

Legal Considerations for Family Caregivers

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presented by
DUSTIN MARNELL B.A., J.D.

HORNE COUPAR BARRISTERS and SOLICITORS

Phone: 250-388-6631
Website: hc-law.com
Victoria Office: Suite 300, 612 View Street
Oak Bay Office: Suite 302, 2250 Oak Bay Avenue

WILL & INCAPACITY PLANNING

The Three Pillars of Planning:

- Powers of Attorney
- Representation Agreement
- Will and Estate Planning

Incapacity Planning

- Powers of Attorney
 - Financial and legal decision-making
- Representation Agreement
 - Personal and health care decision-making
- New legislation effective September 1, 2011
 - new part 2 of the *Power of Attorney Act* for enduring powers of attorney
 - amendments to the *Representation Agreement Act*
 - new provisions for "Advance Directives" in the *Health Care (Consent) and Care Facility (Admissions) Act*

Powers of Attorney

- What are they?
- Types of Powers of Attorney
- EPOA Considerations
- Attorney's Powers
- Attorney's Obligations
- Power of Attorney vs. Committeeship

Types of Powers of Attorney

- Bank
- Enduring
- Springing
- General/Limited

Enduring Powers of Attorney

- Power to act continues during any subsequent mental infirmity *or*
- Power to act may be triggered by a subsequent mental infirmity (springing power of attorney)
- Simple and inexpensive tool to ensure that affairs managed on an incapacity

EPOA Considerations

- Who can be appointed?
 - Cannot be person or employee of a facility providing care services for compensation, unless person or employee is child, parent or spouse of adult
 - An individual-adult; PGT; financial institution
- If more than one attorney appointed
 - Different areas of authority may be given to different attorneys
 - Must act unanimously unless the EPOA provides otherwise

EPOA Considerations cont.

- Compensation
 - No compensation unless authorized in EPOA
 - EPOA must set amount or rate

Attorney's Powers

- Gifts/loans
 - Authority to make gifts or loans can be authorized in EPOA
 - Where not authorized, attorney may still make a gift (including charitable gifts) or loan, if:
 - adult will have sufficient property remaining to meet the personal care and health care needs of the adult and the adult's dependents, and to satisfy the adult's other legal obligations, if any,
 - adult, when capable, made gifts or loans, or charitable gifts, of that nature, and
 - total value of all gifts , loans and charitable gifts in a year is equal to or less than a prescribed value

Obligations of an Attorney

- act honestly and in good faith
- exercise the care, diligence and skill of a reasonably prudent person
- act within authority granted
- keep records
- act in adult's best interests, taking into account wishes, known beliefs and values
- avoid conflict of interest
- ...

What an Attorney cannot do

- commingling of assets
- personal benefit
- in B.C. make or change will of adult

Power of Attorney vs. Committeeship

- Costs
- Plan now or pay later

Abuse of Power of Attorney

- Attorney does not understand his or her duties
- Attorney ignores his or her duties
- Attorney dishonesty

Remedies for Abuse of Power of Attorney

- Revoke Power of Attorney
 - Giving written notice to the attorney
- Report alleged abuse to the Public Guardian and Trustee
- Report to designated agency under the Adult Guardianship Act
- Application to court for committeeship

Representation Agreements

- What is a Representation Agreement?
- Kinds of decisions that can be made
- Who to appoint

What is a Representation Agreement?

- Legal planning document for health and personal care
- Decide in advance who should make decisions about health and personal care in the future
- Section 7 (routine management of financial affairs, limited powers re health care) versus section 9
- What if no Representation Agreement and decisions need to be made?

Kinds of decisions that can be made

- virtually any health and personal care decision
- includes day to day living
- includes discussions with medical individuals (doctors, nurses)
- includes the right to refuse consent to life saving treatment

Appointment of a Representative

- compatibility and trustworthiness
- often spouse and/or children or family member
- can appoint one or several
- can appoint alternates
- if more than one, must act unanimously unless the document says otherwise (unless given different areas of authority)
- no payment unless set out in the document

What if no Representative?

- TSDM-temporary substitute decision maker
- Committee of the person

Advance Directives


- Document in which client may give or refuse consent to any health care if not capable of giving directions
- As of September 1, 2011, advance directives are legally recognized by law
- Binding upon health care professionals and representatives (subject to some exceptions)
- Specific formalities required
- Useful where client has no representative

Will and Estate Planning

- What is WESA?
- What happens if someone dies without a Will?
- Can a person vary a deceased's Will?
- What is joint tenancy?

Conclusion

- For peace of mind consider:
 - EPOA financial management and legal decisions
 - RA where legally binding personal and health care decision making desired (including end of life decisions)
 - Will-effective on death



Any questions or comments?



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- Podcasts and webinar recordings from prior sessions
- Articles and handouts
- Resources

Family Caregiver Support Line (BC): 1-877-520-3267
