

**Just What the (Juris) Doctor Ordered...  
Essential Planning Documents in a Pandemic**

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“This changes everything.” That claim has been made by sellers of products in their commercials for decades. Dodge claimed the phrase for its 1996 Intrepid, Schlotsky’s for its hand-carved meats in 2012, and Ford for its 2015 F-150. They were all puffing to sell a product, and they were all wrong.

The COVID-19 pandemic and how the world has responded to it—that looks like it really does change everything! The impacts are far reaching, well beyond just epidemiology. We see governments struggling with how to respond, financial markets on a rollercoaster, and a new vocabulary developing with phrases like “community spread” and “social distancing.”

This all results in anxiety, in the sense of its true definition. Anxiety causes panic and indecision. One question a time like this begs is, “What are the critical documents to have in place if I succumb to a major illness?” My answer may surprise you.

You might expect a lawyer’s answer to be that you must have a Last Will and Testament. That is indeed an important document, and most adults should have one. But it is not the most urgent estate planning document to have in place if things go wrong. The answer is more basic than that.

If you become disabled due to an accident or illness, someone should have the authority to handle your financial matters and make personal and healthcare decisions for you. If you have not taken basic steps to appoint someone, then it is very likely someone will have to petition a court to be appointed as your guardian or conservator (or both). This goes by different names in different states, and I will call it all “guardian” for simplicity in this article.

Petitioning a court to have a guardian appointed can be expensive, time consuming, and degrading. It is a public court process in which one petitions a court to have you declared incompetent. It generally must involve at least two attorneys (since both the petitioner and the allegedly incompetent individual must be represented). Even a “simple” uncontested petition for guardianship can easily cost thousands of dollars, plus it will require annual reports to be filed with the court as long as the guardianship exists.

How can you avoid the time, expense, and potential loss of dignity of a guardianship? Execute basic powers of attorney or advance directives. These are fairly simple documents with which you may name someone to make financial decisions and healthcare decisions for you in the event of disability. You may also give them some

“advance directives” on certain decisions to be made (e.g. a “living will” that can direct when to stop or avoid life-sustaining treatment).

It usually costs very little (especially compared to the cost of a guardianship proceeding) to draft and execute valid powers of attorney—and it can avoid the courthouse entirely! Technically, even a spouse lacks the authority to make decisions like this for his or her disabled spouse without a power of attorney or being appointed by a court. The last thing loved ones should have on their hands when facing an imminent health threat is trekking into a lawyer’s office and the courthouse to establish authority to make critical decisions for you.

So, what’s my “prescription” for the documents one should put in place immediately in the face of a pandemic? I recommend talking with someone as soon as possible about drafting basic powers of attorney, one for financial matters and one for healthcare and personal matters. I also do not recommend this as a “home remedy” of self-drafted documents. Although these documents look quite simple, there are traps for the unwary. The time the document is most needed (i.e., you are disabled) is a very bad time to discover it was not prepared or executed properly. Seek competent counsel on this important matter.

If you do not know where to get help, or if you would like some basic questions answered before you seek professional assistance, we can help with that. We would be happy to help you sort through these important decisions and point you in the right direction to get competent counsel.

Thompson & Associates offers a confidential, values-based estate planning service to nonprofit friends and supporters without charge. To schedule a time to talk, please contact