

Estate Planning Should Protect You —In Life and in Death

BY GARY ALTMAN, ESQ.

Just for fun, raise your hand if you've honestly read (and understood) **every** single "boilerplate" agreement/release/document that you've been asked to sign. I've got a sneaking suspicion that the majority of you did not raise your hand.

What's Black and White and Read Almost Never?

Here's an example worth mentioning — the "HIPPA Release" that your doctor's office has

you sign prior to your appointment. *The Health Insurance Portability and Accountability Act* ("HIPAA"), sponsored by Senator Edward Kennedy and Senator Nancy Kassebaum in 1996, was originally created to protect workers in regards to their health insurance coverage when they changed or lost their jobs. Additional rules have since been promulgated and,

the particular rules I am referring to in this article are the HIPAA **privacy rules**. Under HIPAA, health care professionals are prohibited from discussing your physical or mental conditions with anyone, including your spouse, children or other family members, **unless you have specifically and in writing** authorized the health professionals to do so.

Consider This...

As I always try to reiterate, estate planning is not only about what happens **after** you die, it is also about what happens if you become mentally and/or physically unable to handle your own affairs. While medical science and health care are making huge advances with the quality of care allowing us to live longer and healthier lives, accidents happen. Someone at any age could be become

suddenly incapacitated. If one of these events happens to you or a close family member, it is generally too late to create the required estate planning documents or make changes to existing ones. Instead, your family and friends will be required to appear in court to appoint a guardian or a conservator (and maybe not the person you would have chosen for yourself) to oversee your affairs. Guardianships are usually an expensive, intrusive and uncomfortable ordeal for families.

Advanced Medical Directive, Medical Powers of Attorney & HIPPA Release

So then, what should you do, to protect yourself and ensure that your wishes will be honored in life as well as death?

Advanced Medical Directives are instructions specifying what actions should be taken for your health in the event that you are no longer able to make those decisions due to illness or incapacity. A "Living Will" is one form of an Advanced Health Care Directive. It records your wishes regarding various types of medical treatments, such as resuscitation, life support, artificial feedings and organ donation. A "Medical Power of Attorney" (also known as a "Health Care Proxy") names the specific individual(s) you appoint to make the aforementioned medical decisions on your behalf — again, if and only if, you become unable to do so. I encourage my clients to have both documents in place to provide the most comprehensive guidance and spare family members (who may or may not agree on what to do) from having to make end-of-life decisions for you.

In addition, I also recommend that my clients sign a complementary HIPAA Release. Many times clients would like to allow friends, additional relatives and/or financial and legal advisors to receive medical information. Without this autho-

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rization, the person you name in your advanced medical directive or health care proxy may be able to make medical decisions, but the health professionals will be prohibited from sharing your medical information with these persons.

On a Personal Note...

I lost my dear sister, Anita, almost 6 years ago after a lengthy illness which included a diagnosis of persisted vegetative state. My wife and I would go to the hospital every day to be with her and, after many months, it became very apparent that care can wane and health care professionals, despite their best intentions, become less attentive and less available. However, the doctors and other health care professionals were also available to talk with us, to discuss her situation and give us their best advice because I was her named health care proxy and both my wife and

I were specifically authorized to receive medical information.

I have had my own children, age 20 and 22, both sign advance medical directives and HIPAA Releases. I strongly urge all of my clients' children to do so as well.

The Bottom Line

Remember, the best estate plan takes into account your wishes not only in death, but also in the event that you are unable to make financial and health decisions while you are still alive. In fact, I'd argue that the many "non-tax" reasons to do estate planning, are equally, if not more important than the tax reasons to do estate planning. Failure to properly plan for both is to resort to the court system, a costly, instructive and lengthy process.

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