

Pandemic Highlights the Need for a Living Will and Durable Powers of Attorney

Estate Planning Beyond Wills and Trusts

by Alexandra Armstrong, CFP, CRPC, and Christopher Rivers, CFP, CRPC



In the last couple of articles, we discussed wills and living trusts. There are other important documents involved in the estate planning process, however. These have become even more important during the last year when due to COVID-19 many people were admitted to the hospital unexpectedly.

Living Wills

A living will sounds like a combination of a living trust and a will, but it isn't. This legal document is used to notify physicians and family members of your wishes regarding medical care in case of a terminal illness or injury, if you were unable to do so. It enables you to state in advance whether to withhold or withdraw treatment if you're a candidate for life support and are considered terminal.

It would serve both as a legal document and as a supplement to discussions you have had with family members to reassure them of what you want done when they're faced with difficult decisions.

A living will should specify such issues as: 1) when the living will becomes effective (the triggering events or conditions); 2) who has the decision-making power; and 3) which treatments are, or aren't, to be withheld.

Copies should be given to your attorney, appropriate family members and your physician. There are many provisions within a living will and it's very important that your wishes are clearly expressed.

In some states, the living will and the health care power of attorney (*see next section*) are combined into one document called an advance medical directive, but a living will may also be a separate document. The regulations regarding living wills differ from state to state, so it's important to work with an estate-planning lawyer in your state of residence to prepare this document. It's also a good idea to check your hospital's policies to determine what document(s) they require.

Powers of Attorney

These three documents — will, living trust and living will — are important components of your estate plan. In addition, we recommend you have two durable powers of attorney (POA): one to cover your health care directives and another to handle your financial affairs. You may want the same person to have both POAs or you may want to appoint two different people.

Health Care Power of Attorney

A health care POA enables you to provide guidelines and instructions about the extent of medical care and inter-

vention you'd want under various circumstances. This POA is more flexible than a living will since it allows for advance directives for a range of personal health care decisions, not just decisions regarding life-sustaining procedures.

A durable power of attorney for health care can authorize access to medical records and assign responsibility for decisions regarding diagnostic procedures, specific treatments, pain relief, the right to employ or discharge medical providers and authorization for admission to or discharge from medical facilities. This POA will be effective if your physical or mental condition makes it impossible for you to understand, make or communicate an informed decision about providing, withholding or withdrawing treatment.

In this document you'd also appoint someone to act on your behalf. For example, the person you name would be able to talk with your doctors and nurses about your care. It's very important to have someone represent you in this capacity. Doctors and hospitals today have to follow strict privacy rules designed to protect personal information, but the unintended side effect is that without your written consent, they may not be able to discuss your condition with your loved ones. In your health care POA you can describe what quality of life is acceptable to you, thus relieving your family and friends of the burden of making these difficult decisions.

Today, most hospitals require that you have one of these in place before undergoing an operation. In some states, the individual designated for this responsibility must sign an affidavit stating that he or she will in no way financially benefit from your demise.

Advanced Medical Directive

As referenced earlier, rather than having a health care POA and a living will, some lawyers prefer to draft an advance medical directive, which combines the two into a single document.

HIPAA Waiver

The Health Insurance Portability and Accountability Act (HIPAA) requires doctors and other medical personnel to abide by strict privacy rules. Therefore, in addition to the estate documents you currently have, we suggest you execute a HIPAA waiver. A HIPAA waiver allows you to name those individuals, such as family members, with whom you authorize your doctors and nurses to discuss your condition and your care. A HIPAA waiver doesn't grant an individual the authority to make health care deci-



sions on your behalf; only the health care power of attorney does that.

Durable Financial Power of Attorney

A durable financial POA allows a person whom you have designated to act on your behalf when handling your financial affairs. This person may be called your agent or your attorney-in-fact. A financial POA is particularly useful to have should you be traveling or become incapacitated. For example, what if you're away on vacation and one of the stocks you own requires a vote on an unexpected buyout offer? If you've given someone power of attorney to sign for you, that person could vote your shares. Be aware, however, that some banks and brokerage firms require that you complete their particular form rather than a general power of attorney form.

You retain the right to modify or revoke the power at any time. A standing durable power of attorney becomes effective as soon as you sign the document; a springing durable power of attorney becomes effective under conditions specified in your document. A durable power of attorney always ends at your death.

Note that a durable POA doesn't provide your attorney-in-fact with the ability to make decisions with regard to assets that are held in a trust. Only a trustee or co-trustee has the legal right to do that. If you're unable to make financial or medical decisions and haven't given anyone your POA, a family member may have to petition the court to appoint a guardian for you.

Choice of a Person for Your POA

Selecting a person to give your POA for health care or for financial affairs is an important decision. Make sure you name someone you trust to act as you would if you were able to do so. For the durable power of attorney for health care, this is particularly important, as you need to select someone who copes well in stressful situations and isn't intimidated by physicians and other medical personnel. Also,

“Note that a durable POA doesn't provide the ability to make decisions with regard to assets that are held in a trust.”

make sure that this person agrees to serve as your POA. He or she may not want the responsibility!

In summary, we think that all six of these documents — will, living trust, living will, financial and health care POAs and HIPAA waiver — are essential components of your estate plan. It's best to meet with your estate-planning lawyer to prepare or to update your documents before you need them. Also make sure that your family members have copies or know where to find them! **B**

Alexandra Armstrong is a CERTIFIED FINANCIAL PLANNER professional and Chartered Retirement Planning Counselor and founder and Chairman Emeritus of Armstrong, Fleming & Moore, Inc.

Christopher Rivers, a CERTIFIED FINANCIAL PLANNER professional and Chartered Retirement Planning Counselor and co-author of this article is a principal of Armstrong, Fleming & Moore, Inc., located at 1800 M St. N.W., Suite 1010-S, Washington, D.C. 20036-5813, 202/887-8135.

This material has been provided for general informational purposes only and doesn't constitute either tax or legal advice. Investors should consult a tax or legal professional regarding their individual situation.

Securities offered through Commonwealth Financial Network, member FINRA/SIPC. Advisory services offered through Armstrong, Fleming & Moore Inc., a Registered Investment Adviser, are separate and unrelated to Commonwealth Financial Network.

RPM
LISTED
NYSE

▲ 47

consecutive years of
CASH DIVIDEND INCREASES

\$ 2.6

billion in
CASH DIVIDENDS RETURNED TO SHAREHOLDERS
over past 4 decades

RPM

Our Brands Pay Dividends

RPM International Inc.
A World Leader in Specialty Coatings and Sealants

800-776-4488
info@RPMinc.com
www.RPMinc.com/bi

