

May 16, 2018 | Estate Planning, Tax, & Probate, Insights

Estate Planning Toolbox – Documents Effective During Life: Healthcare Proxy, Living Will, and Durable Power of Attorney

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What is a healthcare proxy?

WHO MAKES MEDICAL DECISIONS FOR ME IF I AM UNABLE TO?

Anyone could suffer an accident and become incapacitated. A healthcare proxy empowers an agent to make healthcare decisions if you are incapacitated. By planning, you can nominate who you would like to make your healthcare decisions for you. Many people nominate their spouse as proxy, with a geographically-close alternate in event of emergency.

WHAT PROBLEMS CAN ARISE IF I AM INCAPACITATED WITHOUT A HEALTHCARE PROXY?

By planning, you can ensure that doctors are legally empowered to disclose your medical records to the agent you choose – particularly important under the Health Insurance Portability and Accountability Act of 1996 (a/k/a HIPAA).

We've all heard of families who disagree about treatment options for an incapacitated person. Expressing your wishes during life minimizes those disagreements. It also identifies the individual who should make decisions, avoiding the sometimes costly process to determine authority.

I FEEL STRONGLY ABOUT REFUSING CERTAIN MEDICAL TREATMENTS. WHAT CAN I DO TO EXPRESS THOSE WISHES IN CASE I AM INCAPACITATED?

Paired with a healthcare proxy, a living will expresses your healthcare wishes. Some people feel strongly about end of life care. For example, you may wish to refuse medical treatment in the event you have no reasonable chance of recovery. A living will allows clients to express those wishes to your healthcare agent and doctors in the event you are incapacitated. You may also incorporate organ or tissue donation wishes into your plan.



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I DON'T HAVE STRONG PREFERENCES ABOUT END OF LIFE CARE. DO I REALLY NEED A LIVING WILL?

Those who do not feel strongly about end of life care may choose not to complete a living will. It is important to note that the living will is not binding on your doctors but does offer guidance. This can be particularly helpful in an emotional or emergency situation. For example, an adult child making medical decisions as proxy for an incapacitated parent can be relieved of a lot of stress by referring to the parent's wishes in writing.

IN AN EMERGENCY SITUATION, HOW CAN I ENSURE MY WISHES ARE COMMUNICATED?

By planning during life, you can provide your doctor, spouse, and alternate proxy with your wishes regarding end of life care. Rich May also securely stores estate planning documents as a service to our clients, so you can rest assured that your documents will be available when needed.

What is a power of attorney?

WHAT DOES A POWER OF ATTORNEY DO?

A durable power of attorney allows your agent to make financial decisions for you during your life. In today's world, it can be very challenging for a spouse or child to access bank accounts, electronic accounts, or safe deposit boxes for their spouse or parent. A durable power of attorney allows this type of access – with the nominated attorney-in-fact "stepping into your shoes."

An attorney-in-fact's authority is only during life. Generally, an attorney-in-fact acts only during an emergency or upon incapacity. Because an attorney-in-fact's authority terminates at death, it remains essential to provide access to your financial accounts through your will to your Personal Representative.

I AM CONCERNED ABOUT MY ABILITY TO CONTINUE MANAGING MY ASSETS INDEPENDENTLY AS I AGE. HOW DO I STAY BOTH FINANCIALLY INDEPENDENT AND SECURE?

Seniors are often particularly concerned with their ability to continue managing their finances over time. One option to consider is holding your accounts jointly with someone, for example your spouse or more commonly your child. However, some parents may not feel comfortable providing immediate access to their funds. A power of attorney can be drafted to provide access only upon incapacity.

WHO SHOULD I APPOINT AS MY ATTORNEY-IN-FACT?

Like a healthcare proxy, many clients nominate their spouse as attorney-in-fact as well as a geographically close alternate. The alternate makes financial decisions only if the spouse is similarly incapacitated or pre-deceases the client.

However, if you are unmarried or have children who live far away, it may be helpful to name a mature, trustworthy individual with immediate authority. By providing this authority through your estate plan, you can reduce administrative hurdles for your attorney-in-fact.

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We at Rich May, P.C. wish all of our clients a long and happy life! Anyone with questions on planning can contact Rich May attorneys Danielle Justo and Gerald V. May, Jr.

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