VARELA LAW, PC

Planning for your future, your family, and your legacy

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Josefina Valle

What will happen to them if something happens to us?

What is estate planning?

"I want to provide for myself and my loved ones during my lifetime and, upon my incapacity or death, give what I have to who I want, the way I want, when I want, and if I can, save every last fee, tax or court cost possible."

- From 'Loving Trust'

What does it mean to plan for incapacity?

- Avoid a **Conservatorship**
- Incapacity provisions in Living Trust
- Who determines incapacity?
- **Comprehensive** Power of Attorney
- Healthcare Directive
- HIPAA Release

DOCUMENTS IN AN ESTATE PLAN

- Trust
- Will
- Powers of Attorney – Legal and Financial
- Durable Powers of Attorney for Health Care (Advanced Healthcare Directive)
- HIPAA Release
- Assignments for Personal Property
- Deeds for Real Property

POWER OF ATTORNEY FOR PROPERTY & LEGAL DECISIONS

- A stand-alone document that allows an agent to act for the principal (you)
- Used to allow an agent to manage the principal's property
- May be general or limited
- May be revoked at anytime by the principal
- Ends at the death of the principal

- Specific type of power of attorney
  - May be effective immediately
  - May "spring" into existence upon some defined event or determination (e.g., the principal is unconscious or doctor says he or she is incapaciated– called a "Springing Power of Attorney")

REVIEW OF MY POWER OF ATTORNEY

Uniform Statutory Form Power of Attorney
(California Probate Code Section 4401)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA PROBATE CODE SECTIONS 4400-4465). THE POWERS LISTED IN THIS DOCUMENT DO NOT INCLUDE ALL POWERS THAT ARE AVAILABLE UNDER THE PROBATE CODE. ADDITIONAL POWERS AVAILABLE UNDER THE PROBATE CODE MAY BE ADDED BY SPECIFICALLY LISTING THEM UNDER THE SPECIAL INSTRUCTIONS SECTION OF THIS DOCUMENT.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

- Appoints agent to make health care decisions in case of principal's incapacity or disability
- Power of agent does not expire with person's incapacity or disability; only at death
- Possible to use a springing power
- Power always revocable by principal during his or her competency

Healthcare Provisions:

Choice to Prolong Life – *Please select one option*:

☐ **I do not want my life to be prolonged** if (1) I have an incurable and irreversible condition that will result in my death within a relatively short time, (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (3) the likely risks and burdens of treatment would outweigh the expected benefits.

OR

☐ **I want my life to be prolonged** as long as possible within the limits of generally accepted health care standards.

Medication for pain and suffering – *Please select one option*:

☐ **I would like** to receive medications for alleviation of pain and suffering, even if they hasten death.

OR

☐ **I would not like** to receive medications for alleviation of pain and suffering, even if they hasten death.

Artificial Nutrition and Hydration – *Please select one option or simply answer question highlighted in yellow*:

☐ I direct my attending physician **not** to withhold or withdraw artificial nutrition and hydration by way of the gastro-intestinal tract if such a withholding or withdrawal would result in my death by starvation or dehydration.

OR

☐ I **do not want** to receive or continue receiving artificial nutrition and hydration by way of the gastro-intestinal tract after all other treatment is withheld. *Do you want to receive artificial nutrition and hydration? Yes/No:* _____

REVIEW OF MY HEALTHCARE DOCUMENTS

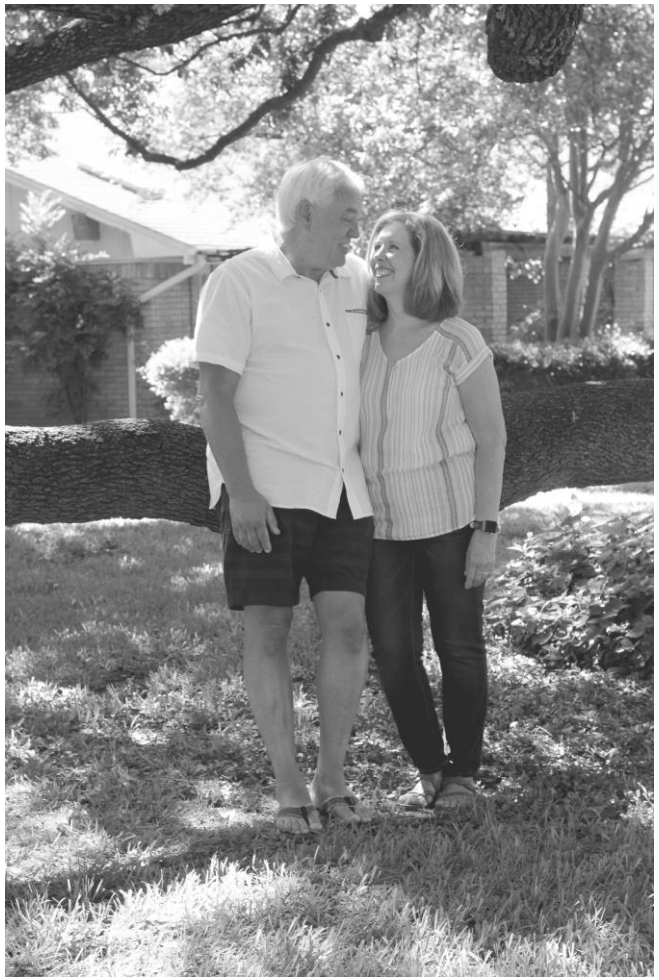
California Advance Health Care Directive
(California Probate Code Section 4701)

Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual

Steve and Susie's Story



- Both in late 50s
- Not married, together 15 years
- Steve had a stroke, became incapacitated
- Bank accounts in his name, Susie was POD
- Old POA that named his sister
- Conservatorship

Rick's Story

- Trust with wife
- Wife incapacitated
- Trust provided both spouses had to amend
- No provisions for POA to amend
- Son needed SNT (*Enhances quality of life for Kathy by paying for goods and services without the loss of government benefits*).

Martin and Maria's Story

- Maria in nursing home, Martin in assisted living
- More than $9K per month
- Spend down of assets
- Daughters sold house without getting legal advice
- A way to legally cover long-term care cost: Medi-Cal
- Medi-Cal Asset Protection Trust

Medicare v. Medi-Cal

- Paying for long term care become an issue for many people
- At-home care or nursing home care can cost more than $5,000 per month
- Many clients believe they must transfer their home out of their name and to their kids to qualify for Medi-Cal
- Numerous ways to qualify
- May need a Medi-Cal Trust
- Important to get legal advice as early as possible
- Important to understand estate recovery

Estate Recovery Program

What is Estate Recovery?

The Medi-Cal program must seek repayment from the estates of certain deceased Medi-Cal members. Repayment only applies to benefits received by these members on or after their 55th birthday and who own assets at the time of death. If a deceased member owns nothing when they die, nothing will be owed.

For Medi-Cal members who died **on or after January 1, 2017:** (See Changes to Estate Recovery effective January 1, 2017 due to Legislation SB 833)

- Repayment will be limited only to estate assets subject to probate that were owned by the deceased member at the time of death.
- Repayment will be limited to payments made, including managed care premiums paid, for nursing facility services, home and community based services, and related hospital and prescription drug services received when the member was an inpatient in a nursing facility or received home and community based services.

For Medi-Cal members who died **prior to January 1, 2017:**

- Repayment will be sought from all assets owned by the deceased member at the time of death.
- Repayment will be owed for payments made for most services received and/or monthly managed care premiums paid on behalf of the Medi-Cal member.

NAMING GUARDIANS FOR KIDS

- Extremely important
- Children can end up in foster care or CPS custody
- More stress and unknowns for children
- Conflict among family
- If guardians are not named, Judge decides who raises your children without knowing the family or children

NAMING GUARDIANS FOR KIDS

- Melanie and Casey Barber were parents of three little boys.
- In 2006, the Barber family was in a tragic car accident.
- The boys (all under 8 years old) survived, their parents didn’t.
- After the accident, which happened in Arizona, while the family was traveling, the boys were in the foster care system for a short time while the police located family members.
- The first family member found was an aunt who kept the boys away from the rest of the family. They lived with the aunt while the family went to Court to fight over who would raise the boys.
- Over 1,000 pages of court documents were filed, 9 lawyers were involved, and tens (or even hundreds) of thousands of dollars spent.
- Court appointed a different aunt as legal guardian for the boys, who may or may not have been who Mel and Casey would have chosen.

We will never know if the Judge made the right choice because Mel and Casey's wishes will never be known.

Case Style: Family and Estates of Casey and Melanie Barber v. Mossy Ford

Case Number:

Judge: Luis Vargas

Court: Superior Court, San Diego County, California

Plaintiff's Attorney: Adam Shea and Spencer Lucas, Panish Shea & Boyle, L.L.P., Los Angeles, California and Robert Buccola and Jason Sigel of Dreyer, Babich, Buccola & Wood LLP, Sacramento, California

Defendant's Attorney:

Description: Family and Estates of Casey and Melanie Barber sued Mossy Ford on negligence theories for the wrongful deaths of the couple who were killed in a rollover accident in Page, Arizona in July of 2006. Plaintiffs, the sons of the deceased couple, claimed that their parents' Ford E350 Sportsmobile rolled over after a right-rear tire tread separation led to the crash. The claimed that Defendant's employees performed a faulty tire repair on the van in August 2005 and it failed to take the tire out of service.

The defenses asserted by Defendant are not available.

Outcome: Plaintiff's verdict for $14.465 million. Before the trial, a settlement was reached with other defendants for $8,300,000, bringing the total to $22,763,000.

Questions?

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