matters, even routine obligations such as paying bills, making gifts, and signing legal documents.

If you become incapacitated without an executed power of attorney in place, your family will be left to restore control of your affairs through the arduous and public process of establishing a conservatorship with the probate courts. Even if someone you trust is ultimately appointed by the court to handle your affairs, navigating the probate court can be expensive, time-consuming, and potentially degrading to your family. In the face of imminent, time-sensitive financial or health-related matters, coupled with your incapacitation, having an executed power of attorney is the surest way to safeguard your family from unnecessary costs, stress, and suffering.

You may have executed a power of attorney several years ago. Give some thought to reviewing it, and encourage your adult children to execute a power of attorney of their own. As life expectancies increase, medical treatments advance, and scammers become more sophisticated in their tactics, a power of attorney can become either a great safeguard – or a significant liability. In addition, as family dynamics change, kids marry or move away, and laws are revised, your documents become outdated. Determine whether your power of attorney designation is still appropriate. Review what powers are granted and when.

In the case of flight 1549, extensive safety protocols and advanced technology were not enough to save the lives of all passengers on board. It was the heroic decision-making and judgement of the pilots in charge that made all the difference. Give your family the best chance of success by designating a competent and trusted family member or friend to take to the control column when you are not able. ■

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