

I'm not dead yet! Why do I need Estate Planning?

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You may be under the assumption that a durable power of attorney will prevent the court's involvement at incapacity- A durable power of attorney lets you name someone to manage your financial affairs if you are unable to do so. However, many financial institutions will not honor one unless it is on their form - even though such a requirement is against the law. And, if accepted, it may work too well -- giving someone a "blank check" to do whatever he/she wants with your assets. Court action could be needed to stop someone from abusing their authority. A power of attorney can be very effective when used with a living trust, but risky when used alone. Under either scenario, your agent could end up going to court to get the necessary authority to handle your affairs.

More information on "Power of Attorney"- A power of attorney is a document that allows you to appoint a person or organization to handle your affairs while you're unavailable or unable to do so. The person or organization you appoint is referred to as an "Attorney-in-Fact" or "Agent." A "Durable" Power of Attorney - makes it so that the general, special and health care powers of attorney can all be made "durable" by adding certain text to the document. This means that the document will remain in effect or take effect if you become mentally incompetent.

Another important part of your estate planning should include an "advance health care directive"- which lets your physician, family and friends know your health care preferences, including the types of special treatment you want or don't want at the end of life, your desire for diagnostic testing, surgical procedures, cardiopulmonary resuscitation and organ donation. By considering your options early, you can ensure the quality of life that is important to you and avoid having your family "guess" your wishes or having to make critical medical care decisions for you under stress or in emotional turmoil.

In considering this it is important to understand the HIPAA Privacy Rules- HIPAA provides federal protections for personal health information held by medical entities and gives patients an array of powerful privacy rights with respect to that information. HIPAA's privacy protections are so powerful that they interfere with estate planning. As a result, you need to give your loved ones a written HIPAA authorization that gives them access to your medical records.