

Advance Planning for Incapacity

What would happen if you were to become too ill or injured to be able to make your own decisions? Legal advance planning options are available that can help ensure decisions would be made for you according to your wishes without the expense, delay and loss of legal rights that can go along with appointment of a guardian. A Health Care Surrogate Designation lets you authorize the person of your choice to make your health care decisions, and a Living Will lets your health care providers know your wishes regarding life-prolonging procedures. A Durable Power of Attorney gives the agent you name the power to handle your financial and contractual affairs.

Health Care Surrogate Designation

This document allows you to appoint a person ahead of time who could legally make health care decisions for you if you were to become incapacitated to make them yourself. It is only usable during the time you are actually incapacitated, and helps to ensure that decisions about your health care will be made by someone you trust.

Living Will

The Living Will allows you to state in advance your decision about whether you would want life-prolonging procedures provided or withheld if you were terminally ill, in an end-stage condition, or in a vegetative state. It is only usable if you have become incapacitated to tell your doctors what you want and your own doctor plus another consulting physician both agree that there is no reasonable medical hope of recovery. The Living Will ensures that your wishes are known and can help avoid unnecessary guardianships, needless suffering, and painful family conflict.

Health Care Proxy

In Florida, if an incapacitated or developmentally disabled person has not been able to name a Health Care Surrogate, certain people may be able to make health care decisions for him so he would not need a court-appointed guardian. The sliding scale of priority ranges from the guardian to the spouse, a variety of relatives, a close friend, and a trained social worker. Although not a statutory form, an Affidavit of Health Care Proxy can be made by the person in that scale who is highest on the list of those willing to serve to let health care providers know that he or she wishes to act as the patient's proxy.

Durable Power of Attorney

The Durable Power of Attorney allows you to name an agent who can deal with your finances, contracts, and assets as if he were you. It generally is *not* restricted to times when you are incapacitated. It can be a helpful tool in avoiding the need for a guardianship, but there are risks, so you should consult an attorney before making this document. Because it is a very powerful legal document, it is important to have an attorney assist you with making or revoking a Durable Power of Attorney.

How to Get Help

An attorney specializing in Elder Law can advise you further regarding the Durable Power of Attorney, Health Care Surrogate Designation, Living Will, and Health Care Proxy Affidavit. Many Legal Services programs are able to provide some or all of these to eligible clients at no cost. It is wise to have these documents prepared or reviewed by the attorney of your choice to ensure that they correctly state your wishes and are validly executed, having been signed and witnessed per statutory requirements. Because the law in this area has changed, if you have an older document, it is a good idea to have it reviewed by an attorney.