Are your Advance Care Directives Up to Date in the Era of COVID-19? Seven Questions to Ask Yourself

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Coronavirus Response Team
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With the turmoil and uncertainty surrounding the COVID-19 outbreak in the United States, it is important for us all to consider who will be responsible for our individual health care needs should we become unable to make medical choices for ourselves.

For those individuals that already have Advance Care Directives in place, such as a Health Care Power of Attorney or Living Will Directive, it makes sense to take a moment to consider the following questions:

- **Do you have a copy of these documents readily available in your home?** If not, consider contacting your estate planning attorney to request an electronic copy, print it, and keep it somewhere readily accessible in your home.
- **Do you have a copy of these documents readily available in electronic format?** If not, contact your estate planning attorney to request an electronic copy, and save it somewhere that is readily accessible from your smartphone or other handheld device.
- **Have you provided a copy of these documents to your medical providers, such as your primary care physician and other specialists that you see regularly?** If not, consider faxing or emailing a copy to your health care provider's records department, rather than visiting the office to deliver a copy in person. Many health care providers are open only for essential medical services, so stopping in to drop off a hard copy is generally discouraged. It is important to respect your state health department's guidelines regarding social distancing for your safety and for the safety of our hardworking health care professionals.
- **Do your documents designate appropriate individuals to make health care decisions for you under current**

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conditions? For married persons, it likely still makes sense to designate a spouse as the primary health care agent in an emergency; however, due to the ease of transmission of COVID-19 from person to person, both spouses may contract the illness in rapid succession. Consider designating at least one – or perhaps a few – backup agents that can make health care decisions for you. Moreover, COVID-19 has dramatically impacted the ability of most individuals to travel great distances. In fact, citizens of certain areas of the country have been encouraged to stay inside their homes for weeks at a time. Consider whether your primary or backup health care agents are nearby and able to reach you, and contact your estate planning attorney to make any changes that may be necessary.

- **Does it make sense to provide a copy of these documents to your primary health care agent and backup health care agents now?** This is a matter of personal privacy preference, but I encourage clients to consider providing a copy to their designated agents listed under these documents (or at least have a discussion with the designated agents to inform them of their role). Like providing a copy to your health care provider in advance, providing a copy to your agents creates additional redundancy that may be important in an emergency.
- **Does the Living Will Directive reflect your current wishes regarding end-of-life decisions?** Executing a Living Will Directive takes certain difficult decisions off the shoulders and hearts of your friends and family. Many states allow you to decide in advance (1) whether you authorize the administration of artificial hydration or nutrition should you become permanently unconscious (colloquially, "brain dead"), (2) whether you consent to the administration of cardiopulmonary resuscitation (CPR) if you become permanently unconscious or terminally ill, and (3) certain choices regarding organ donation.
- **Has contact information changed for your primary or backup health care agents?** Health care providers are under constant stress, and time is of the essence for many patients

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diagnosed with COVID-19. This is a good time to ensure that your documents are up-to-date and reflect current contact information for your agents so that they are quickly contacted in the event of a medical emergency.

For those individuals that do not have these documents in place, it is important to consult a qualified estate planning attorney regarding the preparation of Health Care Powers of Attorney or Living Will Directives. Most states do not require a particular form, but there are hazards associated with executing these documents without appropriate counsel. For example, each state has preferred language and witnessing requirements, and whether a do-it-yourself solution adheres to those requirements is uncertain. Moreover, an attorney will be able to either supervise the execution of these documents or provide detailed instructions on how to execute these documents appropriately.

For more information regarding the above, please contact Andrea Costa Laden or any attorney in Frost Brown Todd's Estate Administration and Planning Practice Group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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