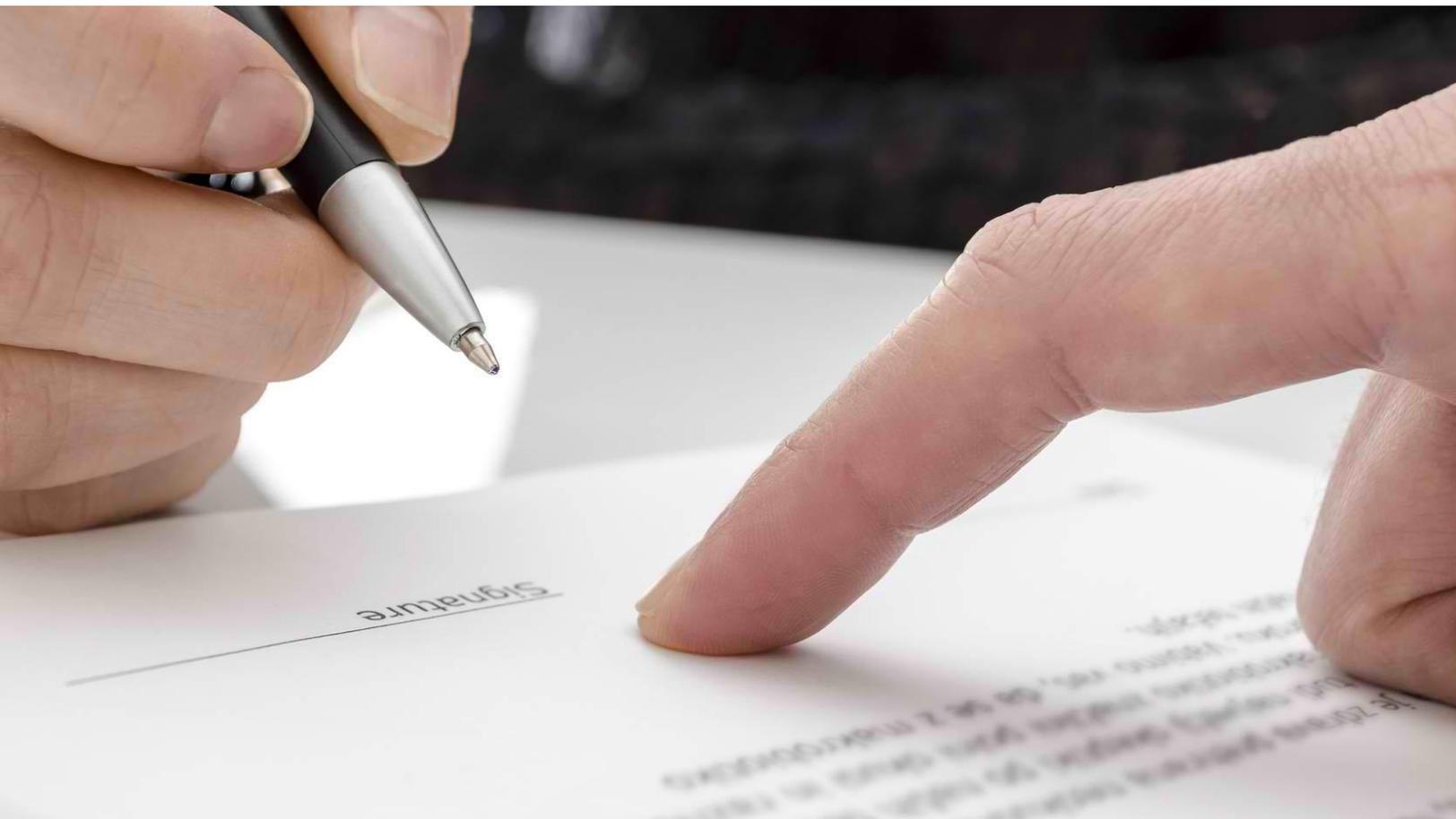


*To be Comprehensively Prepared for the
Eventualities of Aging, You Should Consider the
Possibility of Future Incapacity*

SHOULD I HAVE A DURABLE POWER OF ATTORNEY IN THE QUAD CITIES?



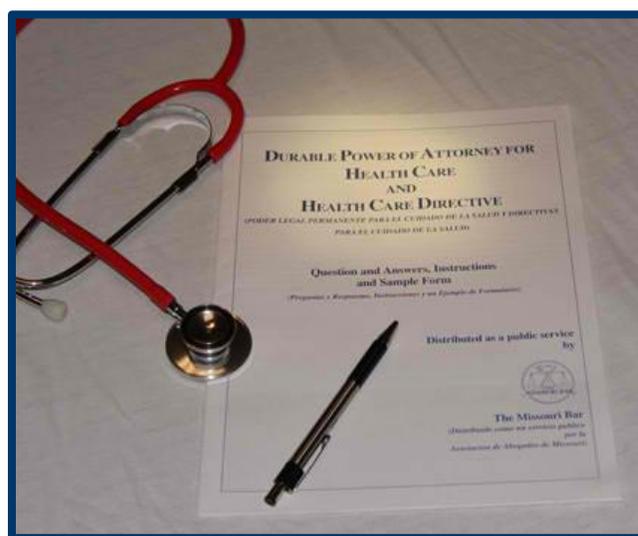
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Iowa Estate Planning Attorney

To be comprehensively prepared for the eventualities of aging, you should consider the possibility of future incapacity. While this may not be the most pleasant subject to address, it is important to take action to protect yourself, because incapacity is quite common among elder Americans.

UNDERSTAND THE FACTS

When you are capable of making your own decisions all of your life, it may be hard to imagine a time when you can no longer handle your own affairs. This is understandable, but as life goes on, you encounter different contingencies. Once you understand the facts, you will see why incapacity planning is so important.

Many people become physically incapacitated prior to passing away. This period can be relatively brief, or it can be quite extended. During this interim, someone is going to have to handle your financial and health care decision-making.



There is also the matter of mental incapacitation due to dementia. There are other causes of dementia, but Alzheimer's disease is the leading culprit.

Approximately 45 percent of those who have reached the age of 85 are suffering from this disease. It also strikes younger seniors, and some people who have not yet attained senior citizen status.

If you were to suffer from Alzheimer's induced dementia, you would no longer be able to handle your own affairs.

When you digest these facts, you can see that incapacity planning is relevant to everyone. An incapacity plan is typically going to include the execution of legally binding documents called durable powers of attorney.

HAND-PICKED DECISION MAKERS

You have probably heard of the legal device called a power of attorney. This document is used to empower someone else to act on your behalf.



A standard power of attorney that is not specifically designated as durable would not remain in effect if the person bestowing the power (known as the grantor) was to become incapacitated. A durable power of attorney does remain in effect

upon the incapacitation of the grantor, and this is why the durable designation is important.

When you execute a durable power of attorney, you can name someone who would be empowered to act on your behalf should you become incapacitated at some point in time. People typically execute two different durable powers of attorney: one for health care decision-making, and one for financial decisions. Sometimes the durable power of attorney for health care is referred to as a health care proxy.

You could name a particular person as the health care agent, and another individual as the attorney-in-fact who would be empowered to handle your financial affairs.

ADULT GUARDIANSHIP

Who would make these decisions on your behalf if you were to become incapacitated without executing durable powers of attorney? The answer is that the state would ultimately make a determination.



Interested parties could petition the state to appoint a guardian to act on your behalf. While it is possible that everything could go smoothly if a guardianship hearing was convened, there are some significant potential drawbacks.

The guardian that is empowered by the court may not be someone that you would have approved of when you were capable of making your own decisions.

Everyone in your family may not be on the same page during the guardianship proceeding. There could be disagreements with regard to the choice of guardian. This could be present in any family, but it could be more likely when there are different factions within a blended family.

This type of acrimony among your loved ones is something that you probably want to prevent.

Thirdly, there is the matter of time. Even if everyone is in concurrence with regard to the desired outcome of the guardianship proceeding, it can take time for the proceeding to run its course. While the court is making a determination your best interest may not be served, because no one would be empowered to act on your behalf.

You can avoid all of these pitfalls if you execute durable powers of attorney when you are of sound mind and fully capable of making your own decisions.

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CONCLUSION

When you examine the statistics objectively, you see that it is very possible that you will become incapacitated and unable to make your own decisions late in your life. Many people become physically incapacitated due to serious medical conditions, and others suffer mental incapacitation.

Alzheimer's disease alone is an enormous threat, striking some 45 percent of the very senior population.

If you do nothing to prepare for possible incapacity, the state could ultimately appoint a guardian to act on your behalf. A guardianship proceeding could result in a number of different negative consequences.

You can seize control of your own destiny through the execution of durable powers of attorney. When you have durable powers of attorney in place, your own chosen representatives will be empowered to act on your behalf in the event of your incapacitation.

Contact a licensed estate planning attorney if you would like to execute these important incapacity documents.

REFERENCES

American Bar Association

http://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/power_of_attorney.html

Alzheimer's Association

<http://alz.org>

About the Author



Dennis D. Duffy

Dennis Duffy combines an extensive background in business with a wide range of legal experience to provide his clients with a uniquely practical perspective. An attorney since 1989, he practices primarily in Estate Planning, Wills, Trusts and Probate. Mr. Duffy also offers frequent educational seminars on a variety of estate planning topics to both the general public and private groups in the Quad Cities area.

Experience

Mr. Duffy has been practicing law since 1989, when he joined the general practice firm of Bozeman, Neighbour, Patton&Noe in Moline Illinois. In 1990, Mr. Duffy and five other attorneys founded the law firm of Anderson & Nelson, with offices in Rock Island, Illinois and Davenport Iowa; the firm eventually grew to 12 attorneys, with Mr. Duffy as managing partner. He founded Duffy Law Office in 1995.

Before returning to school for his advanced law and business degrees, Mr. Duffy worked for nearly a decade for Per Mar Security & Research Corp. in Davenport, as Vice President.

Mr. Duffy is a member of the American and state bar associations of both Iowa and Illinois as well as the Scott and Rock Island County Bar Associations.

He is an executive member of the American Academy of Estate Planning Attorneys. He is co-author of the book Estate Planning Basics – A Crash Course in Safeguarding Your Legacy. Also, the American Academy of Estate Planning Attorneys announced that Mr. Duffy was honored with the Academy Fellow designation. The Fellow program recognizes Academy Members who demonstrate advanced expertise and significant practical experience in the estate planning, trust, tax planning, guardianship, probate and estate administration fields.

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