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Estate Planning: Essential Incapacity Documents

Frequently Asked Questions

What documents are included in the Incapacity Documents?

- Financial Durable Power of Attorney
- Healthcare Durable Power of Attorney
- Advanced Healthcare Directive
- HIPAA Authorization

What is incapacity?

- This is when a person is unable to care for oneself, or their personal affairs.

What are examples of events that can lead to incapacity?

- an intellectual handicap
- a serious accident
- violent & repeated head trauma
- a stroke
- mental illness
- a degenerative disease (e.g. Alzheimer's)

Who needs incapacity documents?

- Everyone 18 years of age or older

What is a Financial Durable Power of Attorney?

- A document appointing a person to handle someone's financial affairs in the event of their incapacity.

What is a Healthcare Durable Power of Attorney?

- A document appointing a person to handle someone's healthcare decisions in the event of their incapacity.

What does the term "Durable" mean?

- The term "durable" means that the power of attorney document is good during incapacity, because it has the correct statutory language in the document that makes it "durable".

What is an agent or attorney-in-fact?

- These terms agent and attorney-in-fact are used interchangeably. This is someone who speaks for a person on their behalf when that person is unable to speak for themselves.

What is a Healthcare Directive?

- A document to medical professionals and family members declaring one's health care desires and wishes in the event of their incapacity.

What is the HIPAA Authorization form?

- A document that gives hospitals and financial institutions authorization to release personal health information to a person's agent.

What happens if these documents are not in place in the event of incapacity?

- A court appointed guardian and conservator will oversee making decisions for the person. This comes at the financial expense of the person's family. The guardian/conservator may end up being someone who is not acquainted with the person's beliefs, values, or personal wishes.

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