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I'M HEALTHY! WHY BOTHER PLANNING FOR DISABILITY?

Most people can manage their affairs as healthy adults...but unfortunately, life-changing events occur. Who will manage your business affairs if you have a stroke, or are in a coma as result of a car accident, have an advanced case of Alzheimer's disease, or even just decide to take an extended trip outside of the country? Someone needs to be able to deal with your bank, to get into your safe deposit box, to make a decision on your IRA distribution, to sign your name on your annual income tax return, and complete many other similar tasks.

Now, while you are healthy, is the *perfect time* to take a moment to decide who should handle your affairs in the event you become unable to do so for yourself. If you wait, that very important decision may become out of your control. This type of planning is an important step that could prevent numerous issues and questions from arising...all with just a bit of thoughtful pre-planning.

DURABLE POWER OF ATTORNEY FOR FINANCES

A **durable power of attorney** is a document in which you designate an agent to act on your behalf and make the decisions necessary to manage your financial affairs. A power of attorney is considered "durable" if it continues in effect after you become incapacitated (a "non-durable" power of attorney does not remain effective in that instance).

TIP: Everyone should consider preparing a general durable power of attorney for financial matters so that someone can manage your property if you become incapacitated.

Powers of attorney can be created to become effective right when they are created (an "immediate" power of attorney) or they can be limited to take effect only if you become incapacitated (a "springing" power of attorney). For married couples who typically name each other as agent, or for individuals with a similarly trusted individual to name as agent, the durable power of attorney is often drafted to be immediately effective. A "springing" power of attorney might be preferable if the designated agent is some other family member or a friend, depending on the level of trust you have in that individual.

- ❖ **CAUTION:** A durable power of attorney is a powerful document. Since it is normally a general power of attorney, your agent can do anything that you can do with any (all) of your assets. For that reason, it is most important that you appoint an agent who you know will work only on your behalf. You must have total confidence in your agent.

In addition to the powers normally specified in a durable power of attorney, you should provide authority for your agent to transfer your assets into your revocable trust (to avoid probate at your death), and to make small gifts (up to the annual gift tax exclusion amount per recipient per year) on your behalf to your relatives or others.

HEALTH CARE PLANNING

If you become incapacitated, someone else must make health care decisions for you. However, only you know who would be best to make those decisions for you, and your comments about medical treatment and life-sustaining measures are important.

- ❖ **NOTE:** State law defines who can make health care decisions if you fail to provide instructions, and those default provisions may or may not match your wishes.

HEALTH CARE POWER OF ATTORNEY

A **health care power of attorney** is a document in which you can name an agent to make health care decisions and provide some guidance (and limitations!) for your agent if you are unable to make those decisions on your own.

When you complete this form, you should indicate your specific desires regarding treatment, or any circumstances in which you might want life-sustaining treatment withheld. The health care power of attorney form allows you to specify: (1) whether you want to authorize organ donation after death, (2) preferences regarding life support in the event of a terminal illness, and (3) whether your agent may withhold and withdraw feeding tubes and other invasive devices in the event of a terminal illness.

TIP: A health care power of attorney is an important part of an estate plan to name a trusted individual to act on your behalf and provide guidance to that person to ensure your wishes will be honored.

Declaration to Die a Natural Death/Living Will

A **declaration to die a natural death**, or “**living will**,” permits an individual to make an affirmative statement that they do not want extraordinary medical care if the only effect of such treatment is to delay and prolong the dying process. The living will is generally effective only when the signer/patient is terminally ill and death will occur within a reasonably short period of time and can only be implemented by a physician after that physician has attempted active treatment to ensure that the patient’s illness is in fact terminal. It is for this reason that a living will only really has an impact on treatment in a health care facility, where the physician is in charge of the treatment. A living will has no effect on EMT personnel when responding to a “911 call.”

TIP: If you do not want extraordinary life-sustaining health care treatment in a terminal illness, state your desire with a “Living Will.”

Do Not Resuscitate Order

State law permits terminally ill patients to ensure that no cardiopulmonary efforts are started in the event of a “911 call.” A **Do Not Resuscitate Order**” is actually a physician’s order directing EMT personnel not to start any cardiopulmonary efforts. This form must be signed by the physician and the

physician must make a notation as part of the patient's medical chart. A physician should issue such an order only if the patient's medical condition is terminal and death is expected to occur in a reasonably short period of time.

Other Advanced Medical Directives

For most of us, medical decisions are made after conversation with our physicians. This communication can take many forms from conversation to written statements. All of these various communications can be effective to inform physicians of our desires.

Many different versions of advance health care directives (such as the "5 Wishes") are available on the internet. Some of these may be enforceable under state law. Others are just means to tell the physician in a convenient way what treatments the patient may want or, more importantly, not want in typical catastrophic illnesses.

TIP: It is normally preferable to use the state statutory forms for naming health care agents and providing health care directives rather than alternate forms that may be offered by internet sites. Ultimately though, *communicate with your physician* and use whatever means is comfortable for you.

WRAP UP

- Now, while you are healthy, is the perfect time to decide who should handle your affairs if you become unable to do so for yourself.
- A durable power of attorney is a document in which you designate an agent to act on your behalf and make the decisions necessary to manage your financial affairs.
- A health care power of attorney is a document in which you can name an agent to make health care decisions and provide some guidance (and limitations!) for your agent if you are unable to make those decisions on your own.
- These straightforward steps could prevent numerous issues and questions from arising...all with just a bit of thoughtful pre-planning.

For more information on this topic, contact us any time!

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