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Facing the Possibility of Incapacity

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Incapacity Can Strike Anyone at Anytime

Even with today's medical miracles, it's a real possibility that you or your spouse could become incapable of handling your own medical or financial affairs. A serious illness or accident can happen suddenly at any age. Advancing age can bring senility, Alzheimer's disease, or other ailments that affect your ability to make sound decisions about your health, or to pay your bills, write checks, make deposits, sell assets, or otherwise conduct your affairs.

Planning Ahead Can Ensure that Your Wishes Are Carried Out

Designating one or more individuals to act on your behalf can help ensure that your wishes are carried out if you become incapacitated. Otherwise, a relative or friend must ask the court to appoint a guardian for you, a public procedure that can be emotionally draining, time consuming, and expensive. An attorney can help you prepare legal documents that will give individuals you trust the authority to manage your affairs.

Managing Medical Decisions with a Living Will, Durable Power of Attorney for Health Care, or Do Not Resuscitate Order

If you do not authorize someone to make medical decisions for you, medical care providers must prolong your life using artificial means, if necessary. With today's modern technology, physicians can

sustain you for days and weeks (if not months or even years). If you wish to avoid this, you must have an advanced medical directive. You may find that one, two, or all three types of advanced medical directives are necessary to carry out all of your wishes for medical treatment (make sure all documents are consistent).

A living will allows you to approve or decline certain types of medical care, even if you will die as a result of the choice. However, in most states, living wills take effect only under certain circumstances, such as terminal injury or illness. Generally, one can be used only to decline medical treatment that “serves only to postpone the moment of death.” Even in states that do not allow living wills, you might want to have one anyway to serve as evidence of your wishes.

A durable power of attorney for health care (known as a health-care proxy in some states) allows you to appoint a representative to make medical decisions for you. You decide how much power your representative will have.

A Do Not Resuscitate order (DNR) is a doctor’s order that tells all other medical personnel not to perform CPR if you go into cardiac arrest. There are two types of DNRs. One is effective only while you are hospitalized. The other is used while you are outside the hospital.

Managing Your Property with a Living Trust, Durable Power of Attorney, or Joint Ownership

Consider putting in place at least one of the following options to help protect your property in the event you become incapacitated.

You can transfer ownership of your property to a revocable living trust. You name yourself as trustee and retain complete control over your affairs as long as you retain capacity. If you become incapacitated, your successor trustee (the person you named to run the trust if you can’t) automatically steps in and takes over the management of your property. A living trust can survive your death, but it can be expensive to maintain and administer.

A durable power of attorney (DPOA) allows you to authorize someone else to act on your behalf. There are two types of DPOAs: an immediate DPOA, which is effective immediately, and a springing DPOA, which is not effective until you have become incapacitated. A DPOA should be fairly simple and inexpensive to implement. It also ends at your death. A springing DPOA is not permitted in some states, so you’ll want to check with an attorney.

Another option is to hold your property in concert with others. This arrangement may allow someone else to have immediate access to the property and to use it to meet your needs. Joint ownership is simple and inexpensive to implement. However, there are some disadvantages to the joint ownership arrangement. Some examples include (1) your co-owner has immediate access to your property, (2) you lack the ability to direct the co-owner to use the property for your benefit, (3) naming someone who is not your spouse as co-owner may trigger gift tax consequences, and (4) if you die before the other joint owner(s), your property interests will pass to the other owner(s) without regard to your own intentions, which may be different.

Source: Broadridge Investor Communication Solutions, Inc.

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