

PLAN FOR YOUR TOMORROW TODAY – PART 1

A sound plan today can benefit you and your loved ones tomorrow. In my last article, I discussed the importance of having a will and what happens if you don't have one. Having a will is a fundamental component to a solid and sound estate plan. However, a will only comes into effect after you die. The way to protect your interests in the here and now is to make a power of attorney.

A power of attorney is a legal document in which you appoint the person of your choice to act and make decisions on your behalf in the event that you are unable to make your own decisions. A power of attorney is effective during your lifetime and ceases to be effective upon death. At that point, your will comes into effect. The idea is to plan for future incapacity today. While you choose an executor to make decisions in managing your estate after you have died, the person you grant your power of attorney makes decisions while you are living, but legally incapacitated or unable to.

In other words, we are talking about substitute decision-making, which is part of planning for future incapacity. You plan for future incapacity when you have the capacity to do. Without capacity, it is too late. A substitute decision maker, personally chosen by you (someone responsible and trustworthy), needs to be involved in cases of legal incapacity such as serious illness, changing mental abilities and even absence from the country. The law gives you options in choosing your substitute decision-maker. In a legal document, such as a power of attorney, you state your wishes, how you would like them carried out, and who should act on your behalf if you are unable to make decisions yourself. Without such a legal document, the substitute of your choosing is missing and your estate plan is deficient.

Without a legal document that explicitly states your wishes, family involvement in an older person's decisions has the potential to be positive and helpful or negative and intrusive...or somewhere in between. Needless to say, it could easily not reflect your intentions and wishes.

Think of it this way, if you became ill or had an accident and were unable to make decisions about your treatment or care, let alone take care of your property and finances, would you trust someone else to make decisions for you? Part of the answer to this question involves making a power of attorney, and an advance health care directive. These are two distinct legal documents with the common theme of choosing a substitute decision-maker, but whereas a power of attorney governs property and finances, an advance health care directive governs health and medical decisions; decisions that are integral to every senior. I will discuss what a health care directive is and its importance in the next issue.

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