



December 26, 2018 **SCENARIO: “Where there is a Will doesn’t mean there is a way”**

This scenario will utilize the same starting facts as the last “Why a ‘Simple Will’ can be so dangerous.” Michael Thomas Brady (“Mike”), 42, was a widowed architect who was bringing up three boys on his own: Greg, Peter and Bobby. Carol Ann Martin, 38, was divorced and was bringing up three lovely daughters of her own: Marsha, Jan and Cindy. Later Mike and Carol met and fell in love, were married and merged their separate families.

Their new family was a wonderful “blended family” where the word “step” was never used. It was like they just fit perfectly together. Over the next 15 years, the “Brady Bunch” as they liked to call themselves, experienced and shared many memories. Eventually, the kids moved out of the house for either college or adulthood and Mike and Carol were empty nesters now both in their 50’s.

Here is where the story changes. Three years later, at the age of 60, Mike unfortunately suffered a stroke. Fortunately, he survives, however, Mike suffered some partial paralysis and will need constant medical care.

THE PROBLEM:

Carol while certainly willing to take care of Mike also realizes that she does not have the energy and possibly the skills to handle a long-term care giver role on her own. Carol doesn’t want to put Mike in a nursing home, but she knows she will need some type of assistance for Mike on a regular basis. She is strongly considering a home health care worker.

In addition to Carol’s medical concerns from Mike’s health issues, she is also concerned about the financial ramifications of a long-term care situation. They will probably have to pull money from the IRA and the 401(k) to pay for his care. Unless they are a ROTH IRA and a ROTH 401(k), they are going to have income taxes when doing so. The good news is that Mike is 60 (i.e. past age 59 ½) so at least he will not incur an additional 10% penalty for doing so.

Carol will need something that gives her the authority to handle anything Mike had separately in his name like the IRA or 401(k). Maintaining the life insurance policy will still require the premium be paid. The house still has a monthly mortgage payment on it along with the property taxes. Mike usually was the one who handled their finances but now Carol must do so.

Carol is willing to do what she must do to care for Mike, but how does she communicate to the rest of the world that she is now handling Mike’s health care and financial affairs for him?



THE “OTHER DOCUMENTS”

While a will is essential, it has one fundamental flaw. A will only becomes active at death. As we see in Mike and Carol’s situation, there will be many times that problems will arise for individuals and families during their lifetimes. Even if someone has executed a will, it will do nothing to affect their need to have critical financial and health care decisions handled. To deal with this “gap in coverage” while someone is alive, there are three documents that come into play: a Durable Power of Attorney, a Health Care Power of Attorney and a Living Will.

A Durable Power of Attorney is a document that enables another person to essentially step into your shoes and manage your financial affairs if you are unable to do so yourself.

A Health Care Power of Attorney, similarly to a Durable Power of Attorney, allows another person to act on your behalf. But rather than managing your financial affairs, a health care power of attorney allows another person to make medical decisions on your behalf if you are unable to do so yourself.

The term Living Will often confuses people. Some people think it is a substitute for a last will and testament that would come into play at someone’s death, but that is not the case. A Living Will is a document that allows you to express your end-of-life medical treatment desires (i.e. if you are in a vegetative state).

An Advance Directive for Health Care is a document where certain state legislatures like Georgia have combined a Health Care Power of Attorney and a Living Will into one document. In other states, they may use that term to describe the Living Will.

MAIN TIPS:

- 1) Wills take effect only at death. They cannot do anything to address someone making financial and/or health care decisions for you during life**
- 2) There are three documents that can handle that “gap in coverage”: a Durable Power of Attorney, a Health Care Power of Attorney and a Living Will**
- 3) Some states like Georgia use an “Advance Directive for Health Care” that combines the Health Care Power of Attorney and Living Will into one document. Other states may use the term to refer to the “Living Will”.**

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