

PLANNING FOR THE UNTHINKABLE:

protecting and informing your loved ones in case of unexpected disability

By Allan D. Bogutz

It crosses everyone's mind from time to time, but we think it can never happen to us.... You're away from home on vacation and you suffer a life-threatening injury. Perhaps your spouse is also injured alongside you.

One or both of you are hospitalized. Your future is in doubt.

We try to plan for all the major activities in our lives—careers, investments, children's educations, travel, and retirement. Unfortunately, many people do not prepare for the unthinkable...the possibility of severe disability.

Regardless of age and good health, no one is immune from accidents, illness, or disability. So, is your family prepared? Do your spouse and/or your loved ones have all the information they need to make sure your wishes are known?

That kind of information, and the subsequent decisions surrounding that information, can be overwhelming.

Fortunately, there are readily available and easy-to-understand documents and steps you can take to assure that your wishes are known, important information is accessible, and your loved ones are looked after in the event you are unable to act for yourself.

ADVANCE DIRECTIVES

Basic estate planning, such as a creating a will and/or a living trust, only affects your property after your death. Advance Directives address your health care and financial management while you are alive but disabled or incapacitated. There are three important Advance Directives to be aware of:

• Durable Health Care Power of Attorney

This document names an agent (attorney in fact) to make health care decisions for you if you are unable to do so for yourself. In a well-drafted document, the agent will have access to your medical records, authority to discuss your care with your physician, and the ability to consent to care or refuse consents where appropriate. The agent must always act in your best interests. Having the power of attorney eliminates the need, delay, and cost of going to court to set up a guardianship.

• Durable Financial Power of Attorney

Like the health care power of attorney, this document names an agent (attorney in fact) to manage all of your financial affairs if

you cannot do so for yourself. This document allows the agent to manage your investments, receive your income, pay your bills, file for benefits like Social Security, and file tax returns for you. The agent can sell or retain property for you or do whatever you would do if you were able. The agent must always act in your best interests. Having this power of attorney means no one needs to go to court for a costly conservatorship.

• A Living Will

To assure that your wishes are carried out at the end of life, a living will permits you to decide and direct in advance what medical measures should be used to extend your life and other extraordinary care that may be given—care that you would perhaps refuse if you could make your wishes known. You can direct that such care not be given if you prefer, setting out when such care should be discontinued.

There are readily available and easy-to-understand documents and steps you can take to assure that your wishes are known.

As with all legal documents, there are considerations and variations based on your situation and even your location. It is important to keep these points in mind:

- All of these documents are revocable if you change your mind.
- You can name different individuals as your health care and financial agents.
- These documents are not expensive to have prepared properly, but can be done poorly (free forms).
- The documents should be reviewed and updated every 3-5 years to keep up with changes in law.
- You can have different documents for different states where you spend substantial time (to avoid conflicts, it is best to name the same agents on the documents in all states).
- You must be cautious about whom you name as agent since the agent is given broad powers and broad access to your resources.
- You should make sure the agent named

in your document knows he or she is to be your agent, agrees to do so, and understands the duties and obligations.

These Advance Directive documents are often offered by the lawyer who drafts your estate plan, will, or trust. They often add little additional charge to the preparation of the documents.

A FRANK FAMILY DISCUSSION

These are delicate topics to discuss and we often avoid doing so. It is easier to leave the unthinkable unspoken. However, imagine how much easier things might be if you tell your children or spouse (or possible unrelated agents) how you feel about long-term care choices, how you feel about extraordinary medical care, and how you want your finances handled for you. It will be much easier for your agent to step in to handle your finances if he or she knows that there is a special drawer in your desk or file cabinet that has your recent tax returns, a list of your investments, and perhaps passwords to access various online accounts. Your children will be less likely to have disputes among themselves if you have told them what you like and don't like in advance and if they know which child or children have been selected to "take charge" in the event of the unthinkable happening.

Is there a good time to have this discussion? Yes, but that will depend on your family and when you get together. It could be after a holiday dinner or a birthday. It need not be somber. You can simply say you have seen an article in the newspaper that suggested you have such a discussion and you thought it

IN THE EVENT OF THE UNTHINKABLE, THE INFORMATION AND SUBSEQUENT DECISIONS YOUR FAMILY WILL FACE CAN BE OVERWHELMING:

- Do you have online investment accounts?
- What are your passwords?
- Where do you bank?
- Who will take responsibility for your children, if they are minors?
- What happens to your share of your business?
- Who is responsible for taking care of your pets?



Allan D. Bogutz is a shareholder in the six attorney Tucson law firm of Bogutz & Gordon, P.C. (www.bogutzandgordon.com) and has significant experience in these matters.

was a good idea. Let them know what you have done and what you want.

Another opportunity to bring the topic up with your family is right after you have seen your lawyer. You can tell them you have done an estate plan and where your documents are located.

BE PREPARED

Planning for such crises provides a number of benefits:

- Your family knows where to find the details of resources, debts, and other important life details.
- Your spouse and children have information to carry on family matters without unreasonable expense or searching.
- You have assurance that your wishes concerning your care will be carried out.
- Your business is preserved while you are unable to operate it.
- You have had a discussion with close friends about your personal and financial preferences.

If the unthinkable happens, there is no temporary reprieve to let others know how you feel. By planning in advance, you can put thoughts of it aside and rest assured that you have done all you could to provide your loved ones with the information they need to know. ■

Allan D. Bogutz is the senior member of the Tucson law firm Bogutz & Gordon, PC and has practiced elder law since 1971. He is acknowledged as one of the "Best Lawyers in America in Elder Law" for 2007 and 2008 and is a Fellow of both the National Academy of Elder Law Attorneys and the American College of Trusts and Estates Counsel.