

CONVERSATIONS WITH CAROL #2

Choices and Self Protection

By Carol Abaya, M.A.

This is Carol Abaya.

Today we're going to talk about choices and how a person can -- and should -- retain control of his or her own life and make important decisions before a crisis. The choice is: either make key decisions yourself -- or else complete strangers can -- and will -- make important financial, medical care, and life style decisions for you. The process is called self-protection.

When I became involved in my parents' every day lives it was because of a crisis. My mother, at 85, suddenly became ill and was hospitalized. Besides overseeing her medical care, I had to take over running her real estate business.

I also had to make sure my father, then 90, was ok at home.

My parents did not make important decisions before the crisis. So I found myself running from bank to bank, having to get Power of Attorney cards so that I could pay my mother's business bills. After identifying two or three banks, I then learned (from my mother) that she had another (important) account in a bank in a town 12 miles away. So I had to go to that bank. Then I had to make arrangements for a notary public to come to the hospital and my mother's room. Then my mother had to sign the necessary bank cards before the notary.

My mother was a very strong minded person, and she had to control -- which is why she hadn't given anyone else the ability to handle her affairs.

I do have a real estate license. However, I had no legal authority to run my mother's business. Besides selling houses, my mother managed some residential and commercial properties for people who lived out of state. So the situation was complicated. Fortunately her customers accepted me after I told them my mother was ill. The MLS also did not question me.

On top of this, my mother was very private about her money. No one, other than my mother and IRS knew what my parents' income was. As my mother was still working, her accountant handled everything. My father had no idea what their total income was. Private duty nurses were costing us \$1,500 a week.

While over the years, as a family, we discussed illness and what would be "acceptable" life to us, neither of my parents had Living Wills. But we knew that my mother's feeling was that if she couldn't drive, she didn't want to be around. She didn't want to be confined to a wheelchair or bed if she were faced with an end of life decision.

As it was, while her illness was bad, it wasn't at a life threatening stage. After a two month stay in the hospital, she returned home -- with 24-hour, 7 day a week care. We then addressed some important legal issues. At that time, we had her attorney draw up Power of Attorney documents for both my parents.

Many people don't like to talk about these crucial issues -- Powers of Attorney; Living Wills, and even Testamentary Wills. Sometimes it's the parent who doesn't want to talk. And other times, the children have a difficult time bringing up the subject.

When I was publishing The Sandwich Generation magazine, I received a call from a reader, who was in his late 70s. He said he wanted to discuss these issues with his son, but was reluctant to initiate a conversation. He said he found the articles in the magazine very helpful to him. He said he was sending me money for a subscription and that I should send the magazine to his son. So, along with the first magazine, I sent his son a note saying that his father wanted to discuss legal things with him, and that he should "go talk with your father." The result was positive.

Why is having these documents -- power of attorney, living wills, and testamentary wills important?

We all have choices. Who do you trust to handle your finances if you can't? Who do you trust to make life and death decisions for you if you are in a coma??

I don't know about you. But I want to control my own life -- and death. and finances. I don't want complete strangers or someone I don't like to handle my affairs. I want to choose that person.

If an individual does not make his or her own decisions, relatives will have to go to court -- this takes time and money. It also can get very expensive, especially if various family members start fighting for control. A complete stranger can be appointed to spend your money - in ways you never would.

If a relative has to have an incompetency decision from court, it can be a very emotional situation --- for both the person to be declared incompetent as well as the person who needs to be able to handle finances of someone else -- whether that be a spouse or a parent.

Let's talk about Power of Attorney

What is it? POA is a legal document that enables someone else to handle your financial affairs. You -- and no one else -- choose the person you trust.

There are 3 different kinds -- general, springing, durable

Durable is the broadest and most useful. It becomes effective when you sign it and remains effective even if you become mentally incompetent.

Many older people are afraid of giving up control of their money -- especially those who grew up in the Depression.

The objective of having a POA is to enable that other person to do everything in the financial area that you would do for yourself. Given today's IRS regulations, it is important, that the word "gifting" be specifically included in the POA document.

If you have POA for someone else and handle any gifting transaction, try to have the person who is really doing the gifting, include a note with the check to the recipient saying that this is a gift from him or her. This will avoid an heir questioning gifts that may have been made to someone else. Be sure to keep a copy of that note and the check for your own records.

It is important to understand that the person who grants POA to someone else, can still retain control of his or her own finances. I put Ruth, my eldest niece, on my bank accounts as POA -- notice I did not set up any joint accounts. Fortunately she hasn't had to exercise it. My mind is at ease knowing that someone I trust will be able to handle my finances if I can't -- either because I'm out of town or ill.

I had father's POA for several years, but he continued to handle his own investments and paid the every day household bills until 6 months before he passed away at age 94. At that time, he turned things over to me, because he just did not want to have to deal with money.

After hip replacement surgery 8 months after my mother was originally hospitalized, my mother drove again and resumed selling real estate. So, she then handled all her business and personal finances. I continued helping her with investments and some commercial property they owned.

A key objective of having all these legal documents in place early on is to facilitate care in time of a crisis. It is my own feeling and experience, that having the same person designated as the "doer" on all three documents (POAs, Living Wills and Testamentary Wills) will ensure consistency of care and financial affairs.

I also recommend that you name only one person to handle your affairs. This is much more efficient and will avoid squabbles and potentially nasty fights between your children.

Of course, there might be the situation that the person you want to handle the financial aspects might not agree with you in reference to medical decisions and what is acceptable to you. In that case, you need to select the person who will comply with your wishes -- and not want to keep you alive for the sake of keeping you alive, when you really would like to "go."

Living Will

What is it? In Latin and Greek, the word "Will" literally means a "command." It is also dealt with in biblical regulations. In addition to its legal value, a Will has always carried great moral weight. The wishes of the person writing it have to be carried out.

Thus living wills are looked upon as a 'command' as to what the person wants in relation to medical treatment and life and death decisions.

Developing a living will is a process as well as a legal document -- a process of deciding what you want or do not want in the way of medical treatment, of discussing your wishes with family members, and of choosing someone you trust to make important life and death medical decisions for you.

Because living wills are so important, I am going to spend more time today in discussing them. Making life or death decisions for someone else is a tremendously emotional process. Having a Living Will before a crisis occurs relieves the burden of having to make a tough decision by a loved ones. It also avoids fights between family members who disagree as to what the decision should be.

As a societal concern, we need to balance the power of medical technology to prolong life with the rights of individuals to end it.

The National Council for the Right to Die clearly notes that longer life spans mean that people are increasingly likely to die of extended illnesses, which can cause suffering that medication cannot relieve. Alzheimer's and other dementing illness can mean terrible psychological pain,

uncontrollable anger and paranoid fears. Heart and lung diseases can lead to great discomfort and frightening difficulty in breathing. When medical science cannot “fix” the problem, humane and respectful care for the patient as a person becomes crucial.

So simply stated, a Living Will conveys a person’s wish not to be kept alive by heroic measures or artificial means if he or she is suffering from a terminal condition. Or it can state that a person does want to be kept alive by machines.

Over the years I’ve spoken with hundreds of older people. Few are afraid of death itself. But all say they are concerned about the dying process.

So with a living will, you control how you live and die. I don’t know about you, but I certainly want to control how I die. I don’t want to be hooked up to machinery that will just keep me alive and bedridden.

I knew that my mother wanted to be able to drive. That was her measurement of whether she wanted to live or not. And in the end, after a conversation with the doctor, she made her decision. She had suffered from congestive heart failure for a year and her heart valves were clogged. The doctor said he could operate and clean out the valves, which would enable her to live maybe a few months longer.

She asked him “Will I be like this?” Both the doctor and I knew she meant in bed. The doctor said there was no guarantee. So my mother decided not to have the procedure and did pass on shortly after that conversation. She did have her wish. She drove until that last illness. The night before she went into the hospital, she, a neighbor and the housekeeper went out to dinner. And my mother drove.

Besides determining what kind of medical treatment you want -- or don’t want -- you need to select a person who is generally called a health care representative. Different states use different terminology. What it means is that you -- and no one else -- choose who you want to make decisions for you when you are ill and can’t make decisions yourself.. So you control things.

As I still want to talk about Testamentary Wills today, I’ll leave more in depth discussion of Living Wills, how you make those crucial decisions, and how states look upon living wills as a legal command to another day.

Testamentary Wills

Most people are aware that they should have a Testamentary Will. What is it?. Remember we talked about a Will being a command. In this case, a Testamentary Will declares your wishes as to how your property and assets will be distributed upon your death.

Again there are the self control and self protect factors. Who do you want to make the decision as to who gets what when you die. Do you want to decide? Or do you want someone else to make this very important decision.

There are two key parts to a Will: You choose an executor -- the person who will make sure the assets are distributed as you want them to be. Second, you determine who gets what.

A simple Will might state your spouse gets everything. Or your assets might be split between your spouse and children according to a percentage you’ve stated in your Will. Or if you don’t

have a spouse, you state who should get your assets and how they are to be divided. Wills can be more complex, and we will talk about that another day.

If you don't have a Will then your assets will be distributed to various family members according to a formula established by the state in which you live. In other words, someone other than yourself -- the state -- controls who will get your house, your car, your jewelry, your stocks and bonds, your keepsakes, and whatever else you have.

Someone you don't like may get what you have and someone you do like and would have given something to may then not get anything.

In all of these situations, power of attorney, a living will, a testamentary will -- if you don't make the decisions and choose your own representative, then an adult child or a spouse -- has to go to court. A judge will then make a determination. Lawyer's fees can amount to thousands of dollars. And family members could start vicious fights to gain control -- especially when it comes to money.

We've talked about important things To Do. I'd like to share my own feelings in reference to things you should NOT do!

Don't have large joint bank accounts or investments with an adult child. Keep the money in your name only.

Don't transfer your house into your child's name. This is a no-no -- even more important if you have several children. Protect yourself. Keep title in your name only.

Why? Many people do have joint accounts. And many transfer the house in order to qualify for Medicaid nursing home care.

But such arrangements can jeopardize the elder's money and/or home.

- child dies first
- divorce
- creditors

So keep everything in the elder's name only, with someone else having POA.

I hope this information has been helpful to you and your parents. Everyone, regardless of age, should have all three documents taken care of before a crisis.

It is important that you consult with a qualified elder law attorney, someone who specializes in this area. Each person's situation is different. It's not advisable to use the same lawyer who may have closed on your house. Do not use pre-printed forms that you buy from a publishing house or office supply store. There are too many variations in state laws to leave such important decisions to a generalized printed form. Names of elder law attorney in your area are available from National Academy of Elder Law Attorneys. Their telephone number is: 520-326-2467 Their web site is: www.naela.org

Tomorrow we'll talk about other ways of protecting your aging parents and helping them retain their own independence and self esteem.