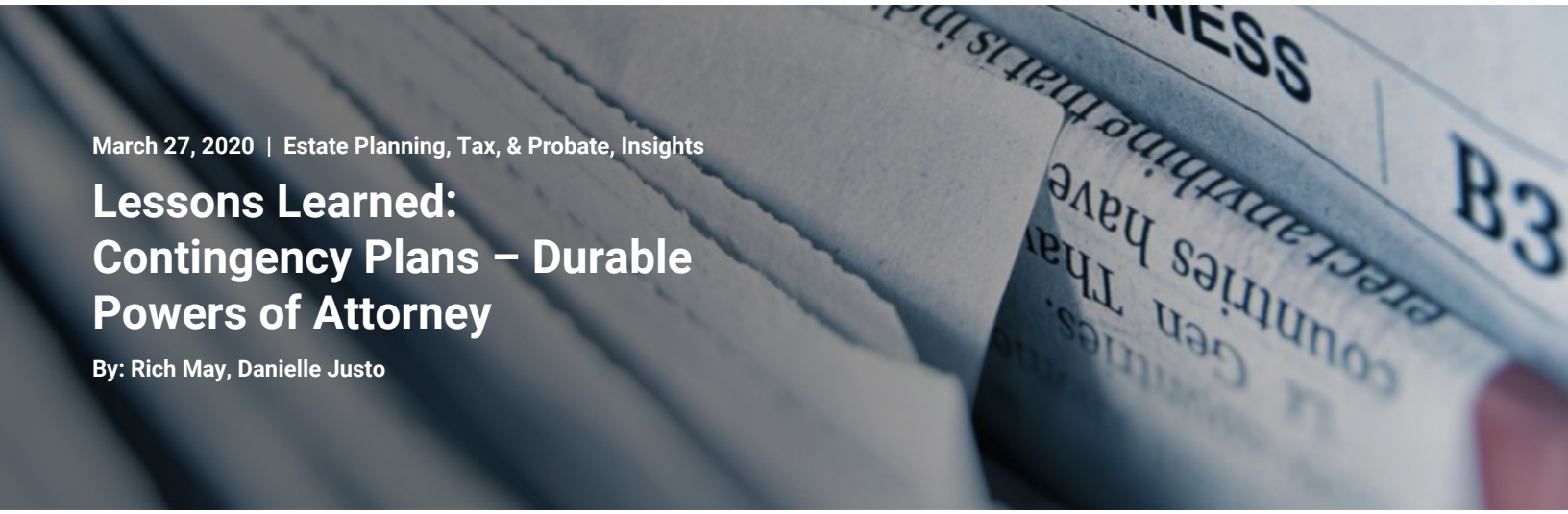

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Lessons Learned: Contingency Plans – Durable Powers of Attorney

By: Rich May, Danielle Justo

For the second time, our client, who is a doctor, had his probate court hearing continued. He had to reschedule his appointments again. He needed to get appointed as temporary conservator so that he could take care of the affairs of his cousin because his cousin did not have any other relatives nearby. He wanted to keep everything in place so that his cousin could return to his home, but he didn't have access to the accounts or the bills. He asked me how this stressful situation could have been prevented…

You may already have a health care proxy in place so that someone can make emergency health care decisions for you, but how does someone step into your shoes and take care of your finances? Make your mortgage or rent payment? Receive your checks; handle your leases if you own property? A durable power of attorney is the answer.

Sometimes clients specifically request this document if they have:

1. A long-term illness;
2. Plans for travelling abroad; or
3. Elderly parents who need help taking care of their affairs.

However, anyone can experience an emergency at any time, so it is a good idea to at least have this POA in place with your health care proxy. If something should happen, this can alleviate the burden on your relatives so they can focus on taking care of you. If you become incapacitated, it may be too late for you to execute it.

You could consider whether you have a joint owner on your accounts or have a safe deposit box because a bank will want to see this document in order to give someone else access. There are many reasons not to delay implementing this part of your contingency plan.

There are only three pieces to put into place:

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1. Decide whether you want the power to go into effect immediately or upon your incapacity. When preparing a POA for an elderly parent, it might make sense for the power to be immediate as you may already be assisting them on a day-to-day basis.
2. Determine who you would prefer to be your agent; we suggest that you do NOT have joint agents, so that there are no conflicts, but rather have for example, your spouse as your primary POA and then an adult child or sibling or parent as your alternate agent.
3. Find two witnesses and a notary who aren't serving as your agents (you may make arrangements with our office or at a bank, for example).

We recommend executing a durable power of attorney as part of your estate plan, which includes your health care proxy and will, and in most cases, a revocable trust to protect your assets and exemptions. Please see our estate planning toolkit for more information and feel free to contact me with any questions.

Disclaimer: This summary is provided for educational and information purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Danielle Justo.

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