

## **Fine Tune Your Estate Plan**

With the end of the year fast approaching, now is the time to fine tune your estate plan before you get caught up in the chaos of the holiday season. One area of planning that many people overlook is making sure their estate plan is up to date for incapacity planning.

### **Three Areas of Your Mental Disability Plan That May be Out of Date**

1. Are your health care directives compliant with HIPAA? While the federal Health Insurance Portability and Accountability Act (known as "HIPAA" for short) was enacted in 1996, the rules governing it were not effective until April 14, 2003. Thus, if your estate plan was created before then and you have not updated it since, then you will definitely need to sign new health care directives (Health Care Power of Attorney and a Living Will) so that they are in compliance with the HIPAA rules. With that said, it's possible that health care directives signed in later years lack HIPAA language, so check with your estate planning attorney just to make sure that your estate plan documents reference and take into consideration the HIPAA rules.
2. Is your Power of Attorney stale? How old is your Power of Attorney? Banks and other financial institutions are often wary of accepting Powers of Attorney that are more than a couple of years old. This means that if you become incapacitated, your agent could have to jump through hoops to get your stale Power of Attorney honored, if it can be done at all. This could cost your family valuable time and money. Aside from this, in the past few years several states (including Florida and Ohio) have enacted new laws governing Powers of Attorney. If you want to increase the likelihood that your Power of Attorney will work without any hitches if you lose your mental capacity, update and redo your Power of Attorney every few years so that it doesn't end up becoming a stale and useless piece of paper.
3. Does your estate plan adequately address mental disability? A will is something that only becomes effective when you die. With today's longer life expectancies come increased probabilities that you will be mentally incapacitated before you die. A fully funded Revocable Living Trust is the best way to provide adequately for mental incapacity, but some older trusts do not. If you signed your Revocable Living Trust more than 8 to 10 years ago and haven't updated it since or have assets that are outside your Revocable Living Trust, then it may well lack modern and appropriate provisions for what to do with you and your property if you become mentally incapacitated. Have your estate plan checked to ensure that it will work effectively and efficiently if you lose your mental capacity. Otherwise you and your loved ones may end up in front of a judge who will have to sort out your financial matters - at horrendous cost.

### **What Should You Do?**

Estate planning is about much more than having a plan for who gets your stuff after you die - it should also include having a plan for what happens in case you lose your mental capacity. If your plan is more than a few years old or does not include a fully funded Revocable Living Trust, then chances are it lacks a good mental disability plan. Now is the time to meet with an experienced estate planning attorney to ensure that you have a mental disability plan that will work the way you expect it to work if it's ever needed.

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