

The DAILY PLAN-ITTM

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Avoid Confusion in a Crisis with Proper Planning

Your client might be doing everything he can do to help his aging parents. Often these decisions, and the legal authority to make them, fall to one child because the other children may not live close by, have other responsibilities, or are simply incapable of acting on behalf of the parents.

In some families they try to work by consensus, and at the same time, respect their parents' wishes. This can be difficult when decisions need to be made quickly.

Key Question: Who is in Charge?

For example: Dad enters a hospital in need of immediate hip surgery. Unfortunately, he has an allergic reaction to the medications. He is hallucinating and incoherent. The doctors need to change his treatment, but they aren't sure who to turn to in his family for a final decision.

Dad's four adult children argue over what they think should happen. Old sibling rivalries surface at a time when Dad needs his family to unify.

As an advisor, you may be called in as a default mediator to help families deal with such issues. Naturally, this kind of scenario can sap your energy, time and focus away from other clients. How you choose to help clients plan for medical crises in advance can not only help them but also prevent a similar scenario from hurting your business.

A Family is not a Democracy

In most families, managing by consensus just doesn't work. There's a reason why Dad or Mom was initially in charge.

In a crisis, it takes too long to get a consensus. Relatives that need to be present can't be there or can't be reached on the phone. Or worse, everyone disagrees while the consensus builder is trying to get unanimous consent.

Whether the issue is health or money, consensus building usually won't work in a time of crisis.

What are the Tools?

What you're looking for in these situations is your client's written instructions and choice for leadership. We recommend that a family use several tools.

Everyone - and we stress *everyone* - needs a Durable Financial Power of Attorney. This provides all types of financial authority to allow a chosen family member to make financial decisions for Dad if he is incapacitated.

The Health Care Power of Attorney and an Advanced Healthcare Directive (Living Will) vary from state to state, but the concept is the same. Someone is charged with making all health care decisions for Dad, including the decision to terminate artificial life support.

These written instructions are critical for families, and you as an advisor should encourage your clients to put them in place through proper estate planning documents.

Five Questions

We ask the following questions to new clients who wish to change their existing Health Care Power of Attorney or Health Care Directive, and you should, too:

1. When was the document last updated?
2. Did an estate planning attorney review it? Any "lawyer-in-a-box" forms they downloaded from online sources might not be state specific and could be invalid.
3. Is the person originally named as Health Care Power of Attorney still the same person they want in charge of medical decisions? Why or why not?
4. Is this same person also named as the Durable Financial Power of Attorney? Ultimately, that's up to our clients, but we recommend that they consider naming different people for each role, as the duties of these positions are quite different.
5. Finally, was the existing Health Care Power of Attorney document integrated into a full estate plan?

At the bare minimum, we recommend that every client needs a Last Will and Testament, a Durable Financial Power of Attorney, a Health Care Power of Attorney, a letter of instruction for their wishes regarding disbursement of personal belongings, instructions for burial or cremation, and an Advanced Healthcare Directive (Living Will).

Additional Protection

A Revocable Trust is a fantastic strategy for incapacity planning. It allows clients to think through many of the financial instructions on how they want their financial affairs to be managed if they are ever incapacitated. If a client creates a revocable trust and names a "successor trustee" in the event of his incapacity, then he avoids having a court appoint someone to manage his assets. This will reduce costs, keep the contents of the trust private, and reduce stress on everyone.

Not having an updated, lawyer-reviewed, and thoroughly integrated plan means your client's wishes could be challenged, and his general welfare could be left up to a guardianship judge.

If changes to a plan are made by an ill client or an elderly client, then establishing competency is also an important step to avoiding a court challenge.

When a crisis occurs, at least it will be clear who is in charge of what, what decisions were made by Dad and put into a written plan, and what tools are in place to ensure that he is protected and his wishes are carried out.

As always, we hope this article has helped you and your clients. If you have a specific case or concern, please contact our office.

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