

"Your Estate Matters" Legal-ease

By Ronda M. Gabb, NP, JD, RFC



PREPARATION is the KEY!



We always talk about PRE-planning things, but what does that really mean? Well, it means **you have to make a plan BEFORE anything bad happens, not after.** Unfortunately, many of the calls we get come from folks who have lost the opportunity to pre-plan - perhaps a loved one has had an accident, a stroke, or now has advanced dementia or Alzheimer's. Under the law, you must be competent to execute any documents, such as powers of attorney, living wills, and last wills and testaments. Once someone has become incompetent, it is far too late.

Planning for incapacity, in my opinion, is more important than planning for death. If someone becomes incompetent, and they have no prior plan in place, how are their ongoing bills going to be paid at a time when their monthly expenses tend to skyrocket because of their additional medical and long term care costs? What if properties need to be sold or mortgaged to bring in extra money? What if we need to access monies from their investments or retirement accounts? Who has the legal authority to do this? If you think a spouse has this power simply by operation of law, think again. If there was not a power of attorney in place,

no one (not even your spouse), can legally sign on behalf of the incapacitated person without having to go to court.

This costly, scary, humiliating, and time-consuming court procedure is called an "Interdiction" (called a Guardianship or Conservatorship in other states). The incapacitated person must be sued and get personally served (usually by a Sheriff's deputy in uniform) with court papers. All parties must physically go (in most cases) to court and the Judge will decide based on the evidence presented if indeed the Interdiction is warranted. If so, the Judge will then appoint a "Curator" to preside over the Interdict's affairs. This Curator very well may not have been the person that the Interdict would have chosen, and their powers are not as broad and all-encompassing as what they would have been if a good power of attorney had been in place. It also makes planning for Medicaid eligibility (if the interdict needs to go into a nursing home) almost impossible as the Curator is not allowed to implement gifting in the ways we usually do (like gifting the primary home to the spouse or disabled child).

Because anyone, young or old, can become incompetent at any time, I believe that every

legal adult (meaning age 18 or older) should have a comprehensive power of attorney in place. **Yes, this even means your kids who are away at college!** The power of attorney should not only cover the management of your assets, but also the management of your health care. For this reason, in most cases, we actually draft two separate powers of attorney, one covering finances and one for health care. Additionally, you always want to name a successor Agent (or two) to serve in case the person you have chosen becomes incompetent, or dies before you do.

Agreed, this is not a pleasant topic to broach with parents, spouses, or loved ones. However, if you could ask someone who is living through the nightmare of an unplanned incapacity if they wished they would have PRE-planned, I assure you their answer would be a resounding YES. Now you see that the PRE in the plan is the KEY to the plan!

Remember this:

"People don't plan to fail... they simply fail to plan."



See other articles and issues of interest!

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