

Beier Howlett

ATTORNEYS AND COUNSELORS

Are You Prepared for a Period of Incapacity

by Katherine B. Albrecht

The COVID-19 pandemic has caught virtually all of us by surprise. Stay-home orders have given us time to tend to our to-do lists. If it is not already on your to-do list, consider adding a review of your estate plan documents to that list. Check to see if you have given your trusted loved ones the authority and information they need to care for you if you become incapacitated for a period of time.

You should have a Patient Advocate Designation that (i) names some person as your Patient Advocate to make medical care decisions for you if you become unable to make those decisions for yourself, and (ii) gives the Patient Advocate guidance about your wishes. Generally, it is advisable to name both a Patient Advocate and a Successor Patient Advocate in case your first choice becomes unable to act on your behalf. While you may want to name multiple people to act together,

this is usually not advisable. If they do not all agree about your care, your wishes may not be carried out. It may become necessary to involve the probate court to determine who will make decisions for you.

Your Patient Advocate Designation can include directions regarding what treatments you do or do not want. It can include directions about where you wish to receive care. It can specify that you do not want tube feedings, CPR, ventilators or other life-sustaining treatment if those treatments will merely prolong the dying process. You can include a direction authorizing the Patient Advocate to enter into a Do-Not-Resuscitate Order on your behalf and a direction authorizing donation of your tissue and organs upon your death.

- Does your Patient Advocate have a copy of your Patient Advocate

Designation? If not, does he know where to look?

- Who are your doctors and dentist and how can they be reached?
- What medications do you take? Where do you obtain those medications?
- What hospitals have your records?
- What health insurance do you have?
- Do you have long term care insurance?

All this information should be readily accessible to the person you have named as your Patient Advocate. Your well-being may depend on it.

If you already have a Patient Advocate Designation that expresses your wishes, but it is more than a couple of years old, you should consider executing a Reaffirmation to be attached to

the existing Patient Advocate Designation.

You also should have a Durable Power of Attorney that identifies some trusted person(s) as your Agent to handle your financial affairs during your lifetime. It is crucial to select someone you know implicitly will act appropriately with respect to your financial matters. A Durable Power of Attorney gives your Agent access to your assets as soon as you sign the document. It is impractical to include a provision that the Agent's authority is only effective if you are incapacitated. In theory, such a provision would require the Agent to prove your continuing incapacity each time the Agent tries to take any action on your behalf.

To enable your Agent to deal with your financial matters effectively, the Agent should know where to find information about your assets and liabilities. Are passwords needed to access information? Where can the Agent find those passwords? Who are your financial advisors? What banks do you use? What bills are due, and when? It is especially important not to let insurance coverage lapse.

As with the Patient Advocate Designation, if you have a Durable Power of Attorney that expresses your wishes but is more than a couple of years old, you should consider executing a Reaffirmation to be attached to the existing document. While Durable Powers of Attorney do not have an expiration date,

financial institutions seem to become more reluctant to accept them, the older the documents are.

A bit of advance planning and organizing can help your loved ones help you if the need arises, and can make a very stressful situation at least a little less stressful. ◇

Katherine Albrecht:
kalbrecht@bhlaw.us.com
(248)282-1064



This publication is distributed with the understanding that Beier Howlett, P.C. is not rendering legal or other professional advice or opinions on specific facts or matters and, accordingly, assumes no liability whatsoever in connection with its use. Forward your comments, change of address, or additions to our mailing list at feedback@bhlaw.us.com.

Copyright © *2020* *Beier Howlett, P.C.*, All rights reserved.

3001 W. Big Beaver Road, Suite 200
Troy, MI 48084
(248)645-9400

www.bhlaw.us.com

