

Estate Planning

The first thing that often comes to mind when we think of estate planning is who will inherit my assets when I die. The document that most people request when meeting with an estate attorney is a Will. However, if you were to become incapacitated during your lifetime and unable to make decisions for yourself, you should think of the person or persons you would want to designate to act on your behalf. The documents in which you would designate such person or persons would be a **Durable General Power of Attorney** and a **Health Care Power of Attorney/Living Will**. These two documents are most often just as important as a Will.

A **Durable General Power of Attorney** is a document in which you give a family member or friend the right to act on your behalf during your lifetime. This document allows the agent you have designated to make financial decisions on your behalf in the event you cannot do so yourself. Some of the common powers that are granted to an agent are the ability to handle your banking transactions, deal with your tax returns, and buy and sell real estate. You can also give your agent the power to make gifts to certain persons. For example, you may be currently making annual gifts to children and/or grandchildren, and in the event you would become incapacitated, you would want this pattern of gifting to continue. You can expressly state this in the Durable General Power of Attorney document.

You can designate one or more persons to serve as agent under your Durable General Power of Attorney. For example, you may have one or more children who you wish to designate to serve as co-agents. In that situation, you would need to designate whether they can act alone or must act jointly. If you are uncomfortable naming two or more agents to act together, you can name one, but should also name successors to serve in the event your primary agent cannot serve.

In the event you were to become incapacitated and did not have a Durable General Power of Attorney in effect, a family member or friend would have to petition the court to be appointed as a guardian for you. This process is a formal and expensive court procedure which should be avoided if possible. A guardian is also burdened with the responsibility of filing annual reports with the court regarding the guardianship.

The second document which you should have is a **Health Care Power of Attorney/Living Will**. This document enables you to designate a health care agent to make medical decisions for you in the event you are unable to do so. The agent you designate under your Health Care Power of Attorney would typically be a family member or close friend. This person would have the ability to consent to medical treatment on your behalf. The document also contains living will provisions in which you may specify treatments you would want or not want in the event you are in an "end stage medical condition" or state of permanent unconsciousness. An end stage medical condition is defined as a condition in which one or more doctors have determined that there is no hope of significant recovery and that without such intervening medical

procedures, you would die. The document also allows you to specify whether your agent must follow your specifications regarding medical treatments or whether your agent shall have final say regarding such medical treatments.

In the event you did not have a Health Care Power of Attorney/Living Will or some other type of Advanced Health Care Declaration, you may have medical decisions being made by a person or persons whom you would not have chosen to make these decisions for you. Also, the decisions being made for you may not be the decisions that you would have made for yourself.

In conclusion, while estate planning is typically thought of as a process of determining who will inherit your assets, it is also important to decide who you want to act on your behalf for the purpose of making financial and medical decisions in the event you cannot make such decisions on your own.

For more information, please contact Anthony S. Rachuba, IV, Attorney at Fitzpatrick Lentz & Bubba, P.C. at (610) 797-9000 or arachuba@flblaw.com.