COVID-19 Pandemic Highlights Need for College-Aged Students and Young Adults to Prioritize Estate Planning

Ashley Gill
agill@mwlaw.com
(501) 688.8843

11/05/2020

Facing mortality does not come easily to anyone, but particularly not for college-aged students or young adults. As a result, many young people, to the extent they think about estate planning at all, mistakenly assume that estate planning is something needed by only the eldest or wealthiest members of society. Car accidents, cancer, heart attacks, and strokes all seem so improbable to most young people that the need to plan for an unexpected crisis or the "what ifs" in life is not seriously considered, or at least is not prioritized. Certain documents, however, govern decisions to be made during life rather than at death, which is why estate planning is important for everyone—not just the elderly or very wealthy.

The COVID-19 pandemic highlights the need for college-aged students and young adults to prioritize estate planning perhaps more than ever. Once an individual attains the age of eighteen (18) years, privacy laws, such as the Health Insurance Portability and Accountability Act (HIPAA) and the Family Educational Rights and Privacy Act (FERPA), may restrict access to the individual's protected health care information (such as prognosis and treatment plans) and education records (such as transcripts, financial aid records, disciplinary records, etc.) making it difficult for parents or other loved ones to help in the event of a health or safety emergency.

The following estate planning documents can alleviate some of the stress associated with unexpected crises for parents and other loved ones: (1) living will; (2) general durable power of attorney for health care; and (3) general durable power of attorney for finances. A brief description of each document along with the execution requirements is included below.

Living Will

The Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, Ark. Code Ann. § 20-17-201, *et seq.*, permits anyone of sound mind who is over the age of eighteen (18) years to execute a declaration (commonly referred to as a living will) governing the withholding or withdrawal of life-sustaining treatment in the event that the individual is diagnosed with an incurable or irreversible condition that will cause the individual's death within a relatively short time and he or she is unable to make decisions regarding his or her medical treatment or in the event that the individual becomes permanently unconscious.

Arkansas law requires that a living will be signed and either (i) notarized or (ii) witnessed by two (2) witnesses Without a living will wherein the patient anticipated and directed the decisions to be made, costly and seemingly endless legal battles have been fought among family members regarding whether to continue life support.

Durable Power of Attorney for Health Care

A durable power of attorney for health care is a written statement that identifies an agent who is authorized to make healthcare decisions on behalf of the principal when the principal is unable to do so. The Arkansas Healthcare Decisions Act, Ark. Code Ann. § 20-6-101, *et seq.*, requires that a durable power of attorney for health care be signed by the principal, and either (i) notarized or (2) witnessed by two (2) witnesses.

General Durable Power of Attorney for Finances

A power of attorney is a legal document that names someone else to act on the principal's behalf with respect to the principal's finances, assets, and other legal rights. For example, a power of attorney might authorize the agent to access financial records, pay bills, apply for governmental or insurance benefits, or sell property on the principal's behalf. A "general" power of attorney grants authority to an agent to do all acts that a principal could do. However, Arkansas law prevents an agent from taking the following actions unless the power of attorney specifically authorizes the agent to do so: (1) amend, revoke, or terminate an inter vivos trust; (2) make a gift; (3) create or change rights of survivorship; (4) create or change a beneficiary designation; (5) delegate authority granted under the power of attorney; (6) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or (7) exercise fiduciary powers that the principal has authority to delegate. Furthermore, a general durable power of attorney does not authorize the agent to make health care decisions on the principal's behalf. A durable power of attorney for health care, executed pursuant to the statutes discussed above, is required to empower an agent to make health care decisions.

"Durable" with respect to a power of attorney means that the agent's authority under the power of attorney is not terminated in the event that the principal becomes incapacitated. A durable power of attorney may be drafted so that it becomes effective only upon incapacity or it may be drafted so that it becomes effective upon execution (meaning that the agent may legally act on the principal's behalf even if the principal is not incapacitated).

Under the Arkansas Uniform Power of Attorney Act, Ark. Code Ann. § 28-68-101, *et seq.*, a power of attorney must be signed. A signature on a power of attorney is presumed to be valid if the document is notarized. For that reason, it is advisable for the document to be signed and notarized.