The Second Type of Probate 105

“I don't own anything so I don't need to think about this right now.”
This may seem like an accurate statement if one was to see estate planning as a one dimensional purpose. The legal and systematic distribution of a person's assets after they die is important to plan for – but if nothing of value is owned, there should be nothing to do – right?

Wrong. A major part of estate planning includes, or should include the preparation of documents to avoid 'Living Probate'. While we gain an understanding of what death probate is about and why we want to avoid it, understanding living probate is just as important if not more so.

The word Probate comes from the Latin verb *probare* meaning to try, test, prove, and examine. It is used most often when referring to the law and court proceedings. So what needs to be proved when a person is alive?

Life happens and along the way, unexpected and unplanned, accidents and illness happens. When a person finds themselves in a situation where they can not speak for themselves who can? Who has the legal right to speak to the needs of another person? Who can make medical and legal decisions for you when you are in a coma, unconscious or too ill to speak?

In today's litigious world, in big cities and small towns, hospitals and clinics are wary of being sued. The proper legal document is required in almost all cases to show who has been chosen to make these important decisions. Without the signed and witnessed document the medical profession is required by their Hippocratic Oath to keep a person alive.

The lack of these basic documents, called a Power of Attorney for Medical Care requires families and loved ones to petition the courts to be named as 'guardian' and 'conservator' for the incapacitated individual. Now we are in the courts, now we are in probate, proving to the court authority that this is the right person to do the job at hand.

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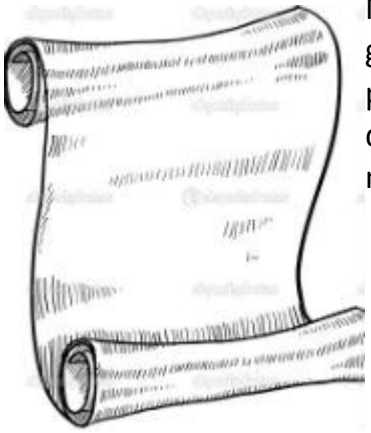
Imagine your spouse of many years or your significant other is suddenly admitted to the hospital. An accident or illness renders them unable to communicate, in a coma or unconscious. The doctor needs to make some decisions on what to do once your loved one is stabilized. Who is the legal guardian? Who has the properly signed and witnesses document that verifies the person chosen to speak for the patient? Regardless of years together, it is the paperwork that makes the decision.

Without this paperwork you now have to petition the court to allow you to serve as “court appointed” guardian over your loved one. This 'petitioning' of the court will mean the hiring of an attorney and acceptance by the judge that you have the emotional wherewithal to make these important decisions. Once given this permission you now act on behalf of the court. You now must keep meticulous accounting records of every dollar spent on behalf of the patient. On a periodic basis, determined by the judge, you will return to the court with your accounting records to once again prove that you are capable of handling the work that is needed.

Time, money and frustration all accompany this endeavor. If other family members differ with your decisions, expensive complications occur – financial and emotional.



Now imagine that when the doctor first asks “who is the legal guardian” you are able to display the signed document – a properly executed Medical Power of Attorney. You sit with the doctor and begin making medical decisions for your loved one – no courts, no attorneys, no legal complications, no family quarrels.

At an emotional and serious time like this it is crucial that the legal matters have already been taken care of. **It is the responsible thing to do, a gift to yourself and your loved ones.**

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