

HOW TO MAKE YOUR OWN HEALTH CARE DECISIONS WHEN YOU CAN'T

As the contentious case of Terri Schiavo painfully illustrates, should you become physically or mentally incapacitated it's best if you can avoid forcing other people to read your mind.

Schiavo was the 41-year-old Florida woman who died after living for 15 years in what some doctors and the courts considered a persistent vegetative state. The protracted, expensive, and excruciatingly public battle over her medical treatment probably could have been minimized or avoided if she had possessed two well-prepared legal documents known as "advanced directives": a living will and a health care power of attorney.

A living will, which many people are familiar with, is a person's written expression of what life-sustaining medical treatment they wish to have or not have should they become terminally ill or are on life support and are unable to physically or mentally express that decision to their family and medical providers. Ideally, the living will should cover such issues as resuscitation, life support technologies, use of artificial nourishment, and medication and pain management.

A less well-known, but equally important document to complement the living will is the durable power of attorney for medical care, sometimes called a health care proxy. This document, which is different from the durable financial power of attorney, designates a person to act as your agent (the proxy) to make medical decisions on your behalf in the event you are incapacitated. The agent's role is to advocate on your behalf that the wishes expressed in your living will be carried out, or the agent may need to make decisions regarding gray areas not covered by the living will.

Despite the importance of these documents, only one in three American adults has a living will, according to a recent survey by FindLaw. Among adults age 18-34, only 18 percent have them. Yet Schiavo was merely 26 at the time she slipped into her vegetative state, and two famous earlier cases, Karen Ann Quinlan and Nancy Cruzan, also involved young women.

Living wills and powers of attorney for medical care are not foolproof. Disputes can still arise among medical providers and family members. That's why it's critical to have both documents properly prepared and executed for the person to lay the groundwork for an event all of us hope never occurs. Here are several steps to take to strengthen the effectiveness of these documents.

Talk over what you want in the living will. Discuss your wishes with your loved ones, an attorney, and your health professionals in order to clarify your own thinking. Be as specific as possible to cover all reasonable contingencies.

Appoint a strong agent. Be sure the agent understands your wishes and is strong enough to withstand possible challenges from other family members or the medical community. Medical providers sometimes refuse to abide by the living will and the agent may want to change facilities, for example. Sometimes a spouse or child is not the best choice. Appoint a backup, as well.

Tell your loved ones. Let your family know you have these documents, what your wishes are (you may need to discuss this more than once), who's your health care proxy agent, and where copies can be found (don't keep them just in your safe deposit box unless the agent has access to the box).

Consider using an attorney. All 50 states allow for living wills and health care powers of attorney. You often can get them and supporting material through hospitals or state medical associations, national organizations such as Aging With Dignity, or you can buy them "off the shelf."

But laws differ from state to state on what language can be used. There are also critical issues as to who can be valid witnesses to the signing of the documents. Because of these possible legal complications, and because the language of generic versions can be vague, financial planners typically recommend that you have an attorney draft or at least review both documents so they are tailored to your desires and conforms to your state's laws. The last thing you want is something open to misinterpretation or challenge. Some states allow the living will and the health care proxy to be combined in a single document, saving money.

Review your documents. Personal situations, medical advances, or your views may change, so review your documents periodically.

WAYS TO AVOID FILING FOR BANKRUPTCY

Consumers in deep financial trouble face a tough choice following President Bush's signing of the new federal bankruptcy act: either file soon for bankruptcy or find ways to avoid what will become a tougher process.

Personal bankruptcy comes in two versions. Chapter 13, known as a "workout" plan, is a court-approved reorganization of your debts that allows you to repay creditors over time while blocking them from seizing property.

Chapter 7 is the more drastic version. It basically allows you to start over by erasing your debts with the exception of back taxes, child support, alimony, and most student loans. But the court sells off most of your assets except for certain exempt assets. What's exempt varies from state to state, but generally includes your home or at least some of its equity, clothing, a car, furnishings, life insurance (though not necessarily all the cash value), pension assets, and tools of your trade.

The new bankruptcy act makes it more difficult for consumers to file under Chapter 7, forcing more into Chapter 13. Consumers hoping to file under Chapter 7 must meet strict income means testing and tighter expense and homestead-exemption standards. Courts will have considerably less discretion about deciding under which Chapter a consumer can file.

Consumers will have until about mid-October to file under the old bankruptcy standards. After that, they face the tougher law. But CERTIFIED FINANCIAL PLANNER™ professionals recommend that consumers explore alternatives before rushing to file to beat the deadline.

Stop the bleeding. This isn't fun, but pare down your expenses to the basics: food, housing, car payments, insurance, and so on. Forget the new digital music player, designer clothes, dinners out, vacations. A budget, or spending plan, can help you find ways to free up more money to put toward your debts. Look for ways to boost income and cut critical expenses such as switching to less-expensive automobile insurance.

Have a garage sale. Sell possessions you really don't need and put the money toward your debts. Chapter 7 bankruptcy would likely require you to sell the stuff, anyway.

Cut up the credit cards and pay cash. A major illness, job loss, and other financial crises account for over half of all bankruptcy filings. But excessive credit card debt often compounds the problem, if not precipitate it. Freeze use of the cards. Spend cash: You will be tighter with your money.

Attack debts. There are two ways to do this. Pay off the highest-interest debts first. This saves you the most money in the long run. But if these are your largest debts, it might

be more encouraging to pay off your smallest debt first and then apply that money to the next largest debt, and so on.

Don't put your home or retirement at risk. Consolidating debt through a home equity loan or a loan from your retirement plan may seem like a good idea, but you are putting your home and your retirement at risk if you can't pay them back. Simply withdrawing money from your retirement plans is usually not a smart idea, either. Your home, retirement account, and, in the wake of a recent U.S. Supreme Court ruling, many individual retirement accounts, are protected in bankruptcy proceedings.

Call creditors. Some creditors may be more willing than you might believe to negotiate smaller payments or more time. They'd rather receive at least something rather than have to deal with you through bankruptcy court.

Consider using a credit counseling service. Under the new bankruptcy act, credit counseling is mandatory before filing for bankruptcy. So consider using their services in the first place and possibly avoid having to file. A counseling service can help you find ways to reduce your debts, and if that's not enough, negotiate with lenders and consolidate all your loan payments into a single payment.

Signs you could use the help of a service include being hounded by collection agencies, creditors refusing to negotiate a repayment plan, being consistently late paying your regular bills, and borrowing to pay off other debts. Unfortunately, some counseling services use unscrupulous practices that actually make matters worse for consumers, according to Congressional investigations, so be sure you choose a reputable nonprofit counseling service.

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COMPANY STOCK: HOW MUCH IS TOO MUCH?

After Enron, WorldCom, and a host of other public companies that have either collapsed or taken nosedives in value in recent years, you would think workers would know better.

Common wisdom among financial advisors is that workers participating in company-sponsored 401(k)-type retirement plans generally should have no more than 10 percent of their account's assets invested in their employer's stock. Yet according to a recent study by the financial research company, Greenwich Associates, company stock accounted for 23 percent of account values.

To the workers' credit, that 23 percent is down from 33 percent in 2001, according to a Hewitt Associates study. But these were only averages. A 2003 study by the Employee Benefits Research Institute and the Investment Company Institute found that 13 percent of employees allocated over 80 percent of their 401(k) to company stock.

So what are the risks of having too much company stock in your 401(k) and how much *should* you hold?

One of the risks of overloading on company stock is the same risk smart investors try to avoid in any portfolio: Too much of any single stock magnifies a loss in that portfolio should that stock's fortunes sag. In fact, this applies to general asset classes. Too much of a single asset class (not just stocks, but bonds, real estate, and so on) makes the portfolio more vulnerable to a change in markets.

That's one reason that, according to Greenwich, the average defined-benefit pension plan, funded by the employer and professionally managed, maintains only 2 percent in its own company stock. (The law also limits pension plans to holding no more than 10 percent in their own firm's stock; there are no restrictions for 401(k) plans.)

And there can be a second whammy to such declining stock values. Beyond putting at risk retirement portfolios laden with company stock, the same forces causing the stock to sag may simultaneously cause plan participants to lose their job and income.

Advisors further recommend the precaution of diversifying away from your employer's industry. If you work in a high-tech company, for example, you may want to minimize your holdings in other companies in the tech industry, which may be offered through mutual funds in your retirement plan. Otherwise, a downturn in the industry could hurt your company's stock, your job, as well as your industry holdings.

How much employer stock you should own is a more difficult answer. Generally, the advice is that it should never exceed 5 to 10 percent of your *entire* investment holdings.

Your retirement plan at work may constitute your entire portfolio. Or it might be only a portion of a larger portfolio that includes individual retirement accounts, taxable investments, and your spouse's retirement plan. Thus, your 401(k) account itself might hold more than 15 or 20 percent in company stock, or even more, as long as it doesn't constitute more than 10 percent of your overall portfolio.

Sometimes it's difficult to keep company stock down to 10 percent. First, employees typically know their company better than most investors and may feel loyalty toward its stock. Their employer may aggressively encourage them to buy and retain company stock (a reason why Enron employees averaged 58 percent of their 401(k) assets in company stock)

Some companies match employee plan contributions only with company stock instead of cash, though the percentage of companies with this requirement has declined to less than 20 percent. Nonetheless, contribute enough to earn that match even if it's company stock – it's free money!

The company also may restrict your ability to sell its stock. You may not be able to sell within a certain number of years, during a certain time, or before a certain age, though companies are loosening restrictions.

Workers fail to periodically rebalance their retirement plan, which can allow a company stock that's doing well at a particular moment to become heavily overweighted.

There can be a tax advantage to owning company stock, called "net unrealized appreciation." This strategy allows the employee to withdraw company stock from the retirement plan at a more favorable tax rate than if the stock is left in the plan and later taken out as a standard withdrawal subject to ordinary income taxes.

Still, when all is said and done, say many advisors, workers generally should avoid overinvesting in their employer's stock.