

Legal Preparedness

Durable General Powers of Attorney. Under a Durable General Power of Attorney you authorize individuals to perform financial matters on your behalf. The Power of Attorney can be designed to become effective upon its execution or upon the Principle's incapacity. Query whether advisable to tie to incapacity as that is a high threshold and it may assist your family for your attorney-in-fact to be able to act in instances where you remain capable but are either unavailable or in poor health.

TIPS:

If you name a contemporary as your attorney-in-fact, give consideration to naming an alternate attorney-in-fact should your contemporary fail or cease to act.

Your power of attorney should include durable language found in the Florida Statutes. This ensures that your power of attorney will remain viable should become incapacitated.

Your power of attorney should specifically state that your attorney-in-fact may sell your homestead residence. A reference to selling real property is not sufficient to cover transactions related to your homestead.

Advance Directives. Under an Advance Directive you name a health care surrogate who you authorize to make your health care decisions should you no longer be able to do so. The Advance Directive also typically includes a Living Will under which you state your preferences regarding the withholding of artificial means of life support.

An Advance Directive is not a "Do Not Resuscitate Order" (DNR). A DNR can only be obtained from your physician.

TIPS:

Consider naming alternate health care surrogates in case your first named surrogate is unavailable or unable to act.

Review Living Will provisions carefully with your legal and medical advisors to determine whether they accurately reflect your intent. To extent you wish to provide greater guidance to your family members and loved ones, consider some of the options outlined in the Five Wishes document. It is preferable to have one document versus multiple to avoid conflicts. Accordingly, if you're interested in the Five Wishes format, make sure that you revoke any prior Living Will you may have signed previously.

Provide copies of your Advance Directive to your health care providers. Also keep a copy in your glove compartment in your car.

HIPAA Waivers. Under a HIPAA Waiver you authorize your physicians to release your medical information to certain named individuals. Under the current privacy laws, this is an important document to ensure communication between your physician and your health care surrogate(s), as well as **with** any other individuals you want to include.

TIPS:

Make sure your HIPA Waiver authorizes your physicians to release information regarding your capacity to your attorney and to any Trustee(s) for trusts you may have created or may be a beneficiary under. Many of your legal documents are hinged on your capacity, so it is important that your legal advisors and fiduciaries can obtain this information from your doctors.

Preneed Guardian Designation. If you plan properly, in most instances it will not be necessary to have a guardian appointed to manage your person or your finances (i.e., should you become incapacitated). Nonetheless, you can sign a preneed guardian designation wherein you specify your preferences regarding the appointment of a guardian should one be required. By designating your preferences, you hopefully avoid, if not limit, the conflicts that might otherwise arise within your family.

Wills and Trusts. Your estate plan should be reviewed periodically with your attorney to ensure that it is up to date, both from a legal perspective and from your personal family situation. As part of this process it is important that you consider how your assets are titled. In preparing for incapacity, there may be reasons for changing title from an individual's name or from joint ownership to some form of trust arrangement.

TIPS:

The laws governing homestead are complicated. Care should always be taken as far as title changes related to the homestead, both from the standpoint of maintaining your Save Your Homes exemption and protecting your equity from creditors.

Location of Important Documents. We recommend that you permit your attorney to retain your original Powers of Attorney, Advance Directives, HIPAA Waivers and other estate planning documents. Most attorneys maintain an offsite vault for storage. By placing your originals in this location you afford protection from destruction and also you simplify the management of your affairs. The attorney can access the documents typically within a day and can attest to a requesting party that the original exists and has not been revoked. In most cases, the original will then not have to be released, providing for its continued safe-keeping.

If you would like to arrange an appointment or have any questions regarding the presentation, please contact:

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