

Wills, Trusts & Estates**Life and death: Choosing an attorney for personal care**By **Margaret O'Sullivan**

Margaret O'Sullivan
attorney.

(December 3, 2021, 9:54 AM EST) -- Preparing a power of attorney for personal care is a critical part of your estate plan. It offers the ability to choose one or more family members or others who will make personal care decisions for you when you do not have the capacity to do so.

A power of attorney for personal care includes a number of areas of personal care decision-making, not just end-of-life decisions, such as where you will reside — in your own home or in an institutional setting — your diet and nutrition, who should be your hired caregivers if you should need them, your clothing and personal hygiene, as well as health and medical decisions. In short, all sorts of issues that do not relate to your financial well-being which are covered by your power of attorney for property, but instead, that relate to your personal well-being.

Who should make these decisions is a challenging question. In choosing one or more attorneys, the qualities and attributes for this role are very different than what are required for financial decision-making, which your attorney for property is responsible for under your financial power of

What is common to both roles is trust, and that you trust that the person you choose to act as your attorney will act in your best interests.

- An understanding of your desires and values is fundamental, as well as respect for them when it comes to sensitive and often emotionally charged matters, such as remaining in your home as long as reasonably possible, if that is your wish.
- Your attorney should have empathy and a high level of emotional intelligence. In certain situations, your attorney for personal care will also need to be a strong advocate for you, and have the strength and perseverance to see matters through in order to carry out your wishes, including in the face of obstacles.
- It is also important that your attorney has a caring attitude. You need to know you can depend on them and that they will stand by you — whether it is making sure your medications are in good supply and navigating the complexities of doctor's appointments and the health-care system, or that your living arrangements are comfortable and safe.

The question arises of how many attorneys can you have — is it possible to have more than one? Yes, you can have multiple attorneys, but if you do, it is important to consider how decisions will be made. For example, if you have three children, you might wish to include all of them so they each have equal information and equal say and involvement, but to ease decision-making if they do not all agree, you may wish to include a majority decision-making clause so that two of three can decide by a majority.

What if you appoint more than one attorney, but all of them are not available in an emergency that requires an immediate decision? Your power of attorney for personal care can provide that in an emergency; one attorney can make decisions.

It is important to consider how your attorneys get along, and whether they will be able to act as a team. It can be a delicate balancing act to ensure the people you believe should perform the role are

appointed, but also that the persons who you select can effectively make decisions together.

In some cases, an alternative is to have fewer decision-makers, or even just one, but clearly set out who should be consulted in making certain important decisions.

Choosing young adult children also requires careful consideration of whether they have the emotional maturity to make what could be a very difficult decision, and whether it would be unfair and even harmful to place such a burden on them. The idea of adult children in their early 20s acting with a more senior family member can be a helpful approach to ensure critical decisions are not made without the children's involvement.

At the end of the day, many people have a "gut" reaction with regard to who to choose as their attorneys for personal care. They need to consider who has the time and energy to carry out a role that can be very time-consuming and onerous. Geographic proximity is also important in many cases to effectively carry out the role.

Personal care issues can be thorny and can lead to family disputes as to the type, level and cost of care which we would all like to avoid. Sometimes, having a neutral attorney who is not a close family member can help.

No doubt, who to choose for what at the extreme can involve life-and-death decisions requires careful thought. Putting yourself in the most extreme situation of an end-of-life decision, such as whether to use heroic measures or not, and who should make this choice can help to crystallize your thinking in choosing your attorneys for personal care.

Margaret O'Sullivan is the managing partner of O'Sullivan Estate Lawyers LLP, a Toronto trust and estate boutique law firm she founded more than 20 years ago. The firm practises exclusively estate planning, trust and estate administration, Canada-U.S. cross-border and international trust and estate matters and estate dispute resolution.

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