



SENIOR SERVICES
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LEGAL MATTERS PREPARING FOR THE FUTURE

As one ages, it becomes necessary to “put one’s affairs in order”. There are several areas that should be looked at in order to protect one’s assets and to make sure that end of life wishes are met. With any type of legal matter, it is always best to consult an attorney who can give advice as to what needs to be done. Elder law attorneys specialize in laws that affect the elderly. They can advise on trusts, social security, Medicaid eligibility and spend down issues, wills, living wills, powers of attorney and much more. Below are several areas that should be looked at as one ages.

Wills

Wills are legal documents that state what property or assets are to be given to another at the time of death. A will allows an adult the right to direct how he/she wants the estate settled. Two witnesses (who are not listed in the will) are needed at the signing of the will to attest to the signature of the person making the will. It is better to have the will notarized. Wills can also be handwritten and signed and dated by the person initiating the will. It does not have to be witnessed, but must be kept with other important documents. If a person dies without a will in North Carolina, laws within the state dictate how the estate is settled. The remaining assets may not all go to the surviving spouse. In order to have assets dispersed as one wants, it is important to have a will made. The will should be kept in a safe place in the home and a copy kept in a safety deposit box in the bank. Wills can be changed with the help of an attorney or they can be destroyed and a new will made.

Guardianship

It is never pleasant to think of becoming dependent on another, but in preparing for the future it is necessary to have plans in place for such a situation should it occur. Unless plans are made for a time of dependency on another, the courts may declare who will care for you and make health care decisions and handle your finances versus who you would choose. It is better to work with an elder law attorney to establish power of attorney with someone trustworthy of handling your financial affairs, the care desired, and end of life wishes. If no action is taken prior to becoming incompetent or dependent, then a family member must apply for guardianship through the Clerk of Courts. This is a lengthy process and involves documentation, a medical and psychiatric evaluation, medical records and often a trial to prove the inability to care for oneself. This process can be traumatic to the family.

Health Care Power Of Attorney

Establishing a health care power of attorney is the first step in declaring who will make health decisions for you when you can no longer do so. The person chosen is called the health care agent. It is important to also name an alternate. Be sure and discuss your health care wishes with the agents, so they are in agreement with and understand your requests. Discuss such topics as the medical treatments you do not want as well as “do not resuscitate” orders. The people you select as your health care agents should know and be willing to carry out your

health or medical wishes. This document will give the agent(s) access to your physician(s) and to your medical records in order to better discuss your health care needs.

A health care power of attorney is a legal document that must be signed and witnessed in the presence of a notary, who then notarizes the document. The document does not go into effect until the physician declares in writing that the person is unable to make healthcare decisions. The health care power of attorney can be revoked by tearing up the original and all copies and designating new agents. The document is then witnessed and signed in the presence of a notary once again. The older adult retains the original copy and copies of the document are given to the physicians who provide care and to the medical records department of the hospital of choice. Copies are also given to the health care agent(s).

Power Of Attorney

Another step to take for future care is to establish a power of attorney to oversee one’s finances. Many older adults are fearful of this next step, as this document gives the agent access to the financial information of the older adult and to his/her assets. Despite not wanting to have this document drawn up by an elder law attorney, it is none-the-less necessary to do so. If this agreement is not established and the older adult becomes incompetent, the family will have to appeal to the courts for guardian of the estate. Selecting a trustworthy family member, relative or friend to handle one’s affairs saves time, money, and emotional stress on all members of the family.

Living Will

The final document to complete in order to have one’s affairs in order is the living will. This document works in conjunction with the health care power of attorney in that it specifies exactly what medical practices you do not want should you become incapacitated. It gives you the right to withhold life support options, refuse medical treatment, and specify resuscitation procedures. This document is signed by two witnesses who are not related to you and do not provide any care for you in any way. The document is signed in the presence of a notary. The living will can be revoked by tearing up the original and all copies and creating a new document with witnesses and notarization. Physicians, hospital medical records department and health care agents should all have a copy of the living will. Some people choose to keep a copy of their living will in the glove box of their vehicle, carry a note in their wallet about having this document or carry a copy in their purse. The original should be kept in a safe place at home and an additional copy kept in a safety deposit box.

Documents In Place

Once these documents are in place, the older adult can relax and enjoy life knowing that all the necessary legal documents are in place for his/her future care. Family members, too, know that they will not have to approach the courts to establish end of life documents. It does pay to prepare.

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