



# Do You Have All the Estate Planning Documents You Need?

*By JoAnne McIntosh*

When you least expect it, an accident or an illness can strike. Do you have a plan for taking care of yourself and your family if you can't work?

If you don't have the following documents in place, these important matters could wind up in the hands of estranged family members, doctors, or even judges, who may know very little about your preferences. Even if you have executed these documents, they may not be accepted if they are more than a few years old. To be legally binding, they need to be in writing using statutory forms, which changed as recently as January 1, 2014.

Everyone should consider having these documents to protect yourself and your loved ones in case of a disability or incapacity.

- **Declaration of Appointment of Guardian for Minor Children.** This statutory document is critical if you have minor children and allows you to name guardians for any child of yours who is under 18 years of age at the death OR incapacity of the survivor of you and your spouse. I recommend that you execute a declaration of appointment of guardian that is a separate document from your will, since a will is only effective upon your death. You can also execute a joint guardianship with your spouse so that your appointments will not name conflicting individuals.
- **Statutory Durable Power of Attorney** ("financial power of attorney"). The financial power of attorney can be made effective immediately (with respect to the appointment of your primary agent), or can be effective upon your disability or incapacity. It names your agents for financial and business matters. All acts done by an agent using your durable power of attorney during your disability or incapacity will have the same effect as if you were not disabled or incapacitated.
- **Medical Power of Attorney.** The medical power of attorney is effective upon your disability or incapacity and names your agent(s) to make health care decisions for you during any disability or incapacity. An agent appointed by a medical power of attorney may make any health care decision on your behalf—but the document allows you to object if you disagree. This authority may only be exercised if your doctor files written certification in your medical record stating that you are incompetent to make your own decisions. In other words,

there are lots of safeguards to protect you and to ensure that your wishes are met.

- **Directive to Physicians and Family or Surrogates.** This directive is an instruction to administer, withhold or withdraw life-sustaining treatment in the event of a terminal or irreversible condition. It makes known your desire that your life not be artificially prolonged under the circumstances set forth in the directive. On the other hand, it can stipulate that you want all such treatments to continue. This is not to be confused with a "Do Not Resuscitate" form, which is a legal order written either in the hospital or on a legal form to withhold cardiopulmonary resuscitation (CPR) or advanced cardiac life support (ACLS).
- **Declaration of Appointment of Guardian.** In contrast to the declaration of appointment of guardian for minor children, this declaration names guardians of YOUR person and estate in the event of a later need for a guardian. While you may have executed a financial power of attorney, you may not realize that another family member or other well-meaning individual may try to effectively remove the agent you appointed under the financial power of attorney by filing an application to be appointed as your guardian. As long as your declaration is consistent with the financial power of attorney, it typically will prevent these unnecessary contested guardianship proceedings.
- **HIPAA Authorization.** You should consider giving all of your agents and alternate agents, which you have appointed under any power of attorney or appointment of guardian, access to your medical information. This access to medical information becomes especially important if your powers of attorney become effective only upon your disability. A properly drafted HIPAA authorization will allow your agents to access your medical information, specifically with regard to incapacity issues, to help them determine if and when they should act on your behalf.

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One generation will commend your works to another... Psalm 145:4

*JoAnne McIntosh is a board certified attorney and CPA at Eccles & McIntosh, PC. She is a member of the Covenant Presbyterian Foundation Board. The Foundation recently launched an education campaign to help Covenant members and friends plan for their financial future.*