

Healthcare Directives, Medical Power of Attorney, Wills and Succession Planning

By Donald W. Hudspeth

Dealing with Medical Care, Death and Business Succession

The firm has some fairly long articles on the topics of healthcare directives, last will and testament, business succession and asset protection. See **Protecting the Future: Asset Protection, Succession Planning and Health Care Directives for Business Owners**© By Donald W. Hudspeth.¹ But the pandemic of the Covid-19 aka corona virus pushes to the forefront the need for everyone to have in place the following documents:

1. Healthcare directive. This document tells your family and treating physician what care you want, e.g. life support or not. Without this document granting prior approval of limited care, the hospital, physicians and staff will feel morally and legally compelled to continue treatment, perhaps beyond the bounds of reason.
2. Medical Power of Attorney. This legal document assigns your authority to a designated representative, e.g. family member, to act in your place when you are no longer able to make medical care decisions. (The directive says what you want; the power of attorney grants authority to require it.)
3. The Last Will & Testament. The will, of course, directs the disposition of your property according your decisions and desires. Otherwise, there may be a fight among the heirs for your property.
4. Succession Planning. The “Buy-Sell” agreement is critical for business owners. Used here, succession planning refers to the transition of ownership and management from a business owner to a son, daughter or favored employee. This may be done by means of a corporation shareholders agreement, an LLC’s operating agreement, or by a separate “buy-sell agreement.” Any of these agreements may contain terms which define the triggering events of transfer, e.g. death or disability, state how the purchase price (if any) of the transferred share or interest will be determined, e.g. fair value, fair market value, some multiple of net worth or multiple of EBITDA (earnings before interest, taxes, depreciation and amortization) and who and what order may purchase or receive the share or interest, e.g. company, other owner, or family member.

a. A common and critical mistake: Corporation shares and LLC membership interests are comprised of two parts: the financial interest, i.e. right to money, and the voting interest. A common, but false, assumption is that close corporation shares or LLC membership interests are readily transferable to the heirs (or to anyone for that matter). They are not. The so-called “economic interest,” i.e. the right to receive dividends and distributions, may transfer, but absent an agreement to the contrary the voting interest typically does not transfer. This could greatly increase the voting power of the remaining owners.

The Package. The firm offers the first three documents as a package deal, so you may complete all three of them at the same time. The Package documents are not particularly complex, long or time consuming. We can do the work over the phone or by video conference.

Except for previous pandemic outbreaks, e.g. the “Spanish flu” and times of war, there probably has never been a time in recent history where it was more important to have in place these health care and succession documents.

¹ Available online at azbuslaw.com/Publication/Articles