

TRUST CONNECTION

A Monthly Report on Trust News and Information

Planning for Your Incapacity

As medical advances extend human life expectancy, the likelihood you will become incapacitated before dying is significant. The first step to plan for this possibility is to work with an estate planning attorney to assign general and health care powers of attorney. In addition to giving you the option to provide input into your medical and end-of-life decisions, these legal documents grant another person the power to act on your behalf.

In every state, a health care power of attorney allows an agent to make health care decisions on your behalf only if you are incapacitated. The effective date of a general power of attorney varies by state. Some states give you the ability to grant an agent the power to act only if you are found incapacitated. Other states do not allow such “springing” powers; the powers given to your agent become effective immediately regardless of whether you lack mental capacity.

Right now you may be raising your eyebrows asking: “Why would I give someone the power to act even if I am not incapacitated?” This question can easily be answered by people who’ve had the unfortunate experience of being forced to stand by and watch the decline of a spouse or loved one and be powerless to act because the person was not legally “incapacitated.”

In deciding whether an individual had capacity, one court wrote: “... old age, feebleness, forgetfulness, filthy personal habits, personal eccentricities, failure to recognize old friends or relatives, physical disability, absentmindedness, and mental confusion do not furnish grounds for holding that a [person] lacked mental capacity.”

Studies suggest a person may show noticeable decline in the ability to perform complex tasks such as driving, taking medication and managing

finances up to 10 years before a clinical diagnosis of dementia. Your mental capabilities may be in decline for years before a doctor provides a diagnosis or certification. And it’s very likely you won’t notice.

Things to Consider

- Choose an agent wisely. If you do not have a family member or friend who can act, try to locate a professional. Many states have regulated organizations of professional fiduciaries.
- Meet with an attorney to ensure your legal documents are in place and up to date.
- Discuss the issue with your physician and trusted advisors. Ask if they have a procedure to follow if they suspect your cognitive abilities are declining. Let them know the identity of your agents and give them a copy of your legal documents. Consider giving them permission to contact these parties if they believe you are showing signs of diminished capacity.
- Begin involving your chosen agent in discussions about your finances; introduce them to your advisors.

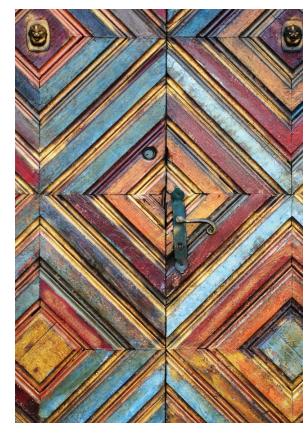
Conclusion

Proactive planning will improve life for you, your family and your agent. You are never too young or too old to initiate the discussion.

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