

START SUMMER RIGHT BY FOCUSING ON HEALTH CARE PROTECTION

By Christine Fletcher, Partner - Private Client Group

As long daylight hours continue to lift our spirits, it is not only the sun's rays that we should protect against this summer. We should also make sure we have our bases covered when it comes to health care and incapacity planning.

Many clients have returned from their winter abodes to spend time on the beaches and lakeshores of the northeast. Hopefully, everyone returned from winter exile without any unexpected injuries or serious medical conditions. If you are unfortunate enough to suffer an unexpected setback, it is critical to have the proper documents in place to carry out your wishes. These documents include health care proxies, living wills, and powers of attorney.

For those with homes in more than one state, it is particularly important to insure that you have legal documents that conform to the law of each state in which you might seek medical care. Failure to conform can render your out-of-state legal documents difficult to use.

HEALTH CARE PROXIES

Each state has its own laws allowing you to name someone to make health care decisions for you in the event you cannot make them for yourself. For example, in Massachusetts you can use a health care proxy to name someone that will make health care decisions for you. However in Florida, this is accomplished through an Advanced Directive for Health Care. If you have homes in more than one state, you should have a document applicable to each jurisdiction in which you reside.

LIVING WILLS

A Living Will sets forth your intention with regard to your medical care in the event of a terminal illness or severe injury. A living will is not like a traditional will at all, but is rather a special document memorializing your intentions with regard to providing or withholding medical care in extraordinary circumstances. Again, different states have different means to accomplish this goal so you may need different documents if you have multiple residences.

POWERS OF ATTORNEY

Powers of attorney are essential to the continuing management of your affairs and payment of your bills in the event you suffer a health crisis. It will make things much easier on your loved ones if you periodically insure that these documents are updated and enforceable in each of the states where you live. Banks and other institutions will often balk at using an older document, making it difficult to use.

RELATED ISSUES

Sometimes you need more than a power of attorney or health care proxy to handle the affairs of a loved one. This happens when your loved one becomes incompetent for some reason, such as dementia, and you do not have the necessary documents in place to care for him or her. In that case, you may need to seek a court-appointed guardianship or conservatorship, and you should seek the legal counsel of attorneys with significant experience in these specialized areas to assist you.

WHO NEEDS ESTATE PLANNING?

For many people, the value of an estate plan will far exceed its cost due to tax savings. Furthermore, estate planning is not just for individuals who have a net worth in excess of state or federal exemptions (currently set at \$1 million for MA, and \$5.34 million for the U.S., but subject to change). The following people can greatly benefit from estate planning with experienced legal counsel:

- Individuals or couples who have dependents or beneficiaries with special needs.
- Adoptive parents, who need to make special provisions for inheritance that differ from state law provisions applicable to those without a legally enforceable plan.
- Other non-traditional families, such as those of unmarried couples or domestic partners.
- Married persons who have previous spouses or children from a prior marriage.
- Those who have special charitable goals.
- Those who have ownership shares in a closely held business that could suffer grave disruption from an inheritance battle or significant death taxes on their estates. Such people can benefit from a well-structured agreement providing for life insurance on key owners in amounts adequate to fund the purchase of the decedent's shares, according to valuations set by agreement.

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