

BECOMING THE --- DECISION-MAKER



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Why is a decision-maker important?



Helps ensure that you have adequate plans and protection in place in the event you become incapacitated.

Incapacity



- Dementia
- Alzheimer's
- Stroke
- Other cognitive impairment

Decision-making



As long as you are competent, you make your own decisions concerning health care and finances. If you become incapacitated, you need someone with legal authority to make decisions and handle your affairs. Loss of capacity may be gradual or sudden.

Types of decisions that may be made



- Personal
- Health care

Types of decisions that may be made



- Financial
 - Residence
 - Investment accounts
 - Bank accounts
 - Credit cards
 - Jointly owned accounts

Discuss your preferences early



- Best to make such decisions while you are competent.
- You are in the best position to make your preferences known before any disabling condition becomes advanced.
- Helpful for decision-makers to know your preferences in advance.

Documents for managing incapacity



- Trust – Revocable Living Trust
 - Joint or Individual
 - Amendable and revocable
- Trustee – serve as own trustee with successor trustees named
- Incapacity – successor trustee acts
- Types of assets that can be managed

Documents for managing incapacity



- Power of Attorney for Healthcare
 - Medical decisions
 - End-of-life care
- Power of Attorney for Property
 - Checking account, credit cards, automobile and
 - Other assets not in trust

Documents for managing incapacity



- Living Will
- Five Wishes

Distributing assets after you pass



Must be competent to sign estate planning documents.
These documents should be prepared before incapacity
so assets will be distributed as you want.

Distributing assets after you pass



- Will
 - Does not allow for handling assets during incapacity.
 - Distributes assets to beneficiaries, usually outright.

Distributing assets after you pass



- Trust
 - Trustee administers assets during incapacity and after you pass.
 - Control over who receives assets after primary beneficiary passes.
 - Distribute assets in trust to beneficiaries.

Distributing assets after you pass



- TOD (Transfer On Death)
 - Residence.
 - Certain brokerage accounts and mutual funds.
 - Checking/Savings accounts.

Distributing assets after you pass



- Jointly held accounts and assets
 - Asset passes upon death of a joint tenant.
 - Certain real estate.
 - Some financial accounts, brokerage accounts, mutual funds, investment accounts.

Distributing assets after you pass



- Beneficiary designations
 - IRA
 - Certain pensions
 - Annuities

Guardianship



In the absence of effective Powers of Attorney or a Trust, guardianship may become necessary to manage the affairs of an individual who is incapacitated.

Guardianship



- Powers of Attorney take priority
- There may be problems in exercising, if there is:
 - Difficult principal
 - Agent is exploiting the principal
 - Family arguing over exercise of the POA

Guardianship



May be appointed guardian of the person. The guardian will make all personal decisions for the ward, including where to live.

Guardianship



- Guardian of the estate
- Handle all financial affairs of the ward:
 - Financial accounts
 - Real property
 - Pay taxes
 - Prosecute/Defend litigation

Guardianship



May be appointed guardian of the person and estate.
May be the same or different individuals.

Guardianship



- Legal process:
- File petition
- Notice to family members
- Summons served on alleged disabled person
- Court hearing
- GAL is appointed

Guardianship



- Contested guardianships:
- May object that a guardian is not needed.
- May object to the proposed guardian.
- The respondent may object and hire an attorney.
- Objecting family member may hire an attorney.

Occurrences that may impact EP



- Long term care is needed.
- How it will be funded:
 - Long term care insurance
 - Private funds
 - Medicaid

Occurrences that may impact EP



- Medicaid planning:
- Asset limits for both spouses
- Income of spouse in long-term care
- Income of spouse living at home
- Residence is exempt

Occurrences that may impact EP



- Medicaid planning (cont)
- Advance planning
- Crisis planning

Occurrences that may impact EP



Financial exploitation may result in the loss of money and assets.

Occurrences that may impact EP



- Types of financial exploitation:
 - “Loan”
 - Computer scams
 - Senior receives phone call with alleged report of computer problem and request for access to computer to “repair” it

Occurrences that may impact EP



- Phone scams
 - Caller pretends to be family member or friend with urgent need for cash.
 - Caller asks for personal information to correct “error” by the IRS, Medicare, etc.

Occurrences that may impact EP



- Professional caregiver
 - May have access to credit cards
 - May have access to personal papers and accounts
- Second marriage

Occurrences that may impact EP



Caregiver child:

- Never worked, single, possible substance abuse.
- Parent has always given financial assistance.
- Child moves in for temporary assistance and never moves out.
- Becomes de facto caregiver by living in the home with parent.

Occurrences that may impact EP



Caregiver child (cont):

- If parent has dementia, the child can exert influence.
- May isolate parent from siblings, friends, others.
- May refuse to take parent for medical care.
- May refuse to answer the phone or doorbell.

Occurrences that may impact EP



Caregiver child (cont):

- May discourage parent from spending money on necessary items.
- May provide substandard care or neglect parent.
- May say disparaging things about siblings.

Occurrences that may impact EP



Estate planning documents that may protect:

- Will –no management during lifetime, but directs how distributions are made after you pass.
- Trust – trustee manages assets and distributes assets after you pass.
- Powers of Attorney – agent manages assets during lifetime; pays bills, etc.

Occurrences that may impact EP



- Professional caregiver
 - May have access to credit cards
 - May have access to personal papers and accounts
- Second marriage

Occurrences that may impact EP



Discuss with a trusted person before agreeing to sign anything, send money, etc.

Reporting elder abuse / exploitation



- Adult Protective Services (APS)
- Hotline: 866-800-1409
- Takes report and possible investigation
- Identity of person reporting is confidential
- Investigator has tools to stop the exploitation:
confront the exploiter; freeze assets; seek orders of
protection; recommend guardianship

Reporting elder abuse / exploitation



- Report to police department
- Power to investigate
- If criminal charges warranted, police will refer to State's Attorney's Office

Reporting elder abuse / exploitation



- Ombudsman
- If exploitation occurred in long-term care facility, report to Ombudsman
- LTC facilities must comply with federal and state law and if, by failing to prevent exploitation by one of its employees, there can be consequences for the facility's licensing
- www2.illinois.gov/aging/ProtectionAdvocacy/LTCOmbudsman

Reporting elder abuse / exploitation



- Civil lawsuit
- Breach of contract suit for “loan” not repaid
- A decedent’s estate may be able to sue for recovery from exploitation that occurred while the senior was alive
- A guardian’s estate can sue for recovery of assets wrongfully taken from the senior
- Sue facility for employer’s malfeasance

Thank You



- Questions

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