

Does It Matter?

Clients often ask me whether it matters or not if they have their directives in place for end-of-life issues. My answer is always the same and a resounding, "Yes." Although none of us want to think about it, the likelihood is good that we will need some assistance with our health or financial issues prior to death. I have seen difficulties beyond description and relationships destroyed beyond repair by the lack of proper planning and communication in these issues.

We recommend that clients have three separate documents (other than a Last Will and Testament and a Trust) to take care of end-of-life issues. They are a Living Will, Health Care Representative Appointment and a General Durable Power of Attorney. These documents, in simple terms, do not take care of issues AFTER your death. They take care of health and financial issues PRIOR to death when and if you are incapacitated and unable to take care of those issues for yourself.

Here is a brief description of each of the documents:

LIVING WILL. A Living Will allows you to express your desire to not be treated with life-prolonging procedures in the event of a terminal illness or a persistent vegetative state. You may also indicate whether you want artificially-supplied food and water withheld in the same conditions.



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HEALTH CARE REPRESENTATIVE APPOINTMENT.

A Health Care Representative Appointment allows you to appoint another person to make health care decisions for you when you are no longer able to do so yourself. You may also decide whether your Health Care Representative may override your wishes in your Living Will.

GENERAL DURABLE POWER OF ATTORNEY.

A General Durable Power of Attorney is a document in which you name another person (an Attorney-in-Fact) to take care of your financial affairs in the event that you are unable to take care of them yourself. In the event of incapacity, this document may allow you to avoid an expensive and invasive guardianship proceeding in the Probate Court. This document may give your Attorney-in-Fact the power to pay your bills, sell your real estate and gift your property (to name a few). The powers given under a General Durable Power of Attorney grant broad authority to the Attorney-in-Fact and should only be given upon careful and studied thought, always with the advice of qualified legal counsel.

With the possibility of abuse in the use of the Power of Attorney, the Uniform Law Commission in this country has in recent years looked carefully at these issues and promulgated the Uniform Power of Attorney Act. Although many States have adopted this new law, Indiana has yet to adopt it. This is another reason why the selection of a qualified Trust and Estate attorney is necessary to guide you in your end-of-life planning. It really does matter.

Marti Starkey, Esq. and Lisa Adler, Esq. are members of the Trust and Estate Section of the law firm of Harrison & Moberly, LLP, where Marti serves as Chairperson. Other Trust and Estate attorney members of the section include James Harrison, Esq., Jim McGrath, Esq., David W. Russell, Esq., Mark Pfeiffer, Esq., and Mike Rusnak, Esq. (who primarily works in the tax controversy area). These attorneys handle all types of work in this area, including estate planning, estate and trust administration, wealth transfer, business succession planning, tax controversy, guardianship and all types of fiduciary litigation.



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