

ESTATE PLANNING

Conversations about where and how you want to spend your final days, or who will inherit your house or business after you are gone, are difficult. Most people simply avoid having such conversations at all. The consequences of your failure to plan for the future, however, can be emotionally (and financially) draining for your family. Knowing that your wishes can be followed will give you, and your loved ones, peace of mind.

The reality is that most adults have not prepared any advanced directives (legal documents giving instructions about end-of-life care). Although the trigger for executing these documents is typically aging or a life-threatening medical condition, adults of all ages need to create these documents – even your 18 year old child who is now viewed as a legal adult with rights of privacy in his/her medical and financial matters. If your adult child has an accident or illness and can't make decisions, a judge may appoint a guardian to make medical decisions.

A variety of documents, such as a **medical power of attorney**, **living will** and **last will and testament**, can lay out your instructions for end-of-life care. These documents generally are not expensive, but without them your family may end up paying high legal bills. Some of these documents are available online but, since such planning must be carefully individualized, it is best to have an attorney put together the correct plans and provisions for your situation. The instructions you set forth in these documents can be as specific or general as you wish, and you can change your instructions at any time.

We believe some or all of the following six documents should be in place and may help your loved ones handle your needs without the complication of court intervention. Further information on these may be found on our website at www.Bichoupan.com.

1. Medical Power of Attorney. Also known as a **health care proxy** or **health care surrogate**, this document allows you to appoint an agent to make medical decisions on your behalf when you are unable to do so. Whether you're in a vegetative state, can no longer understand medical instructions because of Alzheimer's disease, or can no longer communicate, you'll need someone to pass on your wishes to your health provider. Your doctor will determine when you are unable to make your own medical decisions. When this happens, the person you selected will make medical decisions on your behalf and communicate your decisions about your medical and end-of-life care, so choose someone you trust and who knows your wishes. Would you want everything possible done to keep you alive if you were declared brain dead and on a feeding tube? Would you want to undergo surgery if your chance of survival was low? Would you agree to try a new medication? An attorney can help you understand the details to include in your document, and your options. If you become incapacitated and do not have this document in place, a court will appoint a guardian for you based upon the law in your State. This appointed guardian may not be the person you would have chosen, and may not truly know your wishes.

2. Living Will. You can detail in a written statement which medical treatments and measures you do and do not want undertaken when you become incapacitated. This document addresses whether you want to be kept alive by machine, such as a ventilator or feeding tube. Some people want to be kept alive at all costs; others would prefer to end all measures for resuscitation.

Without this document, families could have serious disagreements, or someone who doesn't share the individual's values may be making the decisions. Having this document may save your loved ones from making wrenching decisions for you without knowing your opinion or wishes.

3. HIPAA form. People named in HIPAA forms have access to your private medical records. You could name the agent from your medical power of attorney, or additional friends and family members who may want to speak together to evaluate options and make medical decisions on your behalf. If your adult child does not name you, and has not created a medical power of attorney with you as their agent, you will not have access to their medical records.

4. Last Will and Testament. What happens to your property and assets after you die is determined by your last will and testament, in which you state who receives your real estate, jewelry, savings, investments and any other assets you have, and in what percentages. If you do not have a last will and testament, the court will decide who receives the assets based upon state law – requiring a division of your assets between your family members that you may never have intended or wanted. Most importantly, a will can appoint a guardian for your minor children, so that there is no question as to who you intend to take care of your children if you cannot do so. You could also will your pets and set up a pet trust for their future care.

5. Financial Power of Attorney. When you give someone financial power of attorney, you are giving that person the right to access all or portions of your finances. The document goes into effect immediately after it is signed, but your agent authority may “spring” into being only upon your incapacity. You may decide to do this so you have someone you trust to help you with handling your expenses, such as medical bills, tax returns or withdrawing money from the bank. This person would also be in charge of your finances when you become incapacitated. Failing to procure this document results in a costly legal battle for your family in which a court will select a guardian to handle your affairs for you when you no longer can do so.

6. Letter of instruction. Though you will not need an attorney for this document, it could be important in guiding your loved ones during their time of grief. The letter gives information about how to conduct your funeral service, whether you want to be buried or cremated, and whom to contact after you die. Many people choose to prepay for their funeral so as to spare their families the need to handle such details when they are grieving.

Obviously, no one looks forward to these types of conversations. However, the consequences of not having these conversations sooner rather than later could be very draining on your family – both emotionally and financially – and could lead to results that you never intended. It is time to start that conversation now.

Law Offices of Robert Bichoupan, PC
175 East Shore Road, Great Neck, NY 11023
(516) 482-1186
www.bichoupan.com

