

Checking Legal Issues

Do I want my daughter-in-law to have my jewelry one day, not my sister's daughter. I would rather have Jack take care of my affairs if I can't, but Richard probably expects to do it because he's the eldest. Can I prevent the hospital from keeping me alive artificially if I have no chance of recovery? I want to die at home.

Having control over health care and financial decisions is something most older persons probably took for granted when they were younger. As they grow older, however, the possibility of their becoming unable to exercise this control increases. Through a variety of legal documents, older people can establish their preferences before problems occur, for their peace of mind and that of their adult children. It's also much easier to speak about these issues before there is a crisis.

In fact, the demand for such protections is growing. Many attorneys are well versed in these topics. There are also attorneys who specialize in elderlaw issues such as the following:

- Estate planning;
- Long-term care planning;
- Retirement issues such as obtaining pensions and other benefits;

- Health care issues such as Medicare/Medicaid and insurance disputes;
- Fraud and abuse;
- Housing issues such as home equity conversion/reverse mortgages;
- Age discrimination;
- Planning for possible incapacity.

Legal Protections

While each family's situation is unique, here are some of the legal steps and products parents and their adult children may want to consider:

- **Banking access.** Parents may make an adult child a joint owner of their bank and other accounts so that he or she is authorized to act for them in an emergency. They can also appoint someone as joint renter, deputy, or agent for their safe deposit box.
- **Durable power of attorney for finances.** A Durable Power of Attorney (DPA) for Finances is a document that allows you to give another person the authority to make financial decisions on your behalf. Without a DPA, a spouse, close relative, or companion will need to be appointed guardian by the court in order to manage the person's financial

Talking About **Independent Living**

affairs. Typically, a DPA goes into effect as soon as you sign it. But, you can also specify that the DPA does not go into effect unless a doctor certifies that you have become unable to make decisions for yourself.

- **Revocable living trusts.** Like a will, this written document lets parents direct how their property will transfer after their death. It also lets them choose a person to transfer the assets. Unlike the case with a will, however, trust property does not pass through probate, but goes quickly and privately to the beneficiaries. These trusts also differ from wills in that they take effect during the parent's lifetime, when he or she transfers ownership of property to the trust. Lawyers charge more to write living trusts than wills, but other costs also need to be included in a comparison, such as the cost of probating the will, charges for funding the trust, and costs for maintaining the trust.
- **Wills.** A will is a document that instructs how people want their property to pass on after they die. A key issue with wills is probate, the process by which some types of property are legally transferred from an estate to the will's beneficiaries. This process occurs in the parent's city or county of residence. It may take six months to several years to complete, and there are related taxes and fees that must be paid by the estate. Many parents and children prefer to avoid probate, to keep details of the estate private, and to reduce or eliminate taxes. This can be done by strategies such as having life insurance payable directly to beneficiaries rather than to

the estate, creating trusts, and creating joint tenancies (joint ownership) with a right of survivorship (the property goes directly to the survivor).

- **Advance directives for health care.** Advance directive is a general term to describe a variety of documents about your health care wishes. The documents may be called a Living Will, Health Care Directive, Health Care Proxy, Health Care Power of Attorney, Durable Power of Attorney for Health Care Decisions, or other similar name.

Health Care Power of Attorney.

A special kind of durable power of attorney called a Health Care Power of Attorney (HCPA) is a document in which you give another person the power to be your advocate and make decisions for you regarding your medical treatment and other health and personal care. It is effective only if you are temporarily or permanently unable to make your own health care decisions.

Living will. More limited than the health care power of attorney, this document directs the doctor to withhold or withdraw life-sustaining treatment should a patient be diagnosed with a terminal condition and be unable to state his or her preferences. Many legal experts feel that a living will is necessary even when parents have created a power of attorney. Adding this document helps guide the child or other agent in making difficult decisions and improves the likelihood that the doctor will follow the parent's wishes.

Helping Parents Take Action

What can you do to help your parents address these important health and legal issues? The following steps can get you started:

- **Discuss the legal protections** described above with your parents. Find out if they have or want these documents. If they're unfamiliar with the products, you may want to gather more information to help them decide what they need.
- **Find a good lawyer.** If your parent doesn't already have a trusted attorney who can handle estate planning and the other elderlaw issues discussed above, this is a key first step. Friends and other contacts can give you names. Given the wide variety in price ranges, it makes sense to shop around, although price should not be your only standard. You may even be able to find free or reduced-cost legal help, which may be available through a government agency, AARP Legal Services Network, and other groups.
Questions to ask: Will the attorney provide a free initial consultation? How much experience does he or she have in the issues we care about? Can we get references? Who will work on the documents: just the attorney or others in the firm? What will all the fees and expenses be? When will the attorney be available for meetings?
- **Talk to your parents** about financial protection measures.
Options to consider: Know where to find personal and financial documents in an emergency. Ask to be notified by companies if parents miss bill payments. Suggest parents switch to

direct deposit for Social Security and other benefit checks. Share financial information and responsibilities with family members, especially caregivers.

- **Help your parents work through** the often sensitive issues involved in making these decisions.
Questions to ask: Whom do you want to make financial or medical decisions on your behalf? Do you know what you want done with your property after your death? Are there life-sustaining treatments you would or would not want if you had a terminal condition? If you had a choice, where would you want to die?
- **Help parents take steps** to increase the likelihood their advance directives will be followed.
Steps to take: Talk with the doctor before and after creating an advance directive to get input on issues to consider and to ensure the doctor feels comfortable carrying out the directives. Make sure the documents follow the legally correct format for your parent's state; each state has its own. Make sure everyone who may need to know about the documents is aware of them, including family, friends, spiritual advisors, nursing homes, and hospitals. Make copies of the documents and give them to doctors and agents.

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