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What if You Can't Make Decisions?

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To some extent we all experience times when we just can't make up our mind. Major life decisions, such as employment changes, education, healthcare, and relatively minor decisions such as type of clothing or where to eat. But that's not what we are talking about here. This is much more serious – what if you were not able to make your own decision due to incapacity, disability or mental deficiency?

Many answer that question with “oh, that's not a problem – my kids will help me out”. Or maybe for you it is other family members or friends. That is a good thought, but it rarely works that way. Not because your family and friends are not willing to help, but because they are not legally able to do so. As you can imagine, this can create some dire situations on both the financial and healthcare side of things.

So, what are your options? Well, the best option for making sure that *you* control who handles things and *you* provide them direction on how you want decisions made is to have a general durable power of attorney and a durable power of attorney for healthcare/patient advocate designation. With a general durable power of attorney, you can give another person the ability to “be you” for financial, contractual, and all other non-healthcare purposes. The person you designate can then step in to take care of these important areas if you are unable to do so. With a healthcare power of attorney/patient advocate designation, you can give someone the ability to make your healthcare decisions when you are “not able to participate in your medical decisions”. That may sound like a high bar . . . it is. The law does not allow quite as much flexibility with healthcare as it can literally be putting your life in someone else's hands. For some more important information on the healthcare issue, check out <http://bit.ly/healthcarepoa>.

Without these important planning documents, your family and friends will have no choice but to seek guardianship and/or conservatorship. This is the court process whereby one or more people are appointed to make decisions on your behalf. Conservatorship is for the financial and asset side of things. Guardianship is for a person's “care” (health, housing, etc.). This can be a costly and time-consuming process, not to mention emotionally draining.

I recommend that every adult have powers of attorney in place. Although guardianship or conservatorship may still be required in rare circumstances, having powers of attorney significantly lessens the likelihood that your family or friends will need to go through the cost, delay and emotional drain of the court process.