



Estate Planning for Aging Family Members

Many adult children are finding themselves in a situation of role reversal, caring for aging parents or other family members and needing to make decisions for them. These decisions may include legal, medical, and financial issues. As a child, it can be difficult to approach these issues with parents, particularly when the parents have not offered open discussions regarding these matters in the past. However, it is best to have the conversation while the parent can participate in the decisions and make his or her wishes known.

As your parent requires greater assistance, legal authority to make decisions should be given to a child or other caregiver. A durable general power of attorney gives the child the ability to handle financial matters for the parent. The durable general power of attorney is typically designed to be effective immediately and therefore proof of the parent's later incapacity is not necessary. The parent may name a child power of attorney or "poa" on specific bank accounts, but the parent should also sign a durable general power of attorney to allow the child to deal with other items such as retirement accounts, life insurance policies, medical bills, etc. Often a child will begin to assist the parent with bill paying and other tasks as the parent transitions the responsibilities to the child. Since the parent's ability to handle his or her own finances isn't revoked with the signing of a

durable general power of attorney, this allows the parent and the child to work together during the transition. It is important that the individuals sign well drafted and current documents, as financial institutions are very cautious in accepting old or vague documents.

The parent or other aging family member should also sign a health care power of attorney, naming an agent to make health care decisions for the parent when the parent is no longer able to make decisions for himself or herself. At the same time, the parent may sign a living will in order to express his or her wishes regarding life sustaining treatment at the time of end of life situations. While a family member using the health care power of attorney may need to make difficult decisions, the living will gives the family some guidance as to the wishes of the parent when making these decisions.

Without a durable general power of attorney and health care power of attorney, the remaining family members can make only limited decisions even if they are in agreement. A guardianship established by the probate court could be required in the absence of a durable power of attorney or health care power of attorney. Guardianship proceedings can be difficult and expensive.

The caregiver child may struggle with balancing their own family needs and the needs of their parent. The parent may eventually require the assistance of a professional caregiver such as an aid or nurse or may need

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to consider other living arrangements. The decision to place a parent in an assisted living facility or nursing home is a difficult one. Again, it is best for the children and parent to discuss the parent's wishes while the parent can assist in the decision.

The cost of professional care is significant, so it is important to discuss options for paying for the care well in advance of the need for care. Health insurance and Medicare do not cover the cost of extended care (Medicare may cover costs during rehabilitation but only for a limited period of time). Many individuals have purchased long term care insurance, but most others will be required to privately pay for extended care. There may be assistance available, depending on the resources of the individual in need of care. Veterans and surviving spouses of veterans have benefits available through the U.S. Department of Veterans Affairs. The individual could also qualify for Medicaid, but may need to first "spend down" their assets to a fairly low amount. We can assist families in drafting durable powers of attorney and health care powers of attorney, planning for long term care, determining whether benefits are available, and best utilizing funds during any spend down period.

If we can assist you with any planning needs for your aging parents, family members, or friends, please contact any of the attorneys at Marshall & Melhorn.

**For more information about our firm,
please visit:
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