

## The Time to Plan for Disability is **NOW!**

*by Monica Franklin, CELA*

Some folks believe that legal, financial, and care planning is only for older adults, but we know that bad things happen to good people of all ages. While it is preferable to create a game plan for disability while in the Sapphire state, a dementia diagnosis does *not* necessarily preclude one from creating a game plan and signing legal documents. That game plan starts with the legal documents needed during lifetime: a durable financial power of attorney and a healthcare advance directive. Then there are the documents that must be signed during life but are necessary upon death: a will and possibly a trust. This series of articles addresses the critical elements of the documents necessary for you to create an effective plan that will meet your needs in the event of disability.

**What is a financial power of attorney and healthcare advance directive?** A financial power of attorney is a document in which you, the “principal,” give another person the authority to manage your financial affairs. Similarly, the agent appointed in a healthcare advance directive has the authority to communicate with healthcare providers, direct the course of your care, and make care decisions in the event you are unable to make or communicate your wishes. An agent under either of these documents does not have *power over* you. As an elder law attorney, my skin crawls when I hear an agent, usually a son or daughter, state that they have “power of attorney” *over* Momma. By signing a power of attorney or healthcare advance directive, you are not giving up the right to make your own financial or healthcare decisions.

A healthcare advance directive includes documents such as the living will and healthcare power of attorney. Generally, a healthcare advance directive is more expansive and descriptive of one’s wishes regarding care in various circumstances including, but not limited to, end of life. Many states have forms. You may google your state and “healthcare advance directive” to see if there is a form available. One of my favorite forms is called **“Five Wishes.”**

**When are these documents needed?** These documents are necessary when an individual, due to disability, is unable to manage their financial affairs or unable to make or communicate their healthcare wishes and decisions. So, why not wait until one receives a diagnosis of disability before signing a power of attorney or advance directive? Obviously, we cannot plan a period of disability or incapacity. This would be similar to waiting until your home burns before purchasing a homeowner’s policy. Like your homeowner’s policy, these documents are a safety net that needs to be in place before a healthcare crisis.

**How do I choose an agent?** This is a crucial decision. The financial agent should be someone you trust who is also skilled at managing money, timely paying bills, discussing investments with your advisor, and willing to include you in decision-making even if you are disabled due to a cognitive impairment. Often clients believe they should appoint their eldest child as the agent because that child's feelings might be hurt if he is not appointed. This is such a powerful document that the agent's skills and trustworthiness trump birth order.

The healthcare agent should be able and willing to be a care advocate, possess the ability to communicate effectively with healthcare providers, health insurance companies, and commit to honoring your preferences as expressed in your healthcare advance directive.

The financial power of attorney and healthcare advance directive are building blocks necessary in preparing for disability. If these documents are not in place, and due to a disability, you do not have capacity to understand the documents, then your family may have to petition a court to be appointed as your conservator or guardian. In those cases, rights are removed from the person with the disability and vested in the conservator or guardian. Those court proceedings are stressful and expensive. The financial power of attorney and advance directive are the *ounce of prevention* that is worth a *pound of cure*.

Watch for next month's article for a discussion of important language that should be included in your financial power of attorney and healthcare advance directive as you plan for disability.