

# Estate Planning Basics: Three Must-Have Documents

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The approaching holiday season brings the opportunity to spend quality time with elderly relatives who we may not have seen for a while.

Sometimes our elderly loved ones show changes that give us cause for concern. While some changes are obviously concerning, there are many subtle changes that may indicate that elderly relatives may not be functioning so well on their own.

## Check for These Changes

The following is a list of changes you may notice when spending time with parents or other elderly relatives:

– Did your relative have any uncharacteristic difficulties helping prepare the holiday meals?

– Did you notice less interest than usual in participating in the holidays or visiting?

– Was the elderly person's home kept up as usual? Was his or her hygiene as good as usual?

– Did you notice any forgetfulness during conversations?

– Did you notice any difficulties with their managing finances and paying bills, or keeping up the checkbook?

– Do you have concerns about your relative remembering to take medications?

– Is your relative socializing with friends and relatives as much as usual?

If you have noticed any of these subtle changes in your relative, and possible medical causes have been addressed, perhaps it is time for them to consider planning for their long-term care.

If your relatives have not completed basic estate planning documents, specifically a power of attorney, a health care proxy and a last will and testament, now is the time for them to get those documents in place.

If an individual lacks the capacity to execute these documents, then undergoing guardianship proceedings may be necessary to manage your loved one's medical

care and finances.

The health care proxy in New York State allows one to appoint an agent, or representative, to make health care decisions in the event that the individual is unable to make his or her own decisions.

The importance of having someone designated in advance is that the person listed as the health care agent on the health care proxy document will have a good understanding of that individual's wishes. Without a designated health care proxy, decisions regarding health care may be made which conflict with the individual's wishes, or delays may be encountered if consent is needed for a particular procedure.

A power of attorney is a document that allows one to select an agent – or agents – for financial, personal and business transactions (except health care).

One or more agents may be selected. In New York State, the power of attorney was revised in 2009 and amended in 2010, requiring a rider to the document for transactions over \$500.

Having the power of attorney in place is important so that a person, or persons, chosen by the individual will be able to

assist and manage the individual's financial affairs, if ever needed, and will avoid the expense and delays of guardianship proceedings. If there are assets, and/or real property, planning should be considered to protect those assets from the costs of nursing home care and home care services.

The Medicaid rules have changed, and plans must be made as early as possible to protect those hard earned assets to the extent possible under federal and state guidelines. Finally, it is a good idea to

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explore what options are available for you or your relatives beforehand, rather than wait for an unforeseen event, or emergency situation to occur.

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For specific legal advice, consult with an attorney.

Call our office if you feel we can be of service to you in these matters. Our attorneys may be reached at Brady & Marshak, LLP, Attorneys at Law, 718-738-8500.

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