

Transitions

A thanatological* perspective of life changing events which prompt one to consider
Preparing for incapacity and mortality

A series of Letters

By

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*Thanatology is an interdisciplinary study of death and dying and the associated physical emotional, spiritual and relational aspects of death and dying. In understanding death and dying from physical, spiritual, emotional, relational, financial, and legal perspectives, a Thanatologist can walk alongside each client to help each client live the most meaningful life possible and to provide peace of mind to each child that their loved ones will be taken care of when the client is no longer here.

“The Only Thing That is Constant is Change”

Heraclitus, Greek Philosopher

From the moment we arrive on earth to the moment we leave; life presents us with and commits us to tend to constant experiences of change. From having our parents care for us as children, to becoming adults with rights and added responsibility, to getting married and engaging in a partnership with another person, to bringing children into this world, to seeing our children leave the nest one day, to retiring, to diminished ability to manage our affairs, to others caring for us, to death. These are some of the significant life transitions that many of us experience. As we move through life, we might experience the loss of loved ones or family members, economic downturns, global pandemics, or war. Most life changes do not require a change to one's estate plan. And some changes do trigger the need to adjust our preparation for incapacity or mortality, which we call estate planning.

A Thanatologist-estate planner takes a holistic approach when facing life's changes that include the knowledge that one day everyone dies, and many become incapacitated for a period of time. A Thanatologist-estate planner helps face incapacity and death, compassionately and helps prepare for change. This includes traditional estate planning such as the Advance Directive, Power of Attorney, Last Will and Testament, and Trust. The Thanatologist-estate planner extends this effort to include listening to each individual to gain a deep understanding of each individual's unique life history and each individual's hope for themselves and for their loved ones. The Thanatologist-estate planner seeks to understand the meaning behind every decision so that intention ties to the legal instrument. The Thanatologist-estate planner's role is threefold: (1) to speak clearly one's intention when they can no longer speak, (2) to mirror and

reflect one's life and one's intentions in the legal instruments established in estate planning, and (3) to accommodate change when change occurs. As one's life changes, one's intentions and understanding of life and their relationships with others often changes, and a Thanatologist-Estate Planner works with the client and the clients other trusted advisors in a transdisciplinary manner, collaboratively, to accommodate these changes. While many life changes do not require one to change their estate plan, some life events do. This series of letters explores some of the common life changes that occur and how one might adjust their estate plan to accommodate such a change.

I refer to this series as letters, as it is my personal message to each and everyone of you who invite me into your lives to assist you with your plan. If you feel that any of these transition letters might help a family member, loved one, acquaintance, or friend, please pass this letter on. It is my hope that each letter provides you with the guidance to meet the challenges that change might bring your way, and know that we are here to walk beside you to accommodate change to make life a little easier, help you gain control in uncertain times, and bring peace of mind in knowing that you've prepared yourself and your loved ones for what lies ahead.

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Preparing for incapacity and mortality

(A series of Letters where change prompts a look at one's estate plan)

Transition Letter One: Turning 18

By

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With Adulthood comes Responsibility

Mary Lydon, Simonsen

On March 7, 2020 my twin daughters turned 18. I still see them as my children and I continue to adjust to seeing them and treating them as adults. While I might consider them children still, the rest of the world considers them adults. At 18, they suddenly became legally able to vote, go to war, open a bank account, enter into legally-binding contracts, and make health care decisions for themselves, and all at the exclusion of their parents.

When a child reaches age 18, parents can no longer make medical decisions for their child or obtain medical information or release medical information about the child to care providers. When a child reaches age 18, parents can no longer discuss that child's credit card balances or financial accounts with the college or financial institution. There exists a similar right to privacy with respect to the child's finances as with regard to the child's health care.

This major change in the now-adult child's legal rights and that child's parents' legal rights to make decisions for that adult child hit home professionally for me several years ago when a client called me one day in a panicked state. She told me that her daughter had been attending college in the Pacific Northwest, had gone on a ski trip and hit her head. She was unconscious in a hospital somewhere. The mother found out the hospital where her daughter was, and when she called the hospital to find out about her daughter's situation, the hospital staff told the mom that her 18-year old daughter had rights to privacy, and the hospital could not release any information to the mother about the child. The mom asked what could be done, and I had no good answer for her. Guardianship court might grant the mom authority to make her child's decisions, but guardianship takes time, and this mom didn't have the luxury of time.

After googling what to do in this situation, I found that many law firms across the nation recommending that as soon as a child reaches age 18, the child should consider making powers of attorney appointing their parents as their agents.

Two powers of attorney exist for an adult child to grant authority to parents to make decisions should the child not be able to. Part One of The Advance Health Care Directive allows the child to appoint a parent as agent to make health care decisions, and to receive and release medical information on behalf of the child. Part Two of the Advance Directive is the End of Life Decision where if the child leaves it blank any end of life decision would be left to the parents.

The second type of power of attorney in Hawaii is called the Statutory Durable Power of Attorney. The adult child can appoint parents to make legal and financial decisions on behalf of the child. The child can select the powers that the child feels comfortable in granting to the parents.

Unlike guardianship court which is expensive, time-consuming, public and often takes away authority from the child and gives it to a substitute decision-maker, powers of attorney are affordable, can be done rather quickly, and remain private in that these powers of attorney are not filed in any court. Powers of Attorneys do not take away any legal authority of the child to make decisions, it only adds decision-makers.

An adult child does not have to appoint their parents as agents. In considering a suitable agent, the child will want to ask five questions:

1. Trust. Can the child absolutely trust that this individual will make decisions solely in the best interest of the child, and in doing so trying to understand what the adult child would want done;

2. Able. Would this person be able to do what you ask the child to do? If this person doesn't know, would this person consult an expert? And, how does emotion play into decision-making, can this person make good decisions under pressure?
3. Willing. The adult child will want to ask the considered agent to make sure that the person is willing to do what the adult child is asking;
4. Available. Preferably, the agent should be close by. While a number of things can be done by computer and phone, there are still a host of decisions that are better made by someone in the same physical location as the adult child;
5. Ghost players. These are the people that the proposed agent is married to or in a relationship with who would have a positive or negative influence on how the agent makes decisions. The adult child, for example, would want to know that the agent's spouse would be supportive in this role.

It is much less likely that an 18-year-old will immediately contact a lawyer to craft powers of attorney upon reaching age 18. It is usually the parents who have their estate plan in place understand the importance of these Powers of Attorney.

I recommend that we parents, as we move from parent to advisor, we engage in a conversation with our children about the rights and responsibilities that reaching age 18 brings, and as part of this discussion suggest that the children consider making Powers of Attorney.

Here at the Law Office of Stephen Yim, we treat every client with respect, and an attorney will meet with your child to guide the child through this process of one of the first "adult" decisions a child can make. We do our best to explain the Powers of Attorney, and answer any questions your child might have, and congratulate them for taking this brave step into adulthood.