

Law Office of Eileen R. Fitzgerald

An Elder Law Newsletter

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News From Eileen

I am featuring an article about Advanced Directives in this issue of my newsletter. A couple of months ago the Terri Schiavo story was all over the news. Terri went into cardiac arrest, suffered brain damage and was on a feeding tube for 15 years. Her husband said her wishes were that she not be kept alive under those type of circumstances. However, Terri never put her wishes in writing. As a result, Terri's husband and family were feuding for several years over whether or not Terri would want her life sustained with artificial means. The courts became involved and as we all know, the case became a national debate. This case has demonstrated the imperative need for EVERYONE (including young people) to put their wishes in writing with Advance Directives. Please refer to my feature article on page 2 and 3 for more information on how you can protect yourself and your family from unnecessary legal debate regarding your medical care.

On a lighter note, I hope everyone has a safe, healthy and happy summer. For the first time since I opened my own office seven years ago, I am going to have "summer hours". My office will be closing at 3:00 p.m. on Friday afternoons. Monday through Thursday the hours will remain the same - 9:00 a.m. until 5:00 p.m.

Home visits are available for homebound clients, as well as visits in hospital or nursing homes. Please call me at 630-493-4380 if you would like to schedule an appointment.

Senior Citizen Information Regarding Real Estate

1. The **SENIOR EXEMPTION** reduces the state equalized valuation of your home by \$3000 and is available for a residence owned and occupied as of January 1st of the tax year by a person 65 or older during the tax year. If you qualify and have not received this exemption, call the Supervisor of Assessments at **630-407-5858**.
2. The **SENIOR ASSESSMENT FREEZE EXEMPTION** reduces the state equalized value of your home. Applicant must be 65 or older; have a total household income of \$45,000 or less; must be the owner of record; and use the property as their principal residence. If you qualify contact the Supervisor of Assessments at **630-407-5858**.
3. A **SENIOR CITIZEN TAX DEFERRAL PROGRAM** is available to qualified seniors 65 years and over with a total household income of \$40,000 or less. Deferred taxes are paid by the State with repayment plus interest due upon settlement of the estate or sale of the property. For information call **630-407-5900**.
4. The **SENIOR CITIZENS AND DISABLED PERSONS PROPERTY TAX RELIEF AND PHARMACEUTICAL ASSISTANCE ACT (Illinois Circuit Breaker)** is a state program that gives a grant based on income to renters and homeowners 65 and over who have a household income under \$21,218 for one person; under \$28,480 for two persons; and under \$35,740 for three or more persons. Contact the State toll free at **1-800-624-2459**.

Why Advanced Directives Are Not Just for the Elderly

An advance directive is an instruction about health care that an individual signs prior to needing it. One type of advance directive is a health care power of attorney. It is a written document that names another person (the agent) to make decisions regarding health care for the person signing the document (the principal). The power of attorney is used by the agent when the principal is unable to make health care decisions because of incompetence due to physical or mental health. The principal must be competent to sign the document. He must be able to understand that he is making decisions in advance about his health and must be able to identify who he wants as an agent. The power of attorney for health care can be revoked by the agent, whether the agent is competent or not. It can be revoked by destroying the document or by an oral or written revocation.

The power of attorney for health care applies to all health care decisions, not just decisions regarding life sustaining treatment. It can include health issues such as what type of treatment, where the principal will be placed, whether an autopsy should be performed and issues regarding organ donation, cremation and burial. The power of attorney also allows the agent to look at the principal's medical records. The power of attorney for health care allows the agent to refuse nutrition or hydration on behalf of the principal. This includes a feeding tube, which was the issue in the Terri Schiavo case.

The power of attorney goes into effect when a "provider believes a patient may lack capacity to give informed consent to health care which the provider deems necessary". A provider can be a doctor, hospital, etc. The doctor or other provider will then consult with the health care agent. Signing a power of attorney for health care does not take away the patient's right to make decisions while competent.

The doctor or other provider is not required to abide by the agent's decision if it is against the provider's moral, ethical or religious beliefs. If the provider is unwilling to abide by the agent's decision the provider must inform the agent, who must then make arrangements to transfer the patient to a provider who **will** abide by the agent's decision.

The power of attorney for health care is a durable power of attorney. That means that it will stay in effect when the principal is disabled. Individuals need the power of attorney when they are disabled so the power of attorney should be a durable one.

The power of attorney must be witnessed by one disinterested witness. That means that it should not be a family member or your doctor or nurse. The power of attorney expires at death unless it is revoked earlier. The agent's powers can control after death regarding an autopsy, cremation or burial directions.

There are three choices in the document regarding life sustaining treatment. **The first choice states:**

I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment. This option gives the agent some discretion when making the decision.

The second choice states:

I want my life to be prolonged and I want life-sustaining treatment to be provided or continued unless I am in a coma, which my attending physician believes to be irreversible, in accordance with reasonable medical standards at the time of reference. If and when I have suffered irreversible coma, I want life-sustaining treatment to be withheld or discontinued.

The second option does not give the agent as much discretion because it states that life sustaining treatment can be withdrawn only when there is an irreversible coma.

The third choice states:

I want my life to be prolonged to the greatest extent possible without regard to my condition, the chances I have for recovery or the cost of the procedures.

The third option does not give the agent any discretion.

Copies of the power of attorney for health care should be given to the agent, the principal's doctor and other family members with whom the principal would like to share the document. It should not be kept in a safe deposit box because it would not be available on weekends. If the principal is in a nursing home or assisted living facility, a copy should be kept in the file at the facility.

A second advance directive is the Living Will, which is a written declaration that instructs a doctor not to delay death with life-saving measures. The person signing the Living Will must be competent to sign it. It can be revoked at any time without regard to the patient's mental or physical condition. It must be witnessed by two disinterested witnesses, i.e. no family or health care providers. The living will only applies to terminally ill people so it is very limited. It states, in part:

If at any time I should have an incurable and irreversible injury, disease or illness judged to be a terminal condition by my attending physician who has personally examined me, and has determined that my death is imminent except for death delaying procedures, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.

The Living Will does **not** allow the withdrawal of nutrition and hydration, i.e. the feeding tube. Again, this was the issue in the Terri Schiavo case.

Another advance directive is the Do Not Resuscitate (DNR) order. This is a form directing that resuscitating efforts, such as CPR not be started if the individual's heart stops. The DNR is the only order that paramedics will honor. They will not honor a power of attorney for health care if it says not to provide resuscitation. If someone does not want to be resuscitated then they should not call the paramedics or should have a DNR order. DNR orders are typically signed by individuals who have terminal illness.

It is important for all adults to have some type of advance directive. The most famous legal cases which dealt with life support issues have all been young women in their 20's — Karen Ann Quinlan, Nancy Cruzan and now Terri Schiavo. Although young people do not think that they will be disabled, it can happen. Anyone can get into a car accident or some other "medical accident" that will leave them disabled. Having a power of attorney for health care would certainly make it easier on the family and would avoid the court battles that recently occurred in the Terri Schiavo matter. The stakes are higher for younger people because if an accident or illness strikes, they might be kept alive for decades in a condition they would not want.

Anyone signing a power of attorney should be specific in the document as to the types of things they do or do not want done medically. Take time to think about what you want. Ask for help if you are not sure what choices you have. The principal should also talk with the agent to be sure that he or she knows what the principal wants. Powers of attorney are usually done as part of estate planning, which also includes Wills and Trusts. Estate planning is not just for the elderly! All adults should sign wills or trusts, but they should also sign a power of attorney for health care and/or living will so that their families will not have to deal with the issues that Terri Schiavo's family had.

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True or False – Common Misconceptions

- Your estate does not go through probate if you have a Will. **FALSE.** Your estate goes through probate if you have assets in your individual name with no beneficiary or joint tenant and if the estate exceeds \$100,000.00. Signing a Will does not avoid probate. A trust avoids probate.
- The limit for probate is \$1.5 million. **FALSE.** The limit for **estate tax** is \$1.5 million this year. The limit for probate is \$100,000.00.
- Your safe deposit box will be locked and your accounts frozen upon your death. **FALSE.** This happened when Illinois had an inheritance tax, which it has not had since the early 1980's. As long as someone else's name is on the safe deposit box or your bank account, that person will have access to both.
- I am too young to need an Advanced Directive document such as a Power of Attorney for Healthcare. **FALSE.** Any one 18 years or older should have a Power of Attorney for Healthcare. This legal document

states who you want to be your agent to make decisions about your healthcare in the event you are unable to do so, and it puts in writing some of your wishes in advance regarding certain healthcare situations.

- Someone who is not competent can sign a power of attorney for health care or a power of attorney for property. **FALSE.** Anyone who signs a power of attorney should be competent. The person needs to understand what he or she is signing.
- A husband or wife can sell a house with only one signature. **FALSE.** Both signatures are required if both husband and wife live in the home. This is true whether one or both names are on the title. If both names are the title, then both owners need to sign. Just because they are married, it does not give a spouse the legal right to sell the other spouse's assets. If only one spouse's name is on the title, the other spouse must still sign because the spouse who is not in title has a marital interest in the home. The two requirements for the marital interest in real estate are that the couple is married and that they live in the real estate as their home. If both requirements are satisfied, then the other spouse has a marital interest in the home and must sign the deed for it to be sold.

A happy person is not a person in a certain set of circumstances,
but rather a person with a certain set of attitudes. *Hugh Downs*