

Legal Documents for your Children

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- ▶ Parents are often unaware how critical it can be that their majority age children have executed certain estate planning documents.
- ▶ Primary among these are a durable power of attorney and a health care proxy.

The summer months are often a time for vacations, which provide an opportunity for relaxation and reflection. And while legal documents for your college age children may not be something you had contemplated, there are several estate planning-related documents that can be crucial to ensuring your piece of mind.

Once a child reaches 18 years of age, they are considered an adult in most states. With adulthood your children gain their financial and medical independence, at least in the eyes of the law, as well as privacy from you. Though you are their parent, once your children turns 18, you no longer have the right to legally act on their behalf unless certain legal documents have been executed that appoint you with this authority. These documents are the durable power of attorney and health care proxy.

Durable Power of Attorney

With a durable power of attorney (DPOA), your young adult child can legally delegate authority to you to manage their financial affairs in the event they are unable to do so. A DPOA can be used if your child becomes disabled or incapacitated, on either a temporary or permanent basis. If you are appointed their attorney-in-fact, you can deal directly with their college's financial aid office and student loans, your child's lease agreement, credit card companies, and their bank accounts.

This type of authority may be especially convenient if your son or daughter attends a school in a different part of the country or is traveling abroad. The federal Family Educational Rights and Privacy Act protects the privacy of a student's college record. Some post-secondary educational institutions maintain their own release forms, which may need to be executed in addition to a DPOA.

Health Care Proxy

If your child has a health care proxy, and you have been appointed their agent, you will be able to make decisions about their medical care if they are unable to

do so. Such a medical directive can reduce the time necessary to make medical decisions. Although sometimes appearing as separate documents, a health care proxy will often include two other important directives, a HIPAA release and a living will.

HIPAA, the acronym for the federal Health Insurance Portability and Accountability Act, provides you with authorization to access your child's medical information at a medical facility. These facilities also offer their own HIPAA releases, but your child would need to be capable of signing the directive. Without a HIPAA release, you will not have access to your child's medical condition or records despite your status as the parent.

A living will outlines your child's wishes in the event they require extreme medical intervention or life support decisions. While not legally enforceable in some states, a living will can provide guidance to others.

Conservatorship and Guardianship

If your young adult children become incapacitated without a durable power of attorney and health care proxy, you will need to go to probate court to have a conservatorship and/or guardianship put in place. The process of obtaining either is lengthy, expensive, and a matter of public record. A conservatorship would allow you to handle your child's financial affairs, while a guardianship gives you authority over their physical being, including medical decisions.

So as you relax and reflect this summer, consider having your college age children obtain a durable power of attorney and a health care proxy. With these documents, you will have the necessary access to act on behalf of your children in regard to their financial and medical affairs. And you can spend the rest of the summer relaxing.