

DUKE DEMENTIA FAMILY SUPPORT PROGRAM

Caregiver Connections

An Educational Webinar Series With The Experts

**The presentation will begin shortly.
Thank you for your patience!**

dukefamilysupport.org

919-660-7510

clarity.
LEGAL GROUP



LEGAL ISSUES FOR FAMILY CAREGIVERS

DURING A PANDEMIC(!)

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TODAY'S OBJECTIVES

- Introduction to planning issues confronting family caregivers for aging adults
- Basic understanding of legal tools available to allow a caregiver to manage their loved one's health care, financial, and legal affairs
- Distinguish between guardianship, durable power of attorney, and health care power of attorney
- (Brief) introduction to long-term care planning for Medicaid

THE GOALS OF ESTATE PLANNING AND LONG-TERM CARE PLANNING ARE TO

(1) Plan for the outcome the person wants; and

(2) Create tools and structures that make it possible for the people who help to work easily and get it right



**WHEN
SOMEONE
ELSE DECIDES**

WHO MAKES DECISIONS?



- Legal guardian
- Agent Under Durable Power of Attorney
- Trustee
- Health Care Agent
- Living Will
- Physician
- Family
- Executor

WHEN SOMEONE ELSE DECIDES...

...because your loved one is incompetent and has not pre-planned, or there is a family dispute:

Guardianships/Cou

WHEN SOMEONE ELSE DECIDES...

**...and your loved one has planned
in advance:**

Powers of Attorney

Living Trust

Health Care Powers of Attorney

Living Will

HIPAA Authorization

DNR/MOST Form

WHEN SOMEONE ELSE DECIDES...

...after your loved one's death:

Executors under Wi

Trustees under Trus

Burial or Cremation

Tax

Dispute



WHY DOESN'T EVERYONE HAVE PROPER PLANNING?

3 MAJOR REASONS

A white, scalloped-edged shape, resembling a seal or a decorative frame, is centered on a solid blue background. The shape has a wavy, irregular border with approximately 12 points. The word "PROCRASTINATION" is written across the center of this shape in a bold, green, sans-serif font.

PROCRASTINATION



COST

BUT, CONSIDER THE COST OF FAILING TO PLAN



DENIAL

IT COULD NEVER HAPPEN TO ME!

What are our chances of dying?

**What are our chances of
becoming incapacitated?**

GUARDIANSHIPS

- Anyone can file an incompetency petition
- Clerk of Court decides whether your loved one is incompetent
- Clerk can appoint anyone to serve as Guardian
- Not required, but advisable to consult an attorney

GUARDIANSHIPS

- Part of Estate Planning is planning for incapacity.
- Without proper planning, you will have to go through a Guardianship Proceeding if your loved one becomes incapacitated
 - Public proceeding that can be humiliating, time consuming, and expensive
 - Court appoints someone to handle your loved one's finances and make medical decisions
- Power of attorney is intended to avoid, and typically designates your loved one's choice of guardian

HOW TO AVOID GUARDIANSHIP

- **No authority attaches to family relationships for adults**
- **Contractual Arrangements**
- **Legal Documents**

ESTATE PLANNING INCLUDES:

Planning for Health
Care Decisions

Planning for Asset
Management

Planning for
Incapacity

Planning for Death

WHAT ARE THE CORE LEGAL DOCUMENTS?

Last Will and Testament

General (Financial, Durable) Power of Attorney

Revocable Living Trust

Health Care Power of Attorney

Living Will (aka Advance Directive for a Natural Death or Declaration of Desire for Natural Death)

HIPAA Authorization

WHAT A LIVING WILL CAN AND CANNOT ACCOMPLISH

- Allows your loved one to specify what they do not want their lives prolonged
- Only pertains to life prolonging measures
- Typically does not apply to emergencies
- Option to allow Health Care agent to override
 - Principal's Decision, or
 - Principal's Expression of Preference
- 65%-76% of physicians whose patients DO have advance directives are unaware of the documents

PICKING UP WHERE A LIVING WILL LEAVES OFF: HEALTH CARE POWERS OF ATTORNEY

- Agent's authority can be limited by your loved one, if desired
- Springing, but may be applicable throughout life
- Agency relationship – broad or limited delegation of authority
- When does the agent act?
- Some powers persist after death:
 - Autopsy and disposition of remains
 - Organ donation and anatomical gifts

HIPAA AUTHORIZATION

- If there is a Health Care Power of Attorney, your loved one needs a HIPAA Authorization
- Allows Health Care Agent (and any other named individual) to talk with your loved one's medical providers and obtain medical records, if needed



GENERAL DURABLE POWER OF ATTORNEY

- Names an agent to manage legal financial affairs
- Can be springing or standing
- Not all powers of attorney are the same!
- Can name multiple agents, and your loved one decides whether:
 - Each Co-Agent may act independently, or
 - Co-Agents must act together

LAST WILL AND TESTAMENT

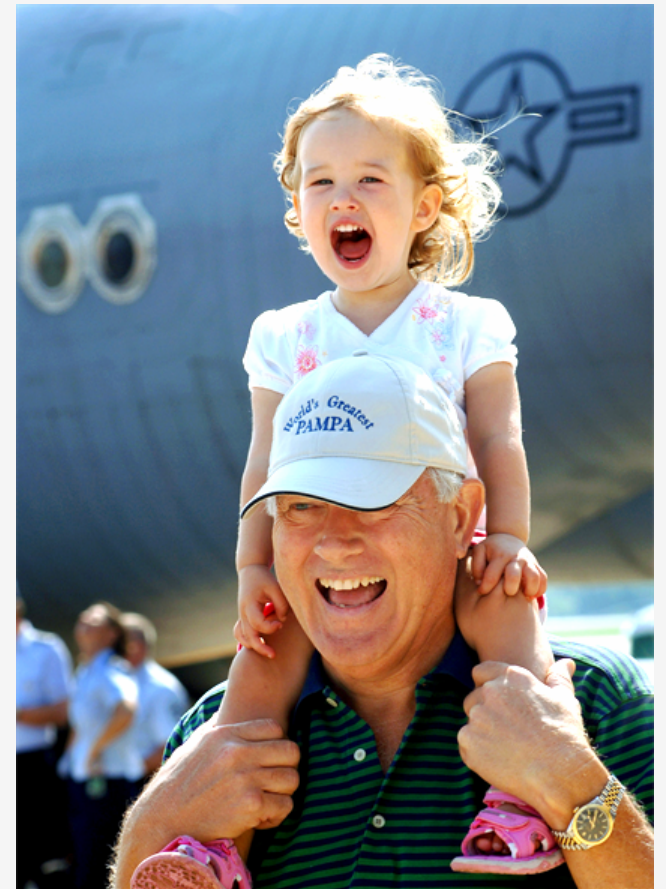
- Only works after death
- Does not control all assets
- May determine what individuals/charities receive some assets
- Defines who has the authority decide as to legal affairs and some assets

REVOCABLE TRUSTS

- Controls the disposition of some assets
 - Controlled by Trustee
 - Private
 - May be different during life and death
 - Can define gifts and set up further trust arrangements for beneficiaries
 - Fewer challenges to use in the event of incapacity

SPECIAL NEEDS BENEFICIARY

- Beneficiary with a disability
- Because of disabilities, is on Medicaid and Supplemental Security Income (SSI)
- Will lose government benefits if she receives an inheritance outright



SUPPLEMENTAL NEEDS TRUST

- No Loss of Government Benefits
 - Third Party Serves as Trustee
 - Provides support and enhanced quality of life for Ella above what government benefits provide



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Inheritance

Supplemental
Needs Trust

QUESTIONS?

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Thank you for joining us today!

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