

## WHAT IF I'M DISABLED?

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Experts in statistics teach us that the chances of becoming mentally or physically disabled are greater than the chances of dying before the age of 65. So as the old sage said, "Hope for the best, and plan for the worst." If you become seriously ill or disabled, you may not be able to adequately manage your financial affairs or express your wishes concerning your medical treatment. To plan for disability you should first, and foremost, have a Will. If you become permanently disabled to the point where you are legally incompetent, you may no longer be able to make a Will. At your death, your property would then be distributed according to Maryland law. Second, you should have a durable power of attorney. Third, you should have an advance medical directive. If your circumstances warrant it, you may consider establishing a living trust (also known as a revocable trust).

### **Advance Medical Directive**

An advance medical directive authorizes another person to make decisions for you regarding your health care if you become incapable of making such decisions. An advance medical directive also sets forth instructions to your health care providers regarding your wishes when you are terminally ill or in a coma or persistent vegetative state. In this respect, an advance medical directive is similar to a living will; however, a living will cannot appoint a person to make health care decisions for you.

### **Durable Power of Attorney**

A durable power of attorney is a written instrument authorizing another person (called the attorney-in-fact or agent) to manage your financial affairs (you are called the principal). The power of attorney grants the agent the authority to deal with your property on your behalf. If you become disabled, your agent would be able to sign checks, make deposits and withdrawals from bank accounts, and sell or transfer your property. This can be a very useful tool to insure that your bills are paid and your checks deposited. Generally, a power of attorney is effective immediately when signed, although there is an understanding that the power will not be used until you are unable to act for yourself. In 2010, Maryland enacted the Maryland General and Limited Power of Attorney Act that changed the law concerning powers of attorney. Because of this change in the law, a power of attorney executed prior to October 1, 2010 should be reviewed to ensure it will be effective at the time when it is needed most.

### **Living Trust**

A living trust is a revocable trust established by a person called a grantor. The grantor retains full control over the assets transferred to the trust and retains the right to amend or revoke the trust during his or her lifetime. If the grantor becomes disabled, a person designated by the grantor in the trust document will act on behalf of the grantor for assets

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held in the trust. All of the assets held in the trust are governed by the terms of the trust document, which can be drafted (within certain limitations) in any manner the grantor desires. When the grantor dies, the trust becomes irrevocable and the trust controls the disposition of these assets.

A living trust is not always advantageous for every person. A living trust will not save any more taxes than a properly drafted will and will not put the grantor's assets out of the reach of his or her creditors.

The primary disadvantages of a living trust are:

- The expense of having a trust document drafted;
- The inconvenience and cost of transferring assets to the trust.

The primary advantages of a living trust are:

- Can avoid the delay of probate;
- Provides for management of your assets if you become disabled or incompetent;
- Relieves you of the burden of managing your investments;
- Avoids the interruption of the flow of income on your death, disability or incapacity;
- Possibly avoids ancillary estate administration in differing states when you own property in two or more states;
- Can protect your privacy because probate filings are a matter of public record and living trust assets normally are not.

Although a living trust and a durable power of attorney accomplish much of the same purposes, a durable power of attorney has several shortcomings which a living trust does not.

- There is no legal requirement that a third party accept the agent's authority to act under a durable power of attorney, unless the power of attorney conforms to the Maryland Power of Attorney Act enacted October 1, 2010.
- If the durable power of attorney was signed many years in the past, third parties may reject the agent's authority, unless the power of attorney conforms to the Maryland Power of Attorney Act enacted October 1, 2010.
- It is generally not advisable to place conditions in the durable power of attorney which state when the agent may act on behalf of the principal.
- The durable power of attorney terminates at the death of the principal.



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(410) 321-0402 – O

(410) 321-0403 – F

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