



## **Estate Planning- It's Not Just What Happens to Your Stuff When You Die**

by Katherine B. Albrecht, July 2014

Most people know they need a will, whether they choose to do something about it or not. They care about how their assets will be distributed at their death. However, they often do not realize that they also need to plan for what will happen to themselves and their assets if they become incapacitated. They assume family members will handle things, but fail to give those family members the tools to do so. The most important part of an estate plan may turn out to be the patient advocate designation, the durable power of attorney, and the authorization of disclosure of medical information.

### **Taking Care of You**

If you suffer a debilitating illness or accident and become unable to communicate and make informed decisions about your own health care, without advance planning there is no one who has authority to make decisions about your care. A spouse, parent or adult child does not have automatic authority to act on your behalf. Your family will need to petition the probate court in the county where you live to have a guardian appointed for you. This process will generally involve a delay of three weeks or more. At a time when there is already a great deal of stress on the family because of your illness or accident, the last thing you and they need is to have to file court papers, appear before a judge and incur legal fees.

If the family does not agree about who should be your guardian, the court may appoint a public administrator to serve as your guardian. While public administrators are generally experienced in these matters, they are also often unable to devote much time to each individual for whom they serve as guardian. They do not know you, your history and your care preferences. They will not know how you feel about various types of medical treatment, and whether you would want those treatments.

You can generally avoid the need for a guardian and determine who will be responsible for your care by preparing a patient advocate designation that names someone you trust to act as your Patient Advocate. The Patient Advocate is authorized to make decisions regarding your care in the event you become incapacitated without needing to obtain court authority. You may want to name an alternate Patient Advocate as well. In the document you can spell out your preferences with respect to the type of care you do and do not want. You may authorize your Patient Advocate to refuse or withdraw of life sustaining treatment such as tube feedings and ventilators.

### **Taking Care of your Assets**

If you become unable to take care of your financial affairs, without advance planning there is also no one who has authority to do that for you. A spouse, parent or adult child does not have automatic authority to deal with your assets. If funds are needed to pay your bills, your loved ones may not have access to those funds. They may need to petition the probate court in the county where you live to have a conservator appointed for you. A conservator is a guardian of your assets. As with a petition for appointment of a

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guardian, a petition for appointment of a conservator involves a time delay and legal fees. Once a conservator is appointed, he must file an inventory with the court disclosing what your assets are. That inventory becomes a public record available to anyone curious to see what you own. The conservator must account to the court annually and as with the inventory, that accounting becomes a public record.

You may be tempted to just add another person's name to your assets as a way to give them the ability to deal with the assets if you are unable to. This may work in some cases, but may cause more problems than it solves. One joint owner of real estate alone cannot take many actions with respect to that property. Your assets may become liable for debts of the joint owner. A joint owner has no obligation to share your assets with your intended beneficiaries upon your death.

You can protect your assets and your privacy, and authorize someone you trust to manage your assets by creating a durable power of attorney. In that document you can name someone you trust to act as your agent to handle your financial affairs. The scope of authority may be very broad, or you may limit it depending on your needs. You may want to use several durable powers of attorney, one naming someone with authority to use funds in on or more bank accounts to pay routine bills, and another naming someone else to handle bigger transactions such as sales and investment of your assets.

By consulting with an estate planning attorney you can save both yourself and your loved ones time, money and heartache. By doing advance planning for your care and your assets you can select persons you trust to follow your wishes. Discuss those wishes with them in advance and give them the tools to take care of you and your assets. Execute a Designation of Patient Advocate and a Durable Power of Attorney. Provide a copy to each person you have named as Patient Advocate or agent. Your loved ones will thank you for it.◇

Katherine B. Albrecht spoke at the Annual Day of Education hosted by the State Bar of Michigan on the above topic. This article was published in the State Bar of Michigan Paralegal/Legal Assistant Section Newsletter. Click on the following link and you will be directed to the full newsletter.

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