

LEGAL PLANNING FOR LIVING WITH A CHRONIC MEDICAL CONDITION

In 1900, most people died younger from communicable diseases and after relatively short illnesses. Today, we are more likely to die older from one or more chronic conditions and after an extended period of illness. The decisions involved with planning for disability associated with chronic conditions can be difficult to make. Recognizing that developing a plan is the goal and that plans can (and should) be revised over time may help you assume a proactive role when it comes to legal matters. A summary of the basics involved in planning are outlined below:

A. Financial Power of Attorney & Guardianship

A financial power of attorney allows you to designate a person to make your financial decisions and handle your financial affairs if you are unable to do so yourself. This document needs to be put in place early, before you are unable to make decisions.

If you have no agent under a financial power of attorney, a family member may petition the courts to appoint a guardian of your estate to manage your money and property. However, guardianships can be expensive to administer and in many cases having powers of attorney in place can avoid the guardianship process.

B. Health Care Power of Attorney & Advance Directives

A health care power of attorney allows you to designate a person to make your health care decisions, including residential placement and home care decisions, if you are unable to do so yourself. You may appoint back-up individuals to act if the person you have designated as your primary agent is unable or unwilling to act to make your health care decisions.

Advance Directives such as a Living Will or Physician's Order for Live Sustaining Treatment (POLST) allow you to communicate in advance your preferences for end of life medical care, such as indicating you do not want to be fed by tube or be resuscitated if your heart stops. Your agents under your health care power of attorney and your medical providers have a duty to honor your wishes expressed in your Advance Directives.

A family member may need to ask the court for the appointment of a guardian to make health and case decisions if there is no health care agent in place for you or if you are cognitively impaired and insisting on making health care decisions for yourself which are inappropriate and dangerous, such as refusing necessary home care.

C. Estate Planning

Estate planning documents provide for the distribution of your assets at your death, such as a Will. A Trust provides not only for distribution of your assets at your death, but management of your assets while you are alive. If your estate is of a sufficient size to warrant the expense of establishing and administering a Trust, a Trust can be an effective tool for planning for potential disability as you can name trusted individuals or professionals to step in to manage your Trust in the event of your disability.

D. Long-Term Care Planning

Chronic conditions are likely to progress and result in the need for some type of long-term care. Long term care means care that is generally limited to assistance with activities of daily living for the person with the condition, such as assistance with bathing, dressing, transportation, meal preparation, etc. As long term care is not medical care, traditional health insurance and Medicare does not cover it. You should consult with your financial planner to determine whether your income and assets are sufficient to cover your expected necessary long term care. If income and assets are insufficient, then you should consult with an elder law attorney in order to plan to protect assets and qualify for Medicaid covered long term care services.

In planning for long term care, especially in making financial projections, it can be helpful to consult with a Care Manager. A Care Manager comprehensively evaluates your physical health and wellness, memory and mental status, functional abilities, informal and formal social support networks, financial resources and living environment and makes recommendations for care based on this assessment together with an understanding of your wishes.

Hire an Elder Law Attorney

Hiring an elder law attorney early in the disease process can save you money and time down the road. An Elder Law Attorney has experience in issues affecting persons with chronic conditions and their families, whether dementia, Parkinson's or other degenerative conditions. A good elder law attorney understands the medical and practical aspects of planning for chronic disease and disability, the changing array of long-term care resources, and helps clients meet their goals of freedom, control and social involvement. He or she can craft an estate plan to protect your assets while qualifying you for government benefits. The National Elder Law Foundation and National Academy of Elder Law Attorneys can help you locate a qualified, experienced attorney.

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When you have questions related to elder law, estate planning, probate, and guardianship, think of the attorneys at Dutton Casey & Mesoloras. With over 130 years of combined legal experience, you can depend on our team for the knowledge, advice, and support you deserve to resolve your legal needs.

Resources:

National Elder Law Foundation – www.nelf.org

National Academy of Elder Law Attorneys – www.naela.org

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Appointments are also available in Arlington Heights, Lisle, Skokie, and Westchester, Illinois, or via video conferencing or telephone.

