DIFFERENT TYPES OF POWERS OF ATTORNEY

The term "Power of Attorney" is used to refer to a variety of different documents. There are financial Powers of Attorney and there are medical Powers of Attorney. Both documents are important, yet each one serves a very specific purpose. In this article I am going to explain the difference and why is it is important to have both in place.

Financial Powers of Attorney

A financial Power of Attorney is a legal document that allows you to name an individual, called an agent, to act on your behalf with regard to your day to day financial matters. Within the category of financial Powers of Attorney, there are basically three different types that can be set up

1. The "Durable Power of Attorney" is effective upon signing and remains effective until death. The Durable Power of Attorney is effective whether you are competent or incompetent.
2. The Power of Attorney (not Durable) is effective upon signing, but is not effective should you become mentally incompetent. This Power of Attorney is commonly used for people that need someone to take care of a single task, such as the sale of the home or paying bills while they are out of town. This Power of Attorney does not allow the designated agent to continue acting on your behalf if you become incapacitated.
3. The "Springing Durable Power of Attorney" is effective at incapacity, not at the time of signing. This document is used when you do not want anyone involved while you are mentally able to handle your own financial affairs. Therefore, it "springs" into effect at incapacity.

Many Powers of Attorneys are not always called by the names used above. However, you can determine the type of Power of Attorney you may need by answering a couple simple questions. **A)** Do I need an agent to act on my behalf immediately? **B)** Do I want my agent to act on my behalf only if I become mentally incapacitated?

The purpose of the Power of Attorney is to plan ahead for situations you cannot anticipate. For example, what would happen if you became incapacitated or extremely ill? Who would run your business, sell your home or pay your bills if you could not? If you have not taken the time to name an "agent" under one of the Powers of Attorney identified above, the court may have to intervene and name a "financial agent" for you. If the court gets involved the process to appoint a financial agent for you is called a conservatorship proceeding. Once the court gets involved it becomes a time consuming and costly experience. By setting up a Power of Attorney now, you can designate someone you trust to act on your behalf and the court will not need to get involved.

If you do not get your affairs in order when you are healthy and competent, there is a good chance that your family will spend considerable time and money in court to get permission to act on your behalf. Additionally, there is also the chance that your court appointed conservator may not be the

person you would have chosen to oversee your finances. When you do not plan ahead, you leave important and personal decisions unanswered.

Medical Powers of Attorney

For years, many of us have heard the term Living Will, but we have confused this term with the basic Last Will and Testament. A Designation of Patient Advocate and Living Will is a medical Power of Attorney. It is a legal document that allows you to name an individual to make medical decisions for you if you cannot.

For a long time family members, especially spouses, have been able to get by without the medical advocate Power of Attorney. Years ago, no one would question a spouse's authority to make decisions for an ill or incompetent spouse, because that was their job. However, with the recent case involving Terry Schaivo, we learned that if you do not designate a person to serve as your medical advocate, your family may not agree on the type of care you receive or issues related to life support. In the Terry Schaivo case, Terry's husband and her parents did not agree on the type of care she received or on whether she should be removed from life support. Since Terry had never taken the time to set up a Designation of Patient Advocate with Living Will, there was no clear indication of her wishes and the court would not choose the side of either the spouse or the parents. As a result, Terry Schaivo was left on life support for over ten years. Regardless of whether you agree with the decision that was made to leave her on life support or to ultimately remove her from her feeding tube, what we all need to take from this case is the importance of putting our wishes in writing.

In addition to the problems regarding medical care and life support issues, recent federal legislation called HIPAA (Health Insurance Portability and Accountability Act), has caused additional road blocks regarding the release of medical information.

HIPAA was enacted by the federal government in 1996 and ultimately enforced in 2004 to protect patient privacy and medical records. With the enactment of HIPAA, family members have been denied information about the condition of a loved one, doctors are being denied pertinent information on a patient and in some situations relatives from out of state have been denied information about the condition of a loved one or the passing of a loved one. Because HIPAA is a federal law, each medical institution may interpret and implement the law differently. The intent of the law was to protect privacy of patient information, it was not designed to interfere with access to health care.

While it appears that the actual intent of the law and the implementation of it are a bit skewed, there is one simple way to help keep your family informed. A Designation of Patient Advocate and Living Will with HIPAA authorization can designate a key person to act on your behalf and to access medical information on your behalf. The Designation of Patient Advocate and Living Will with HIPAA authorization designates a medical contact person who can act on your behalf if you are mentally unable to make decisions yourself. The document can clearly state your wishes regarding life support if there is no chance of recovery and the HIPAA provisions provide for the release of medical information to your advocate.

Many of us take for granted that when the time comes for family to make decisions about our care that everyone will agree and our wishes will be magically known to everyone. Unfortunately, when a medical crisis occurs, we can never be sure how our loved ones will respond. By setting up the Designation of Patient Advocate and Living Will with HIPAA authorization while you are alive and competent, you have the opportunity to discuss these issues with your family and your advocate now!