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'Money \$ense': Planning for incapacity

By Mark Hebert
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WHILE NO ONE likes to think about these things, what would happen if you were unable to take care of yourself mentally or physically? What if you could not make the decisions necessary to take care of your health and finances? What if you became incapacitated?

Incapacity can happen to anyone at any time. Aging may bring on dementia, Alzheimer's disease, or other illnesses. Accidents and physical injuries can also happen at any age. Incapacity can be temporary or permanent. Unless you are prepared, incapacity could deplete your savings and destroy your finances, not to mention the emotional effect on your family.

Preparation is the key. Consolidate your assets as much as possible. Formalize your work. Doing so helps ensure your wishes are carried out. Without this, the courts could be making decisions for you if they are petitioned to determine your status. A good plan can save your family from a variety of legal, financial, and personal problems.

With this in mind, let's look at a few ways to prepare for incapacity:

Health directives

Use advance medical directives. There are several types of directives including a living will, durable power of attorney for health care (health care proxy), Do-Not-Resuscitate order and HIPAA authorization. Each has its own purpose. Be aware that the use of these different documents varies depending on the state you are in.

A living will allows you to give someone the authority to make life-sustaining or life-ending decisions if the person signing the document is incapacitated. Most states recognize these types of documents when there is a terminal injury or illness.

A health care proxy allows you to appoint a trusted representative to make medical decisions for you if you become incapacitated. This includes situations in which the living will does not apply.

A do-not-resuscitate order is a doctor's order that tells all other medical personnel not to perform CPR if you go into cardiac arrest. DNRs can be effective only during hospitalization or while you are outside a hospital.

A HIPAA authorization will give your doctor or other health care provider the authority to disclose your medical information to the person you have selected.

If you have any of these documents active, it's a good idea to give copies to your medical providers for their files. It's also important to inform anyone who you have designated as a decision-making agent that you have done so.

Financial planning

Now that we have reviewed the health side of preparing for incapacity, let's take a look at the financial side. Options for protecting your property include placing it in a revocable living trust and having a financial durable power of attorney.



You can transfer ownership of your property to a revocable living trust and act as trustee. If you become incapacitated, a successor trustee you have named can step in and take over the management of your property. Trusts can include detailed provisions as to how you want your assets managed. You can resume the duty of trustee once the incapacity has passed. Be aware that a trust only governs property owned in the trust and may not apply to all of your assets.

The trust can contain provisions as to how your status is determined. Incapacity can be determined by one or more physicians or by your own attending physician, for example.

A durable power of attorney for your finances allows you to authorize someone you trust to make financial decisions on your behalf. Depending on state law and the language used in your document, this power can be effective immediately or only when you become incapacitated.

As can be seen, these things require some time, money, and effort. In considering the people you would like to have in various roles, think about where they live, how busy they are, and if they have the ability to do the job. These are documents you will want to revisit periodically to keep them current. See a qualified estate planning attorney to discuss your needs and help you get the necessary documents in place.

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