

Decide for Yourself...

A Guide to Incapacity Planning

HEALTH CARE POWER OF ATTORNEY

Who do YOU want to make your health care decisions if you were unable to do so?

A Health Care Power of Attorney, also called a Designated Health Care Surrogate, is a legal document appointing another person as your "Health-Care Agent" to make your medical and health care decisions when you are unable to do so. These decisions include choosing the following: (1) Doctors and other Health care providers, (2) Types of treatments you receive, and (3) Health care facilities.

If your loved ones are not named in a Health Care Power of Attorney, they may be denied access to your doctors and medical records. They also may run into legal roadblocks that prevent them from making decisions regarding your medical treatment and medication, living arrangements (nursing home or rehabilitation facility), hiring and firing of doctors, and hospital visitation access.

What happens if you do not have a Designated Health Care Surrogate?

Without a Health Care Power of Attorney, the State of Florida will provide one for you (commonly called a "Guardianship") and the Court will appoint someone you don't know to make all your essential health care decisions.

LIVING WILL

What are YOUR wishes if you were terminally ill or on life support?

A Living Will, or Advance Health Care Directive, is a legal document that makes known your health care wishes regarding life-sustaining care such as food, hydration or ventilators. A Living Will is generally used when a doctor decides that you are incapacitated and terminally ill, are in a persistent vegetative state or end-stage condition.

The absence of a Living Will places emotional stress on loved ones if you have an incurable or irreversible condition that will result in death. The importance of having a Living Will was demonstrated in the famous case of Terri Schiavo. If she had a Living Will, the delay and litigious nature of her death could have been avoided.



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FINANCIAL POWER OF ATTORNEY

Who do YOU want to pay your bills if you were unable to?

A Financial Power of Attorney, or Durable General Power of Attorney, is a legal document appointing another person as your 'Agent' to handle your business and financial affairs ... while you are still alive but unable to do so because you are incapacitated, or are unavailable.

For confidentiality reasons, banks, financial institutions, investment companies, and other third parties will only disclose personal financial information to their customers or their legal "Agents". They will not allow financial transactions to be made by your loved ones, such as bill paying, if you have not named your loved one as your Financial Power of Attorney.

What's the difference between an "Agent" and a "Personal Representative"?

The powers of an "Agent" (the one who has Financial Power of Attorney) end when you pass away. A "Personal Representative" (person named in your Will to handle your affairs) powers begin when you pass away and your Will has been accepted by the Court.

What happens if you do not have a Financial Power of Attorney?

Without a Financial Power of Attorney, the State of Florida will provide one for you and the Court will appoint someone you don't know to make all your essential financial decisions and manage your assets.

LAST WILL & TESTAMENT

Who do YOU want to inherit your Assets?

A Last Will and Testament is a legal document specifying who receives your assets (i.e. your beneficiaries) and who will serve as your personal representative (your executor) for administering your estate AFTER your death. A Will usually requires a Probate-court proceeding after your death.

What happens without a Last Will and Testament?

Sadly, 55% of adults do not have a Will. Without a Will, the State of Florida will provide one for you and all your assets will be distributed under the State of Florida's intestacy laws. Your assets may not go to the people whom you intended. These laws are particularly inadequate if you wish to leave assets to a charity, friend, or to a life partner.

LIVING TRUST

A Living Trust is a popular and flexible Estate Planning tool.

A Living Trust is a legal arrangement in which you give financial control of property to a Trustee (which can be you, or someone you choose) for the benefit of your beneficiaries. This arrangement has little impact on your daily life, as YOU are in control of the Trust and its assets. You can change or revoke the Trust at any time.

Living Trusts are not just for wealthy people. They make financial sense for those who have more than \$75,000 worth of assets subject to Probate. The savings from the Trust's Probate-Avoidance feature typically more than offsets the legal expense of creating and maintaining the Trust.

Benefits of a Living Trust include:

- Avoids Court proceedings, such as Probate, contested Wills, and Guardianships
- Provides for the care of an individual with Special Needs
- Provides for the care of a minor
- Insures that your assets will be properly managed and maintained while you are alive in the event of your incapacity, as well as after your death
- Provides for the care of loved ones who have mental or physical impairments, who struggle with addictions, or lack of financial responsibility
- Manages complex family situations, such as blended families and unmarried couples
- Motivates heirs to make smart life decisions and reward them for doing so
- Reduces Estate Taxes for married couples
- Provides for the care of family pets after your death
- Creates flexible Estate Plans to carry out YOUR personal wishes; including the kind of long-term care facility you want to live in, or how you want your money to be spent

DEFINITIONS:

Agent: The person given legal authority to make financial decisions for the person with dementia (principal) through a power of attorney document, usually a trusted family member, domestic partner or friend; see also *health care agent*.

Assets: Personal possessions of value, including cash, bank accounts, real estate, vehicles and investments.

Beneficiaries: The people named in a will, trust, or insurance policies to receive the estate of the person with dementia upon his or her death.

DNR: A form signed by a Physician, which stands for "do not resuscitate" and refers to a person's instructions that, if his or her heart or breathing stops, the doctor should not try to restart it.

Durable: When a power of attorney document is durable, it is valid even after the principal can no longer make his or her own decisions.

End-Stage Condition: An irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and for which, to a reasonable degree of medical probability, treatment of the irreversible condition would be ineffective.

Execute: To legally sign or carry out a legal document.

Grantor: The creator of a Trust, sometimes called a Settlor or a Trustor.

Guardian: The person appointed by the Court to make decisions on behalf of an incapacitated person.

Guardianship: The legal proceeding in the Circuit Courts of Florida in which a Guardian is appointed to exercise the legal rights of an incapacitated person.

Incapacitated: An adult who has been judicially determined to lack the capacity to manage

their own property or is unable to communicate a willful and knowing health care decision.

Legal capacity: The ability to understand and appreciate the consequences of one's actions and to make rational decisions.

Life-Prolonging Procedure: Any medical procedure, treatment, or intervention, including artificially provided sustenance and hydration, which sustains, restores, or supplants a spontaneous vital function. The term does not include the administration of medication or performance of medical procedures, when such medication or procedure is deemed necessary to provide comfort care or to alleviate pain.

Persistent Vegetative State: A permanent and irreversible condition of unconsciousness in which there (a) is the absence of voluntary action or cognitive behavior of any kind and (b) and inability to communicate or interact purposefully with the environment.

Personal Representative: The person named in a Will to administrate the estate of a person upon his or her death. The executor of a will carries out the instructions of the deceased as outlined in the will.

Probate: The Court process used to distribute the property of a person who has died.

Surrogate: Any competent adult specifically designated by a Principal to make health care decisions on behalf of that Principal upon the Principal's incapacity.

Terminal Condition: A condition caused by injury, disease, or illness from which there is no reasonable probability of recovery and which, without treatment can be expected to cause death.

Trustee: The individual chosen to manage the Trust assets on behalf of the beneficiaries.

Trustor: The person for whom a Living Trust is created; for example, the trustor of the John W. Smith Living Trust is John W. Smith; also called a Grantor.