

Independent Investor

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Get It in Writing — Power of Attorney, Health Care Proxy and the Role of Alternate Decision Makers

Estate planning is mostly about putting mechanisms in place to ensure that your assets are distributed according to your wishes once you are gone. Yet there is another aspect to the process that centers on appointing others to manage your affairs during your lifetime.

What would happen if you became incapacitated and couldn't handle your financial affairs? Who would act on your behalf to pay bills, watch over investments and deal with the paperwork that accompanies collecting insurance and other benefits? Or, who would make arrangements for your medical care and see that your wishes for treatment were carried out? Without advance planning, a court would make these critical — and highly personal — decisions for you.

Fortunately, you can work with an attorney to make arrangements that allow your affairs to be managed by people you choose.

The Role of Alternate Decision Makers

Before you talk to a lawyer about naming alternate decision makers to carry out your wishes, you can save time by understanding the types of issues such individuals may be charged with addressing.

For Financial Affairs, a Power of Attorney

A power of attorney is a legal document that gives another person authority to act on your behalf with regard to legal, business or financial affairs. A big advantage of a power of attorney is that it can help prevent your loved ones from having to go to court to request guardianship over your financial affairs if you become incapacitated. This arrangement can also give the person you designate the ability to pay your debts, manage investment transactions and even make charitable gifts that could help reduce your estate taxes. The power-of-attorney agreement ends at your death unless you also name this person as the executor of your estate.

It is important to update a power of attorney at least every five years — otherwise, some financial institutions may not accept the document as valid. And some financial institutions may not accept the document regardless of the date, so it is best to check with each institution you deal with regarding their policy. (In these cases, you may need to draw up more binding agreements via your financial advisor.)

For Medical Concerns, Health Care Directives

The two most common forms of health care directives are a living will and a health care proxy. A living will is a document presented to an attending physician that explains the care you wish to receive (or avoid) in the event you are incapacitated by a terminal illness or serious accident. For instance, it can express your wishes for controlling pain, receiving nutrition or making life-support decisions.

Alternatively, a health care proxy allows you to designate someone — a proxy — to make medical decisions for you. Keep in mind that in some states you may even be able to combine a health care proxy and a living will into a single document. Hospitals and nursing homes are required to ask about the existence of any such documents when you are admitted. In most states, a health care proxy does not take effect until you can no longer make medical decisions for yourself; until then, only you can legally consent to any treatment. In addition, you can always change or cancel the document as long as you are mentally alert. If you decide to make changes to any of these documents, be sure to do so in writing.

A comprehensive health care advance directive combines both a health care proxy and living will into one document. Organizations such as AARP, American Bar Association and the American Medical Association have joined forces to create a simple, yet comprehensive form.

It is important to note that while health care directives are not financial documents, it is quite possible that during a visit with an attorney to discuss financial and estate planning affairs, such documents may be packaged together with other estate planning items.

Planning Creates Peace of Mind

Informing loved ones and doctors about the types of alternate decision makers you would choose in a wide variety of situations can bring peace of mind to those most concerned with your well being. Though you cannot anticipate an unexpected health crisis, you can plan ahead to ensure that you and your finances are cared for in a manner that coincides with your intentions, even if you cannot make decisions for yourself.

For more on whether a power of attorney and/or health care directives are appropriate in your situation — and how your state's laws treat these arrangements — consult your attorney.

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