



THE IMPORTANCE OF ESTATE PLANNING IN A HEALTH CRISIS

In these trying times, your estate plan may not be top of mind. But an up-to-date plan can help you manage family matters during the current health crisis, as well as prepare you for whatever the future may hold.

Before we dive into the details, it should be mentioned that new planning must take a back seat to the health and safety of the community. Many states have not designated attorneys as critical workers. Still, attorneys are aware that there are emergent circumstances where their assistance is permissible. Further, attorneys in many states, especially those with stay-in-place orders, are scrambling to implement rule changes that relax requirements like in-person document signing and to clarify rules surrounding digital notarization. The bottom line, though, is that you should only seek document changes for critical situations.

POWERS OF ATTORNEY

Durable power of attorney. Most estate plans include powers of attorney, and the vast majority of married couples name each other as agents under a general durable power of attorney. These documents allow each spouse to act on behalf of the other in managing various aspects of family life. For example, if there is a need to make any changes to an account or access a safe deposit box, one spouse can act for the other. In cases where an

individual is battling an illness, this option can prevent unnecessary exposure to others and help ease stress.

Health care power of attorney. In times like these, a health care power of attorney could become vitally important. Here, it's important to keep in mind that health care powers of attorney are always "springing"—meaning that the named agent can make decisions on behalf of the spouse or loved one only if that person is unable to make his or her own health care decisions.

In many cases, when a spouse or loved one is still capable of making decisions, medical personnel will ask for a HIPAA release form, which is included either in the health care power of attorney or as a separate document. The HIPAA release allows doctors and hospitals to release personal medical information to designated representatives and discuss a patient's condition and treatment options.

Basic forms. Many states offer a "statutory form," which is usually available online. Often, the best place to find the basic forms needed for powers of attorney is your state's bar association website. Typically, the bar association will have a public information or forms page that will include a basic powers of attorney form, along with some informational and instructional materials.

The form instructions will likely include whether your state requires a notary as part of the signing process. (Some states allow a choice between two witnesses or a notary.) If a notary is required, the instructions should provide guidance on whether your state permits remote or digital notarization. Otherwise, there are typically notary services available at several critical businesses, such as shipping companies, hospitals, and financial institutions. Hospitals also tend to have health care power of attorney and HIPAA forms available.

TAKING STOCK OF YOUR PLAN

For those of you who have an estate plan in place, now is a good time to take stock and review it. You might start by asking yourself the following questions:

- Does it meet your wishes and reflect the current realities of your family?
- Are the named agents and powerholders still the people whom you want in charge when the time comes to shift responsibilities?
- Do named beneficiaries and stated payout percentages make sense? These beneficiary designations may include those you have added to your bank, brokerage, and retirement accounts.

Please note: When it comes to retirement account beneficiary designations, keep in

mind that several important changes were made in late 2019 under the [SECURE Act](#). These changes include the elimination of the “lifetime stretch” for most nonspouse retirement account beneficiaries.

Hopefully, you won’t need to update other estate planning documents like wills or trusts during the height of the crisis. If you believe you have a critical need for updates, contact your attorney immediately and work with him or her on the right course of action.

THE BEST LESSON? BE PREPARED

The most important takeaway here is to keep your estate plan up to date. Laws change, life and family dynamics evolve over time, and even technological advancements alter how we access our online accounts, which hold some of our most cherished property and memories. Make a point to meet with your estate planner every few years or certainly in anticipation of any major life events.

Life changes quickly, but having a solid estate plan in place will help you stay the course.

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