

## **LIFETIME ESTATE PLANNING**

Estate planning is more than just a will only applicable when you die. Estate planning also includes planning for what happens in case you become incapacitated and unable to handle your financial affairs or make medical decisions. In Texas, distinct advantages accrue to families who avoid probate during a period of a family member's incapacity.

Living trusts have become a popular planning technique to manage financial affairs in case of incapacity. Living trusts can avoid probate during life and upon death. The increased expense to draft as compared wills and added expense to transfer assets makes costs a consideration on deciding on a living trust, yet the living trust can be preferable to a will because of the lifetime benefits in managing property it gives in case of incapacity.

There are other estate planning documents that you should consider in planning for the possibility of incapacity.

**Statutory durable power of attorney.** A statutory durable power of attorney names someone, called the agent or attorney-in-fact, to handle financial or non-medical, personal affairs if you become incapacitated. Many individuals first name their spouse, and then name their children that are of age and are responsible individuals as their agents. Some name parents, brothers or sisters, or family friends. You may name successor agents if the primary one you name cannot serve. An effective statutory durable power of attorney may save your family from a court proceeding to obtain a guardian for you if you became incapacitated. Everyone should have a statutory durable power of attorney.

**Medical power of attorney.** A medical power of attorney names someone to make health care decisions if you are unable to make them for yourself. Most people name their spouse to make the decisions, but also designate someone else to decide if the spouse is not available. A court proceeding to appoint a guardian to make medical decisions for you in the event of accident or disease, but with a medical power of attorney you can choose who makes your treatment decisions.

**Directive to physicians.** A directive to physicians, instructs your physician to remove life support systems if you become unconscious, there is no hope for recovery, and you are being kept alive by machines. This document is sometimes called a "living will." Texas law also permits you to designate persons, such as your spouse and family, to be consulted regarding this decision.

**Declaration of guardian.** A declaration of guardian designates who will be appointed as your guardian in the event of a long-term incapacity. This is usually not necessary if you have a statutory durable power of attorney and a medical power of attorney, but is prepared as a back-up plan.

One thing all of these documents have in common is that they must be signed while you are still competent and do not yet have a mental incapacity. If you would like to discuss lifetime estate planning for incapacity, please call the Yale Law Firm PC at 210.736.2222.