

**RAPHAN LAW
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Elder Law & Estate Planning



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Preparing For The Future



Planning for life-changing issues such as dependence, incapacity and death is important to address *while* you are able to do so.

Waiting until you have a problem may be too late.

Making these plans early, some of which are simple, can relieve the financial and emotional burden of aging and help you move forward with better care for your loved ones.

What Plans Should I Be Making?



Right now, you or your spouse may be able to handle all of your affairs – but in the future you may need help:

- Help with your financial affairs
- Help with your medical care, Alzheimer's care
- Arranging for the disposal for your remains.
- Distribution of your estate after death.

Making these plans early, some of which are simple, can relieve the financial and emotional burden of aging and help you move forward with better care for your loved ones.

3 'must-haves' to help plan for future care



Advanced Directives: These documents give someone close to you the authority to manage your finances, healthcare and burial if you are not able to do so.

1. **Power of Attorney**
2. **Health Care Proxy**
3. **Living Will**

Additional planning:

Homecare Planning: Setting up your affairs so that you can afford to stay in your home if you need care in the future. Community Medicaid is an important component.

Estate Planning: Arranging your affairs so that your estate will go to the people you want when you pass away.

Planning will prepare you to receive the assistance you need to address issues later in life, when you may not have the capacity to make decisions.

1. Power of Attorney

A document in which you appoint someone to manage your financial affairs.

- This is the most critical document that any of us can have with respect to planning for our own incapacity.
- POA gives someone of your choosing the authority to do all, or only specified financial transactions for you.
E.g.: your banking, closing on the sale of a property, filing taxes.
- The person is called your “agent.”
You can also appoint a back-up agent, or co-agents.
- You can tailor the Power of Attorney to meet your needs.
E.g. – Power to open your mail, access to your medical records, and hire professionals.

If you don't have a power of attorney and lose the capacity to make financial decisions for yourself, you might be the subject of guardianship proceeding.

2. Health Care Proxy

A document in which you
appoint an agent to make
medical decisions on your behalf
if you are not able to
do so yourself.

- If you're able to make health care decisions yourself, your agent has no authority over your care.
- You can appoint a successor agent, but not a co-agent.
- You can make statements regarding a particular type of care you would want to receive.
- You give your agent the right to access your medical records.

*If you do not have a health care proxy, a biological family member
would have priority over health care decisions.*

3. Living Will

Your Living Will is a declaration to your health care providers as to whether you want to receive life sustaining treatment if you are at the end of your life.

- NYS doctors are supposed to try to take all measures to keep you alive unless there is “clear and convincing” evidence you want to die naturally without medical interventions.
- Many loved ones are not ready to say goodbye at the time when such a choice must be made.
- It is better to discuss your end-of-life choices with your loved ones now, so they can reconcile your decisions while you are still able to discuss these issues with them.

If you do not have a living will, the hospital can discontinue extraordinary measures to preserve life after a review of a hospital committee determines: the life-sustaining treatment offers no medical benefit, the patient will die imminently anyway, and the treatment violates accepted medical standards.

Medicaid Planning- Institutional Care

Medicaid Planning is simply a way to protect your assets, for your spouse, children, or loved ones and use government Medicaid funding for your health needs--whether for home care or a nursing home.

You can transfer assets to impoverish yourself to be eligible for institutional Medicaid benefits, but there is a five-year lookback period to avoid a penalty.

When is there a need for Guardianship?



If you have not executed a Durable Power of Attorney and/or Health Care Proxy and you become ill or unable to handle your own affairs, nobody can handle those affairs for you.

Your bills may remain unpaid and you may not have the ability to secure the services you may need, such as homecare workers or nurses' aides.

What if I'm determined incapacitated?



If nobody can handle your medical decisions, you may remain in a state that you'd rather not be in, perhaps stuck in a hospital or nursing home, or you may or may not receive the care and treatment that you would prefer.

At that stage you may no longer be in a position to appoint a person on your own, so the commencement of a GUARDIANSHIP proceeding may be required.

Court Guardianship Proceeding



A Guardianship proceeding is a Court proceeding where any person or agency asks a Judge to declare you incapacitated.

If you are found to be incapacitated, this Judge will select and appoint someone to handle your personal and property affairs, as well as your medical decisions.

Guardianship proceedings are typically commenced by a hospital, friend or family member. The proceeding can take anywhere from one month to six months from beginning to end.

Thank you!



Everyone's financial and familial situation is different and may have many facets.

Feel free to email me at mcarmody@RaphanLaw.com with any questions.

Regards,

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