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LEGAL AND FINANCIAL PLANNING FOR OLDER ADULTS

With the general increase in the elderly population, increased attention has been focused on the particular legal and financial planning needs of older adults. Many people live long, healthy lives because of medical advances and healthier lifestyles. But all people face the possibility that some of those years may involve mental incapacity and the high costs of long-term care.

Lawyers have always helped their clients plan for property distribution at death by preparing Wills. They have also helped people avoid unnecessary taxes and ease administration of their estates by estate planning.

Increasingly, lawyers are consulted by older adults and their children to help plan for and cope with the financial and legal contingencies of living a long time, including the possibility of incompetence or a long-term care need.

Persons with Alzheimer's disease, disabling strokes or accidents present the strongest need for this type of counsel and planning most dramatically. Failing to plan for that legal decision-making authority depletes family resources, adding to the emotional hardships placed on the family by the disease or injury. The purpose of this paper is to explain legal options to lessen the impact of a disabling illness.

We should point out one fact that will become more apparent as one reads further: <u>everyone should plan for the possibility of disability, and if signs of a disabling illness are present, legal planning should begin immediately</u>. Many more planning options are available when an individual is mentally competent and before significant family resources have been expended.

Basic Legal Problems

Families with a member who has a long-term, disabling illness find themselves at odds with two basic norms of society: The first is the legal principle that each individual is presumed competent to make his/her own decisions about financial, personal and health care matters, and that others, even those close to him/her, have no special legal status to take over decision-making authority. The second is the belief of most people that they have health insurance coverage that will protect them and their families from financial ruin if they require expensive care.

Those responsible for the care of a person with a mentally disabling disease quickly find that they encounter road blocks when they attempt to transact legal business for the individual, even though the individual is a spouse, parent, brother or sister, in obvious need of that kind of help and the helper is of the highest moral character with the best of intentions. The law is written to protect people against those who would take advantage of them, and cannot readily distinguish between the well-intended person seeking to fulfill a real need and the unscrupulous individual who would use the individual's vulnerability to his/her own advantage. When a guardian is appointed, legal procedures designed to protect the disabled person make the process cumbersome, and can sometimes work against the best interests of the disabled person and the family. However, other times a guardianship is the best structure within which to establish decision-making tools for an elder's surrogate decision-maker.

These caregivers also learn that most people do not have any protection from financial ruin if they need long-term care. Medicare does NOT cover long-term care in a nursing home, nor do most private insurance policies, including the typical Medicare Supplement or "Medigap" policies. With typical nursing home costs between $6,000 and $7,000 per month, the financial impact of a lengthy nursing home stay can be devastating.

Making a Plan

Comprehensive planning usually has four major components that are essential if you are concerned about how your need or those of your family members will be met if someone has a disabling illness.

- It designates the person of your choice to have the legal authority to manage your business and financial affairs.
  Legal Tools:
  a. ***Durable Power of Attorney***
  b. ***Living Trust.***

- It states your desires about the use of life-prolonging medical technology and designates your choice of representative to give consent to medical care when you are unable.
  Legal Tools:
  a. ***Health Care Declaration (Living Will)***
  b. ***Health Care Power of Attorney.***

- It addresses the financial security of your spouse and other family members if you have a long-term care need**.**
  Legal Tools and Approaches:
  a. ***Family Trust***
  b. ***Durable Power of Attorney (with special authority to protect assets)***
  c. ***Long-Term Care Insurance***
  d. ***Medicaid Planning***

- It provides for clarity of your funeral wishesm and an orderly and efficient transition for your survivors at your death.
  Legal Tools:
  a. ***Last Will & Testament***
  b. ***Living or Testamentary Trust***
  c. ***Use of Pay-on-Death and/or Beneficiary Designations***
  d. ***Funeral Planning Declaration***

If a disabling illness renders you incompetent to make such plans, it becomes critical for those close to you to make their own plans for your continuity of care and financial protection.

PLANNING OPTIONS FOR A COMPETENT INDIVIDUAL

A competent person has the most flexibility in planning for the contingencies of a disabling illness. A person can specify who is to speak for him/her on health care matters, who can sign for him/her in legal and financial matters and leave general or detailed instructions about how important matters should be decided when he/she is unable to speak for him/herself. An individual also can make financial arrangements that will provide the greatest protection of both his/her own need for care and the needs of others dependent on family resources.

Although every adult is presumed legally competent until there is a court determination otherwise, transactions and documents signed by a person who is mentally impaired or susceptible to the influence of others are vulnerable to later legal attack.

The test for competence is complex and highly dependent on the facts of a given case. As a general rule, a person can sign a document or enter a transaction only

if he/she is capable of understanding the consequences of the transaction. This is true even if the person can no longer write his/her name. A witnessed signature by an *"X"* is valid if the person intended it to be his/her signature and understood the nature of what he/she was signing.

A lawyer helping with a transaction involving a person whose competence may later be questioned may seek evidence of the person's ability to understand the transaction in a variety of ways, including asking a physician for an opinion about the individual's capacity to understand the document and its meaning.

Courts have held that an individual can be incompetent for most purposes, but still have the capacity to execute a will. If an individual has a lucid moment in which he/she understands what his/her assets are and the people who are the natural recipients of his/her estate, a valid will can be executed. This is different from the higher standard of competence required for the execution of a contract, in which the individual must comprehend the nature of what his/her rights and obligations are.

1. DURABLE POWER OF ATTORNEY

A Durable Power of Attorney is a document by which you give another person the authority to handle financial transactions on your behalf, even if you later become incompetent. It can be very broad or very limited in its scope. It can even contain gift-giving and other estate planning authority. It can be written to take effect right away or take effect only if you become incapacitated. It can also be placed in safekeeping, such as in the lawyer's file, to be delivered only when there is a need for the appointed person to take over.

Who Can Give A Power Of Attorney?

Any person who is over 18 and is competent can give this power to another to act on his/her behalf.

You cannot "get" a power of attorney over someone who has become incompetent. When a person who has become mentally incapacitated has no Trust or Durable Power of Attorney, a court-appointed guardian is usually required.

Can A Power of Attorney Be Revoked?

Yes. The revocation should be filed in the County Recorder's office and delivered to the person holding the power.

Why Should You Have A Durable Power Of Attorney?

There are many reasons why most people should give a durable power of attorney to a close family member, friend, or trusted associate. An expensive guardianship proceeding may be avoided and there will be an important continuity of interest with respect to the individual's financial affairs. Money may have to be reinvested. Bills have to be paid. Taxes must be filed and business decisions made. The durable power allows an individual to pre-select the right person to "carry on" in the event of incapacity.

Who Should Be Appointed Under A Durable Power Of Attorney?

Trustworthiness, good judgment and availability are the key factors in selecting someone to act as your power of attorney. A General Durable Power of Attorney is like a blank check since it gives the agent authority to sign for the principal (the person making the power of attorney) in nearly any circumstance on any kind of transaction without limitations or approval. For this reason, the person chosen as agent must be someone who can be trusted to act in the principal's best interest.

The agent should not be someone prone to impulsive action. The agent must recognize the limits of his/her knowledge or skill and seek expert advice when needed. Often, the principal's lawyer will be the best guide to the agent in exercising the power when the principal is incapacitated.

The agent is likely to need to handle both routine and extraordinary transactions for an incapacitated principal. A local agent is usually preferable to a distant one.

Spouses, adult children, siblings and professionals, such as an attorney or accountant, are the most frequent choices.

Can There Be More Than One Agent?

Yes, but care must be exercised in multiple agent arrangements. If two agents' signatures are essential for each transaction, routine transactions may be cumbersome, and important transactions may be stymied if one is unavailable.

Some people want to give the same power to more than one agent. This arrangement also requires care. There is a great danger of the "left hand not knowing what the right hand is doing." Coordination of authority and responsibility is essential.

One solution is to designate one person to act under the power of attorney, but give the agent clear instructions to consult with another trusted adviser before carrying out non-routine transactions. A back-up power, escrowed by the lawyer until and unless needed, can be used if the primary agent is unavailable.

What Are The Limitations Of A Durable Power of Attorney?

While they are powerful instruments, Durable Powers of Attorney are not without their limitations. Banks, stock transfer agents, insurance companies and real estate title companies often must approve of the Power of Attorney before accepting the agent's authority to act on behalf of the principal. A power created five years ago is less likely to be accepted than one created six months ago. A power backed by a physician's certification of competence at the time it was made is more likely to be accepted, particularly if the maker of the power had a shaky signature at the time.

What Is The Agent's Responsibility?

An agent under a power of attorney is governed by fiduciary principles. The agent steps into the shoes of the principal and is required to carry out the principal's instructions and act in the principal's best interests. The agent must exercise care in handling the principal's business and be able to account for the use of the principal's assets.

> EXAMPLE: A couple creates durable powers of attorney designating each other as agents with back-up powers to their oldest daughter. Months later an auto accident injures the wife, and head injury incapacitates the husband, who has to be placed in a health facility. The daughter assumes control and the parents' attorney releases the power of attorney to her. The daughter begins paying routine bills, files insurance papers and, under the parents' attorney's guidance, begins restructuring the couple's assets to permit the husband to qualify for Medicaid help to cover the husband's nursing home bill. Gradually the wife recovers and assumes responsibility for routine transactions.

When Does the Authority Under A Power Of Attorney End?

Death of the principal terminates the agent's authority. Revocation of the power by the principal or by a court-appointed guardian also ends the agent's power.

If the power of attorney is not durable, i.e., does not contain special language such as "this power shall remain effective notwithstanding my subsequent incapacity or incompetence," the power would terminate upon the incapacity of the principal. To be a planning device for incapacity, a Power of Attorney must have the special durable power language.

2. JOINT OWNERSHIP OF ASSETS

People place another person's name on their bank account(s) for a variety of reasons. This is often done without realizing the various consequences of this legal relationship.

Usually a joint bank account gives the other person complete power to withdraw all of the funds at any time. This special rule applied to joint bank accounts is not shared with all other forms of joint ownership, however. Real estate, stock certificates and some forms of personal property in joint name will require both signatures before a transaction can be completed.

Joint ownership of assets is usually "with rights of survivorship," meaning that funds or property pass directly to the other person at the death of the first, without any obligation to pay funeral expenses or equalize distribution according to the deceased person's Will.

Setting up a joint bank account does not usually result in any discussion with the joint owner about how the money should be used if circumstances change.

Joint accounts also cause many couples with substantial assets to lose the benefits of credits available to lower federal estate tax; for people of more modest means, a joint account can create problems with eligibility for benefit programs such as Medicaid.

Joint bank accounts do have a place in some estate plans, usually between husband and wife, but they should not be used with other persons as a substitute for more thoughtful planning.

> **EXAMPLE**: Mother places son's name on her bank account as joint tenant so that son can pay her bills if she becomes disabled. Her son falls upon hard times and son's creditor obtains a freeze on the account. Mother has to go to court and prove that the funds were originally hers to get them released.
>
> **EXAMPLE**: Mother with three daughters places the eldest daughter's name on her bank account as joint tenant so that daughter can help pay the bills. Mother intends for her estate to be divided equally among her three daughters. At the mother's death, the eldest daughter inherits the entire bank account no matter what the Will says.

3. ADVANCE HEALTH CARE DECISION-MAKING-The Living Will And Health Care Power Of Attorney

The case of Nancy Cruzan focused the nation's attention on the plight of a brain-damaged auto accident victim and her family. Nancy, age 26, was injured beyond all hope of recovery. Medical technology was able to sustain her by providing her nutrition through tube feedings.

Her parents sought to have the artificial nutrition stopped. The case was taken through Missouri courts and ultimately to the United States Supreme Court where it was decided that the state of Missouri had the right to require "clear and convincing evidence" of Nancy's views before withdrawing the life-sustaining tube feedings. Since Nancy was an adult, her parents could not speak for her.

Ultimately Nancy's parents were able to show that Nancy had expressed her views against being kept alive in a vegetative state in conversation with family and friends. The tubes were disconnected after four years of court battles, and Nancy was permitted to die.

Indiana laws give an individual the opportunity to make medical treatment directives in advance and to appoint a surrogate decision-maker to speak for him/her during a period of incapacity. The legal tools for advance health care directives are the Living Will and the Health Care Power of Attorney.

What Is A Living Will?

The Living Will continues an adult's right to control treatment decisions even if the person is incompetent at the time a decision is to be made to provide, withhold, or withdraw treatment. A Living Will is not a Will at all - at least not in the sense that most of us understand the term. Whereas a Will has to do with the disposition of your property after death, the Living Will has more to do with the manner of your death. It is a document in which a person states his or her desire to have or not have extraordinary life-prolonging measures used when recovery is not possible. A Living Will only becomes effective when a person is terminally ill, and death will occur in a short period of time. Use of artificial respirators, surgeries, radiation, and other treatments, which may delay, but do not prevent imminent death, can be avoided by a Living Will. Perhaps the most important benefit of a Living Will is that loved ones can be relieved of the burden of making this decision if the patient, who can no longer express his/her desires, has stated his/her intentions in advance.

In addition, a person may state whether he/she wants or does not want to be provided with artificial nutrition and hydration.

Who Can Make A Living Will?

It is important to know that the Living Will must be executed while one is competent, i.e., in full possession of one's senses. Normally, a Living Will is

prepared by an Attorney, and delivered to the physician and the health care facility that may be rendering the medical treatment. A Living Will speaks for you if you cannot speak for yourself in a time of crisis.

Is A Living Will Legally Recognized?

Indiana passed its Living Will Statute in 1985. Although it is not absolutely binding on your physician or health care institution, it is usually honored, especially if the individual has discussed the matter with the doctor and family before a crisis arises. If a doctor is unwilling to carry out the provisions of a Living Will, the doctor must seek another physician who will take the case and carry out the patient's intentions. The Indiana statute specifies the basic form of a Living Will, although some individual variation is permitted.

A Word of Caution

A federal law, known as the Patient Self-Determination Act requires that medical institutions that receive Medicare or Medicaid funds provide written information to patients concerning their rights, including the "right to accept or refuse medical or surgical treatment and the right to formulate advance directives."

If you have not completed an "advance directive," i.e., a living will or health care power of attorney, prior to admission to a facility, you will be "read your rights" and provided with the opportunity to complete a standard form. You should be very careful with the use of forms of this type. Without proper counsel and time to think through these critical issues, you may sign a legal document that does not say what you want to say. The key is to plan ahead and get good counsel on these issues.

What Is A Health Care Power Of Attorney?

Everyone must be informed of the consequences of a proposed medical treatment and to consent to it before it is administered. A Health Care Power of Attorney[1] allows you to designate the person ("health care representative" or "health care power of attorney") to receive this information and make a decision for you when you are incapacitated and unable to speak for yourself.

What Authority Can Be Given To A Health Care Representative?

Virtually any health-related decision can be made by a properly delegated health care representative. This includes the selection of a physician, authorization for

[1] The terms "Health Care Representative" and "Health Care Power of Attorney" are essentially interchangable. There are two statutes in Indiana that allow the appointment of an agent for health care decision making – one is the Power of Attorney statute (and thus the "Health Care Power of Attorney"), and the other is the Health Care Consent statute (from which comes the term "Health Care Representative.)

release of medical information, and giving informed consent to any treatment or medical procedure. For instance, a person with Parkinson's disease in the very early stages could appoint his/her spouse or child as health care representative and give instructions about whether to consent to certain treatments as the disease progresses.

There are two important limitations to the document: (1) The Representative has no authority to act unless the patient is, at the time, incapable of consenting, and (2) The power may not be used to overrule the patient's own instruction.

How Is A Health Care Representative Appointed?

The appointment of a Health Care Representative must be in writing, signed by the appointee, and witnessed by an adult other than the person appointed. Revocation is by notice to the Representative that the appointment is revoked and by notice to the health care provider.

Careful use of the Living Will and Health Care Declaration or Health Care Power of Attorney together enhances a person's security that his/her personal views will be carried out during a time of crisis. Equally important, is the family discussion that should take place before signing these documents. Such discussion can reduce family stress at a very difficult time.

4. FUNERAL PLANNING DECLARATION

A relatively new statutory tool in the estate planning toolbox, Indiana now allows for someone to execute a Funeral Planning Declaration. Such a declaration allows you to dictate how to dispose of your body (cremation vs. burial), what your funeral home preference is, if any, and what other plans you would like for your funeral.

This declaration also allows you to designate *who* you want to be in charge of your funeral planning. This can be an important way to avoid family discord after your death and prevent battling opinions among family members on what kind of funeral you should have.

A Funeral Planning Declaration is different from a “pre-paid funeral plan” that you might purchase during your lifetime. A pre-paid funeral plan can be a wonderful way to not only dictate what you want in the way of your funeral services, but also arrange for the payment for such services. A Funeral Planning Declaration does not require the purchase of a pre-paid funeral plan.

The same statute that allows for the execution of a Funeral Planning Declaration also sets forth a pecking order for who is in charge of making funeral decisions even if no Funeral Planning Declaration is in place.

Because this is a relatively new form allowed by Indiana law, I have attached a sample Funeral Planning Declaration.

5. LAST WILL & TESTAMENT

The oldest type, and most familiar estate planning document is a Last Will & Testament, or "Will". Through a properly executed Will anyone can leave their assets to whomever they wish (with certain exceptions).

Wills have no effect whatsoever during your lifetime; they are only effective upon your death. Not only does the Will state how you want your assets to be distributed, it also identifies the person or persons you want to manage your estate – referred to as an Executor (male) or Executrix (female), or more generically as Personal Representative.

Wills can be simple or they can be complex. Wills can distribute assets by percentages, or with "specific bequests." Wills can be customized to meet your individual needs.

As discussed further below, a Will can contain within it a trust – referred to as a "testamentary trust." There several different reasons to decide when a testamentary trust is appropriate and when its counterpart – a "living trust" – is more appropriate.

6. LIVING AND TESTAMENTARY TRUSTS

Trusts play an important role in many lifetime plans. A trust permits assets to be set aside for one or more beneficiaries with a particular set of instructions for the use of those assets. A trustee is appointed to manage the fund, and the assets become titled in the name of the trustee. Trust law permits broad latitude to the creator of the trust to specify how the assets will be used. A Trust can be created during your lifetime (known as a living trust) or at your death through your Will (a testamentary trust).

What Can A Trust Do?

A trust can:

- provide a caretaker of funds for a child or an incapacitated adult to be used as you direct;

- provide financial management for your own assets and a means to pay bills, etc., even if you become incapacitated;

- set aside assets for a spouse's needs while minimizing federal estate tax when the assets pass to children or others;

- preserve an asset (such as your house) for your own living need while assuring that it will pass to persons of your choice, even if you someday require nursing home care or Medicaid assistance; or

- pass property at death without probate proceedings.

> **EXAMPLE**: A widow who anticipates needing long-term care transfers her house to her daughter in trust to be maintained as a home for her as long as she can live independently. Daughter moves in with her, but later mother must be placed in a nursing home with Medicaid assistance. Because the home is not an asset of the mother any longer, it need not be sold when mother requires Medicaid assistance for the nursing home care.
>
> **EXAMPLE**: A husband with many investments wants to provide help for his widow in managing those investments after his death. At her death, the bank is directed to distribute what remains to his children.
>
> **EXAMPLE**: A husband with early Alzheimer's disease fears leaving wife in poverty if he requires long-term care. The couple sets up a Trust which permits the Trustee to exercise planning options at a later time if the couple's security becomes threatened by the costs of care.
>
> **EXAMPLE**: Parents of a child with a mental disability have inadequate funds to provide for the total costs of the child's care in a group home. The parents do not want to disqualify child from Medicaid benefits by leaving assets to the child, but they do not want to disinherit the child. They create a Special Needs Trust for the benefit of their child in which the trustee is directed to provide entertainment, advocacy and other services that will enhance the child's quality of life as the parents have done during their lifetimes.

Who Can Serve As A Trustee?

Either a bank trust department or a person can be designated as a trustee. Bank trustees are often the best choice if there are substantial assets to manage and the bank's investment expertise can be used to keep the assets productive. Individuals are often chosen as trustees where the assets make a bank trustee uneconomical. However, an individual trustee should keep regular contact with legal counsel to

comply with the trust management and taxation rules set forth in law and the instructions in the trust instrument. Co-trustee arrangements or a bank trustee with a family-member advisor often provide the most suitable balance of technical expertise and personal interest in the beneficiary.

A well-planned estate is the least costly to administer. Well-planned estates can involve a living trust or a will, or both. Conversely, a poorly-planned estate plan may have unintended results, including family discord. Poorly-planned estates are expensive to straighten out when death or a crisis arises, regardless of whether they involve a living trust, a will, joint accounts or a combination of these. The key to a plan that carries out your particular goals is putting all of the pieces together into a cohesive plan and using the legal planning Tools that fit your particular circumstance.

Trust are among the most powerful and complex of legal documents. Beware of financial planners and insurance sales people touting "canned" living trusts. A trust must be tailored to your individual needs and goals. If you are planning for long-term care benefits from Medicaid, be sure to seek counsel from a lawyer who specializes in both trusts and Medicaid.

LEGAL OPTIONS AFTER INCOMPETENCE

When the person with a disabling illness or injury can no longer participate in legal decisions and transactions, legal options must usually be exercised by other family members for the benefit of the disabled individual and the family as a whole. Frequently, a spouse or an adult child must assume this role and often must seek specific legal authority to conduct business in the name of the disabled person.

Under Indiana's Health Care Consent statute, certain categories of family members are bestowed with the natural right to make health care decisions for their loved one, even if no advance directive is in place. This includes the spouse, the adult children, parents, and siblings. However, the statute bestowing such family members with healthcare decision making powers has its drawbacks. For instance, the statute doesn't help medical providers know which adult child to turn to for decisions – and what happens when children disagree on the course of action. So, while there are mechanisms in place that allow for a family member to make health care decisions for an incapacitated person, several problems can be avoided, and clarity provided, through the use of a health care declaration or health care power of attorney.

When it comes to managing *financial* affairs, there is no mechanism in the law that bestows financial powers over an incapacitated adult with anyone, much less family members.

A spouse can usually access jointly-owned savings accounts and certificates of deposit, but jointly-owned real estate, life insurance, stocks or bonds require signature by both joint owners. If no Durable Power of Attorney or Trust was executed by the disabled spouse before incompetence, a guardianship will generally be needed to deal with these items.

A “guardian” or “conservator” is a court-appointed overseer of a person who has become incompetent. In Indiana, "Guardianship” and "Conservatorship" mean the same thing.

A Guardianship becomes necessary when a person becomes incapable of managing his/her money and property or making decisions about living arrangements or health care.

How Is A Guardianship Established?

Someone must petition a court to establish a guardianship. The Court schedules a hearing to determine whether the person over whom the Guardianship is sought is legally incapacitated. Medical evidence of incapacity is usually required. If the judge decides that the person is legally incapacitated, the judge may appoint a Guardian over the person’s finances (Guardian of the Estate) or the person's personal decision-making (Guardian over the Person), or both.

The Court then supervises the Guardian by requiring the Guardian to file an accounting at least every two years, submit certain other reports, and to obtain Court approval for major types of transactions, such as sales of real estate.

What Are A Guardian's Duties?

A Guardian's primary responsibility is to manage the incapacitated person's affairs in the best interests of the incapacitated person. Generally, a guardian may not use the incapacitated person's assets for the guardian's benefit. Conversely, a guardian does not assume personal financial responsibility for the incapacitated person by becoming guardian. A guardian of the person will have authority over personal and health care decisions, such as consent to treatment and decisions about where the incapacitated person will live.

The rule that the guardian must use the incapacitated person's assets for his/her benefit includes some provision for those persons who are dependent on the incapacitated person, including a spouse and minor or incapacitated children. However, transactions which benefit the spouse must often have court approval.

Who May Be A Guardian?

The Court can appoint any competent adult or institution, such as a bank trust department, to serve as guardian to manage the incapacitated person's affairs. In the law, preference is given to spouses, adult children and other close relatives if they are willing to serve. If the incapacitated person has previously stated a preference of person to be appointed through a will, power of attorney, or similar declaration, the Court will consider the incapacitated person's preference.

Advantages And Disadvantages Of Guardianship

The primary advantage of a guardianship is that it gives clear legal authority to someone to act on the incapacitated person's behalf. Third parties involved in legal business with the incapacitated person will seldom challenge the authority of a court-appointed guardian. Another advantage is the court supervision of the guardian's activities.

Court oversight is also a primary disadvantage of a guardianship where the relationship between the incapacitated person and the guardian is close and beyond question. The reports to the Court and the restrictions on guardian's actions result in increased expense for legal fees. The law also limits the flexibility of the guardian to do financial planning with the incapacitated person's assets. Transfers of the incapacitated person's assets to another person will be permitted in only very limited circumstances.

How Is A Guardianship Ended?

A guardianship is terminated if the incapacitated person dies, and can be terminated if the incapacitated person regains competence or if the assets of the incapacitated person reach such a low point that there is no reason to continue it.

If a guardian dies or becomes incapacitated, the Court will appoint a successor guardian.

The information contained in this article cannot be a substitute for individual legal counsel. Every person's situation is different. You should not act upon the information contained in this article without first consulting with an attorney.

About the Author, H. Kennard Bennett

Ken Bennett graduated from Wabash College in 1979 and the Indiana University McKinney School of Law in 1982. He is a partner in the elder law firm of Bennett & McClammer. He founded and serves as Executive Director and Senior Counsel to the Center for At-Risk Elders, Inc., a public interest law firm that among other things operates the CARE Volunteer Advocates Program, providing guardianship services to low-income, unbefriended, incapacitated adults.

Ken also serves in a leadership role with the Indiana State Guardianship Association. He is a past president of the Alzheimer's Association, Indiana Chapter and has served in leadership roles with the National Academy of Elder Law Attorneys, United Senior Action Foundation, and other groups focused on the well-being of incapacitated adults. He currently serves as Chairman of the Central Indiana Senior Fund Advisory Board, which is a fund of the Central Indiana Community Foundation.

Ken is proud to say that he is an Eagle Scout.

FUNERAL PLANNING DECLARATION
OF
CLIENT

Declaration made this _____ day of _____, 2015, pursuant to I.C. 29-2-19 et seq.:

I, **CLIENT**, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my instructions concerning funeral services, ceremonies, and the disposition of my remains after my death.

I hereby declare and direct that after my death **DESIGNEE1** shall, as my designee, carry out the instructions that are set forth in this declaration. If my designee is unwilling or unable to act, I nominate **DESIGNEE2** as an alternate designee.

I hereby declare and direct that after my death the following actions be taken (indicate your choice by initialing or making your mark before signing this declaration):

(1) My body shall be:

(A) _____ Buried. I direct that my body be buried at _____.

(B) _____ Cremated. I direct that my cremated remains be disposed of as follows:

_____

_____

(C) _____ Entombed. I direct that my body be entombed at _____.

(D) _____ I intentionally make no decision concerning the disposition of my body, leaving the decision to my designee (as named above).

(2) My arrangements shall be made as follows:

(A) I direct that funeral services be obtained from:

_____ ___

_____ ___

(B) I direct that the following ceremonial arrangements be made:

_____ ___
_____ ___

(C) I direct the selection of a grave memorial that:
_____ ___
_____ ___

(D) I direct that the following merchandise and other property be selected for the disposition of my remains, my funeral or other ceremonial arrangements:
_____
_____ ___
_____ ___
_____ ___

(E) _____ I direct that my designee (as named above) make all arrangements concerning ceremonies and other funeral services.

(3) In addition to the instructions listed above, I request the following:
_____
_____

(4) If it is impossible to make an arrangement specified in subdivisions (1) through (3) because:

(A) a funeral home or other service provider is out of business, impossible to locate, or otherwise unable to provide the specified service; or

(B) the specified arrangement is impossible, impractical, or illegal;

I direct my designee to make alternate arrangements to the best of the designee's ability.

It is my intention that this declaration be honored by my family and others as the final expression of my intentions concerning my funeral and the disposition of my body after my death. I understand the full import of this declaration.

Signed _____

_____
City, County, and State of Residence.

The declarant is personally known to me, and I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not a parent, spouse, or child of the declarant. I am not entitled to any part of the declarant's estate. I am competent and at least eighteen (18) years of age.

Witness _____ Date _____

Witness _____ Date _____