

Daughterhood The Podcast

Episode #30: Protecting Your Care Partner with Attorney Larisa Gilbert

SUMMARY KEYWORDS

attorney, helpers, power, planning, elder law attorney, trusted, documents, parents, life, hear, elder law, typically, folks, decline, starting, conversation, talk, doctors, podcast, bedridden

RESOURCES

National Academy of Elder Law Attorneys <https://naela.org/>

Life Care Planning Law firm <https://www.lcplfa.org/>

Conversation project <https://theconversationproject.org/>

Five wishes <https://fivewishes.org/>

Representative payee for Social Security <https://www.ssa.gov/payee/>

Representative payee for VA <https://www.benefits.va.gov/fiduciary/fiduciary.asp>

SPEAKERS

Rosanne, Larisa

Narrator 00:02

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Rosanne 00:42

Hello, and welcome to Daughterhood the Podcast. I am your host Rosanne Corcoran Daughterhood circle leader and primary caregiver. Daughterhood is the creation of Anne Tumlinson who has worked on the frontlines in the healthcare field for many years and has seen the multitude of challenges caregivers face. Our mission is to support and build confidence in women who are managing their parents care. Daughterhood is what happens when we put our lives on hold to take care of our parents. We recognize this care is too much for one person to handle alone. We want to help you see your efforts are not only good enough, they are actually heroic. Our podcast goal is to bring you some insight into navigating the healthcare system. Provide resources for you as a caregiver as well as for you as a person and help you know that you don't have to endure this on your own. Join me in Daughterhood.

Rosanne 01:30

Today, my guest is Larisa Gilbert elder law attorney at the estate planning and elder law group of Duncan Galloway Greenwald in Louisville, Kentucky. Larisa has extensive professional and personal experience in elder law, where she provides planning for clients and their families at all stages of their lives. Along with being a brilliant attorney, Larisa knows firsthand the challenges caregivers face when it comes to not only planning for current or anticipated needs, but also protecting their care partners assets. She has assisted her own parents in laws and clients with benefits planning and application assistance, and she knows firsthand how important it is to help the whole family get the compassion and legal support they want as they help their loved ones plan for their future in a way that allows them the dignity that comes with maintaining both choice and control as one ages. The daughter of a career military officer she is also passionate about helping veterans to integrate their VA and retirement benefits into a plan that provides security for their future and clear guidance for their families. Larisa and I discussed the importance and understanding of powers of attorney protecting assets, end of life planning and the importance of trusted helpers. I hope you enjoy our conversation.

Rosanne 02:45

As caregivers, we hear so many times the most important thing when you're trying to help your parents as they age to protect them in their assets, and especially with cognitive issues is to make sure all of the proper documents are in place. What's the most important document to have in place, and why

Larisa 03:02

Well the two most important documents to have in place while your loved one is still alive are powers of attorney and people normally don't think about that you hear a lot of folks talking about making sure the wills done or setting up trusts. But it's really these two very basic tools in estate planning that are so crucial if you're trying to help a loved one. And you can see that the slide has begun either physical decline, or you're getting a sense that there might be some mental decline. And there are two forms of powers of attorney there's financial powers of attorney and then medical powers of attorney. And if you craft those in a way that's very robust, you can as an elderly person, pick your trusted helpers in advance while you still have the mental ability to do that you can figure out who amongst your family or your friends can really be relied upon to help take care of things when you can and have a comprehensive robust financial power of attorney will give your trusted helpers the ability to do anything that you could do for yourself except execute a will. And then a medical power of attorney is the same thing with respect to healthcare issues.

Rosanne 04:15

I hear the word durable power of attorney a lot.

Larisa 04:18

Right.

Rosanne 04:18

What is that?

Larisa 04:19

That just means that it is a lasting power of attorney you can set up powers of attorney to be either immediate powers of attorney which means they take effect immediately without any sort of triggering event or you'll commonly hear them referred to as springing powers of attorney which means there has to be a triggering event or a date in which they go into effect durable powers of attorney stay in effect until the person granting the authority revokes it or until they died powers of attorney die with the person that granted the authority

Rosanne 04:55

People I don't think people realize that

Larisa 04:56

No, no they don't. So if you want your trusted helpers ability to help you to survive your death at that point, you need a trust. Or if you're just worried about how your assets are going to be distributed, you can name your trusted helpers in your will as executors.

Rosanne 05:14

Okay. And what happens then, the idea I think, is while you have the durable power of attorney, you're on these financial documents, or you know where they are, and where you can access them, right, so that after the fact it is easier to then access them, or else you're out in the cold,

Larisa 05:33

Right. And after the fact are you talking about after the person loses the after death

Rosanne 05:38

After death Yeah,

Larisa 05:40

Well, no, to be able to access things after death, you either have to be named as a person on the account either a payable on death or transfer on death designation, because you can't use a power of attorney to do anything after the person dies. But you can help somebody out a tremendous amount while they're still alive. If if you can have periods of lucidity, in which you're fully competent to name your trusted helpers, and sign a power of attorney. And then if you've gotten a diagnosis, say of Alzheimer's, and you know that even though most of the time, now you're functioning, well, eventually, you're going to decline, that's a really good time to get one of those documents in place.

Rosanne 06:20

Okay. And if you don't have it in place before any type of cognition changes, what happens?

Larisa 06:27

Well, if you're just starting the journey towards some type of decline, your attorney will talk with you make sure that you understand what you're doing, you understand the significance of what you're doing. She'll probably also talk with your family and with your permission, and also maybe with your medical providers to make sure that she thinks that this is not a one bright moment in a year of clouds

and fog and haze. But if you're at the beginning, even if you're starting to forget where your car keys are and your short term memories going, you can still get them executed. Okay. And then people that you have chosen to help you out can really do a lot on your behalf.

Rosanne 07:08

I don't think people understand that importance.

Larisa 07:11

No,

Rosanne 07:12

And

Larisa 07:13

No, they don't.

Rosanne 07:13

I don't, I often wonder if it's because it falls under that estate planning umbrella, like well, I don't have an estate.

Larisa 07:22

Yes. And they think it's going to cost them an awful lot and hugely important documents, they they don't cost very much at all. Now, as a cautionary tale, I will say that downloading something off the internet or borrowing your friends that might not get the job done. You know, if you borrow your friends POA from Wyoming and it's a statutory foreign power of attorney, you need trusted helpers to help you get government benefits planning done in the Commonwealth of Kentucky. Well, good luck. So even though they don't cost a lot in the overall scheme of things, it really does make a lot of sense to go ahead and spend the money go to an elder law attorney or somebody who doesn't just do family law or estate planning is kind of a side bit part of a larger practice that does anything from real estate transactions to personal insurance suits fun, find somebody who's always looking down the line for dealing with elderly people and end of life issues because they're going to be the ones that give you powers of attorney that have the most ability to help when you need it.

Rosanne 08:31

So an elder law attorney,

Larisa 08:33

I think that would be my recommendation to anybody. You can get an estate planning attorney to provide you just as robust a document but not all estate planning. Attorneys are thinking about elder law planning. If you know you're never going to need government benefits help if you're never going to be concerned with traditional elder law issues, then find just get the estate planning attorney to help but I think most folks would be better served by seeking out an elder law attorney specifically.

Rosanne 09:03

Okay. And what is the cost? I mean, I'm sure it varies just a ballpark.

Larisa 09:07

So most attorneys charge a flat elder law attorneys operate on a flat fee system. And the reason is that with an eye toward benefits planning is so fraught with peril if you don't get all the information you need. So when you see an elder law attorney for this, you should expect probably flat fee service and they can range anywhere from \$100 to \$500. Depending on the area of the country. How much is in the documents, whether they're a friend, or some some will throw them in for free as part of will and trust planning. But if you just want those, I would say expect 250 to \$500 for two,

Rosanne 09:45

That's not bad.

Larisa 09:46

No

Rosanne 09:47

For for what for what it protects you in

Larisa 09:49

right and it's not like you're getting a three page document for \$250. So my robust powers of attorney are anywhere from 25 to 29 pages long

Rosanne 10:00

When I saw a copy of your robust Power of Attorney documents, it made mine feel like it was a very small inconsequential document. And I thought, Oh, no.

Larisa 10:14

Most people normally do them for limited purposes. If you want to be able to talk to your banker about your spouse's account, if you want to engage in real estate transaction on somebody else's behalf, those tend to be narrow in focus, because they're for specific purpose. I heard somebody say the other day to think of them as well packed suitcases for a trip around the world, you don't know what you're going to need in those suitcases when the time comes, but better have it in there, rather than be stuck needing something important wherever you've gone when the stores are closed.

Rosanne 10:50

Absolutely. I love that. I love that. And anyone who's ever called a cell phone company, or I mean, the cable company, or I'm sorry, are you the person on the accounts? Like, oh, my God, my cables out?

Larisa 11:03

Right? Right?

Rosanne 11:04

This isn't life and death.

Larisa 11:06

Right.

Rosanne 11:06

So it's, it's amazing, because you really, it's that forethought, and and Gone are the days of being able to just pick up a phone and talk to somebody about something else. Like that's over. And it's funny, I had found a report that Merrill Lynch put out in 2019. That said, nearly half of Americans over 55 don't have a will, and 18% have a will, but no living will or durable power of attorney,

Larisa 11:35

Right. Well, it's hard to think about, you know, and particularly if you've not done anything, when you're younger, you get to be 60/65, you're starting to have some aches and pains, you're starting to finally come to terms with the fact that you might not live forever. And that's unpleasant to think about,

Rosanne 11:51

Right.

Larisa 11:52

And a lot of folks have this superstition that if they make out a will, then that's giving God permission to take them right then and there because their affairs are in order.

Rosanne 12:01

That's right.

Larisa 12:02

That has not been my experience. But I understand why folks feel that way. And it's common. So I find that if you can just get those powers of attorney in place, then it opens up your willingness to have the larger conversation, that might be more important. Because if you don't have a will, then your state is just going to use it's off the rack rules to try to figure out what you would have wanted. And that might not be the case.

Rosanne 12:27

Yeah, nobody wants that. Now, at what age do you think, is a good age to do this,

Larisa 12:33

To do the power of attorneys and wills?

Rosanne 12:35

Yes to start to think about powers of attorney and wills. And you know, all of those documents?

Larisa 12:40

Well, my firstborn on his 18th birthday was gifted a robust power of attorney in the presence of two witnesses. And because he's the child of two lawyers, he read it and thought about it, and then had it

executed. Yeah, yeah, we love him very much. We gave him other stuff, too. But the reason was, he was going off to college, and he's a legal adult, right. And he might have wanted to take, you know, a semester abroad or travel the summer after his first year. And because he's a legal adult, if he'd lost his passport, or lost some important credit card or other financial instrument, we couldn't have easily helped him with that in place. Similarly, with the medical power of attorney having that means that if he had gone to college and needed medical or psychological support, we would have the ability then to get the information we need. That turns out he did not. But I'm sure we've all heard stories from friends where their children go off to college, or having a harder time than anyone realized, the parents are getting a sense that there might be a little bit of a slide toward depression or anxiety that the school locks down without any specific permissions in place. Because once you're 18, even though your brains not fully developed, the law recognizes you as an adult, right? And you get the protections that adults have. So basically at 18 for the powers of attorney, I recommend that yeah, do and then for will, you know, whenever you're starting to acquire some assets, and you want to control where they go, the off the rack rules for most states typically go if you don't have a will, but you have goes down to your children and your spouse has a certain statutory share that they can choose to take. If you don't have a spouse and you don't have kids, it typically goes then up to your parents. Well, you know, I loved my parents, and before I got married, that would have been perfectly fine with me if they'd gotten everything but not everybody does. They would have you know, some folks would prefer the what they've worked hard for go not to their parents, but to their siblings or to nieces and nephews without a will. That can't happen. And then once you have kids, you need to use your will to name the Guardians. And a lot of people don't do that. Because that's a Conversation, totally thinking about who in the family you might want to be guardians and who not. And you might have a higher opinion of one of your siblings than your spouse does. And vice versa. I hear so many couples come in and tell me that they didn't get it done because they had a roiling fight over who was going to be the guardians of their as yet unborn children. Right? Oh, my goodness, then you go through the whole guardianship proceeding. So powers of attorney at 18 wills when you've started to acquire some assets, and you want to say and who gets them? Definitely if when you have children, and then when the children age, you probably want to start rethinking your estate plan and estate plan sounds so lofty, but it's just, it's a plan for choice about who gets your stuff when they get it. And when they get it.

Rosanne 15:53

It's hard when you're then looking at your parents and noticing changes or thinking okay, well, every day somebody is calling with some sort of a scam, where every day a scam comes into your your inbox,

Larisa 16:07

Right.

Rosanne 16:07

So as we as we are looking at this, how do you go about protecting your parents from these types of things, when you may or may not have a power of attorney and does a power of attorney even help in those situations?

Larisa 16:21

It can't so if your parents have gotten scammed, a power of attorney can give you the ability to deal directly with whatever institution the money was taken out of. And if that has happened, your parents are likely embarrassed, and they're flooded with emotions, and they just don't want to deal with it. So having somebody who's a little bit removed from the situation didn't handle all the conversations with the financial institution can help. But back to your threshold question about how do you protect your parents, if you're good kids, and good and trustworthy kids, there's a lot you can do, you can get those powers of attorney in place for them, you can work with them if they're receptive to restructure their accounts. So they have one checking account that they use for everyday transactions. And they keep just enough money in that. So you don't want to have to have them coming to you every time they want to go on vacation to Florida or something. But you want to limit the amount of the money that's in that account, so that if they're scammed, the damage is controlled, okay. And if they're like my folks in my in laws, who just kept a lot of money in their savings account at the bank, maybe that's the one that you want to agree with them to take away the debit card to take away the checkbook, just in case put your name on that account, don't commingle it with your funds might be one way of handling it. And you know that money's out there and protected so that if your folks ever want to use it, then they can get the checkbook back from you, or they can get the debit card back from you. If you don't have good kids, then you've got to have somebody who's a good trusted helper, either one of your siblings that you don't have to worry about a niece and nephew, a close friend, you can work with your bank, if it's a small bank to put transaction notifications on your account. So that if you're a couple say and one of you starting to experience some decline, the bank will notify you if more than x amount comes out of the account. Sometimes that can help you put a stop to things. But mostly what I hear is I get adult children coming in with their parents to get these powers of attorney in place. And it's usually because the adult children have just figured out that their parent has gotten scammed, either when I call legitimate scam, which is predatory salespeople trying to sell them stuff that they don't really need. But there it is a product delivered is just they didn't need it, like a Walk In Bathtub, you know, or new roof on the house, they get the new roof they get the new deck. But did they need it? No, not necessarily.

Rosanne 18:59

Right? Well, it's hard to because there's those moments of you, you don't, you don't want to make them feel like they're not responsible. And you don't want to make them feel like well, you don't know any better. So I'm going to do this,

Larisa 19:13

Right.

Rosanne 19:15

It's the worst. And the last thing that you want to do.

Larisa 19:18

No and it's hard because aging is tough enough the alternatives worse,

Rosanne 19:23

Right

Larisa 19:23

But there is right, you know, you're starting to feel a loss of control over your body. And that has an effect on your sense of dignity. So if you are an adult child trying to help your parents get some sort of reasonable protections and plan in place, do whatever you can to avoid insulting their dignity, even if their memories slipping. That's why I find starting off with the powers of attorney to be the best thing and you just talk about them in terms of trusted helpers and maintaining their choice and control. I find it's more helpful if you start the conversation by saying I want you to live as long as you possibly can, and choice and control, and your sense of how much of those you have are so important to your physical well being. So I want you to get a plan in place where you're choosing, and you're controlling who your helpers are, and you're choosing, and you're controlling how much they're able to do right now, while you're fully aware. And you can go ahead and sign these documents and put them in your fireproof box. So I know where they are. And then if you do actually start to decline, I know to come get them, and I'll get them out, and I'll get you the help you need. So that's one plan for the truly resistant, you get the documents signed, but you don't necessarily take copies away with you. Because for 18 year olds in particular, right, my son, he didn't want us meddling in his life. And that's legitimate, you know, absolutely. pletely legitimate. So what we told him was, you're going to sign these, we're putting them in the fireproof box, we hope we never have to take them out. But if we need them, they're here. And then he was fine with that. Similarly, with your elderly loved ones, get them signed at a minimum, and then put them in that fireproof box, don't put them in a safe deposit box, because you can't get that out. Right? Right, the better thing to do would be to get them signed, and then you send copies to all the financial institutions, doctors, offices, hospitals that they regularly interact with. And you let them know, we're just going to do this. So it's in place, these folks legal teams will have already reviewed and approved them. But I don't plan to go around willy nilly messing in your affairs. This is just in place. It's a safety net, in case you ever need it. I love that. Yeah. It tends to work. Yeah. Particularly, they're the ones choosing the trusted helpers.

Rosanne 21:47

Well, right, exactly. Because it's your right, it still gives them control of the situation

Larisa 21:52

It's their choice.

Rosanne 21:54

It's it's just it's like break glass in case of emergency. It's that

Larisa 21:58

Right. Now, one thing I had to do is kind of talk for a while with my clients, because most parents love their children and tend to have blinders on about their children's ability to take care. Yeah, so you did I mean, an elder law attorney will ask some questions that seem kind of nosy. But I often ask you, okay, you're gonna pick these three children as your trusted helpers, does anyone have them like to gamble a lot, any of them declared bankruptcy before, because with this financial power of attorney, they could get a robust one, they could get all of your money. So that's always a fear. And I recommend that people think long and hard about who their trusted helpers are. The other thing I typically recommend, if somebody's got good kids, as they do it the way my family did, which is for a couple, maybe each other

would be the first step to that. And then the second tier of helpers would be the kids and you give them independent authority to act because the children might not all live in the state or live near you. And in this case with my parents, my sister lives out of state. And so she uses the powers of attorney to help in all the ways that don't require somebody to be physically present. And I use the powers of attorney to help in all the ways that I can, because I'm here and close to my mother. So my sister takes care of medicine refills, she talks with the medical providers for scheduling, she makes sure that the care coordination services are happening as they should anything that can be done by phone, she does. And then she comes in frequently to visit my mother and to take her to medical appointments when I can, but I'm the one more often than not, who takes her to the doctor and who interacts with the staff at her assisted living facility. It's a good way to divide and conquer and to keep one kid from feeling overwhelmed.

Rosanne 23:52

Absolutely. That's a great and that's teamwork.

Larisa 23:56

Right.

Rosanne 23:56

There's your there's your team.

Larisa 23:57

Right, right. And even if it's one person just doing a little bit, if you're truly in the trenches of elder care, where you're doing the anticipatory grief, because somebody loved very much is declining enough that they really can't care for themselves. If you've got more than one trusted helper in place, even one little thing that one of them can do just to take the burden off the one who ends up more often than not shouldering the laboring or it helps, totally. And then the other thing I would recommend, we were talking at the beginning about durable and immediate effect versus springing effect. One thing you want to think about before getting a plan in place is whether you want that springing provision in that triggering event. A lot of folks feel strongly about that, but I usually try to talk them out of it in the elder law context. And there's two reasons for that. The first one is if you tell them if you don't trust your helpers enough now while you're lucid and can monitor what they're doing, why on earth would you want to put in a position vision that gives them the ability to do everything for you when you're not lucid, and that usually causes folks to rethink. But the more important reason recently was COVID. If you'd had a provision in your power of attorney that only took effect, once you became incapable of handling things on your own, typically, that requires a doctor's opinion, sometimes two independent doctors agreeing on it. If anybody had needed immediate help at the beginning of COVID, that had a springing provision in their power of attorney, it would have been almost impossible. Yeah, so it's always the clients choice. But to date, I have not had one choose a springing event power of attorney, or triggering event power of attorney, once we talk through the concerns.

Rosanne 25:46

And see this is none of this you can get on the internet, you get different articles about it, you get different opinions about it, you can play, you know, what did you do for your parents?

Larisa 25:57

Right.

Rosanne 25:58

But to sit down and talk it through, is completely different with someone who knows what the heck they're talking about, and does this as a living.

Larisa 26:07

Right Right,

Rosanne 26:09

This is what you need to do. And, you know, it's not the most comfortable thing. And it's not, not something you want to run out and do tomorrow, but you have to.

Larisa 26:18

Right,

Rosanne 26:18

You just have to it's part of life

Larisa 26:20

You do, I cannot disagree.

Rosanne 26:22

Thank you. Which brings us to the other part of don't want to talk about it, don't want to figure it out, don't want to look at it. But the living wills portion of right estate planning,

Larisa 26:34

Right. And you hear a lot of talk about living wills, and I typically discourage them in favor of a medical power of attorney. A living will is a set of fixed instructions. If this, then that. That's what most people are aware of. That's what most people think of when they talk about advanced healthcare directives. They're very limiting. Now, they do serve a good purpose, and that to some extent, they make your wishes very clearly known. And that alleviates a lot of the guilt that kids can feel or relatives when having to make tough decisions. But what I typically recommend is that what's known as a medical power of attorney, and like the financial power of attorney, it gives your trusted helpers the ability to figuratively step into your shoes and make any decision that you can make on your own. That's a lot of power. Yeah. So that imposes on you a lot of responsibility to go through and talk with folks about the nitty gritty of the circumstances under which you would not want to live. You can't just say, here's a medical power of attorney and I don't ever want to be on a ventilator. Because that doesn't cover the situation when your brain is in the end stages of decline. You're bedridden, can't communicate incontinent, can't feed yourself and you get a urinary tract infection. And if the doctors withheld antibiotics, it might be one of the more merciful ways to leave this earth, all things considered, then spending another year in that bed in decline. And they can be modified. You know, I've gotten language

for clients who are Catholics and feel very strongly about their religious beliefs and so they can be modified to include language approved by their archdiocese. So now, it restates the importance of their views regarding the sanctity of life and still give their trusted helpers, some room to work. So the Catholic language that I can put in powers of attorney says, generally speaking, that You declare that you are a Roman Catholic, and you are choosing to make decisions regarding your care and treatment that are morally permissible according to the teachings of your church. And then there's more specific language, including typically something to the effect of the duty to preserve my life is not absolute, because the teachings of my faith instruct that it's permissible to reject life prolonging procedures that aren't adequately beneficial, or that might be too burdensome. And then typically, they'll also include a phrase regarding their Church's teaching on the morality of suicide or euthanasia. Now, in Kentucky, there's no law permitting physician assisted suicide. Some countries do permit that. And it's possible that in the future, more and more states might enact laws that permit that. So if you are a practicing Catholic who feels very strongly about these issues, you can put language in your medical power of attorney to give pretty clear guidance to your trusted helpers.

Rosanne 29:50

It's another you need to know you need to work with somebody who knows what the heck they're doing,

Larisa 29:55

Right.

Rosanne 29:56

With any of these documents, really estate planning documents their lives. Breathing documents

Larisa 30:01

They are

Rosanne 30:02

They need to be changed, they need to be amended, they need to be looked at again, you don't just fill them out and go, Okay, we're done. And then 20 years later, you say, Oh, I have these documents

Larisa 30:12

Right now, that's true more for wills and trusts with the powers of attorney, the goal is for them to be robust enough that as circumstances change, they can still get the job done specifically for the medical power of attorney, you can get that done. But then if your views change, and you communicate them to your trusted helpers, I recommend all of them at once, then they've got the flexibility to do what you'd want it. Whereas if you have a living will and your views change, then you need a new document. I gotcha. So, but with wills, and trusts, if your views change, those are more fixed sets of instructions. Those you need to have updated when your views on things change, say so like with a will or a trust if your sweet baby angel who used to cuddle with you all the time when she was a child turned out to be a rather wretched adult, but you're leaving her third. And now as an adult, you're concerned that she's been a blow it all in Vegas, you probably want to change your documents to lock down a little controls regarding when she gets that money and how much Gotcha. But if you did the wheel when she was

five, and still cute and snuggly, and an angel straight from heaven, then probably there weren't any controls.

Rosanne 31:25

Right? Fair enough. Yes, fair enough. Well, and there's some there's some thinking that goes into all of this. And like the durable, the medical power of attorney, you know, there's those, what is that called Five Wishes that you can go through to see, because it's not so while it's about your death, it's about your life.

Larisa 31:47

Right

Rosanne 31:47

So I believe you said it, what life do you want to fight for?

Larisa 31:51

Right, tight, what kind of life? What kind of life do you want to fight for? If you're somebody like my father in law, who earned their living in physical tasks, he was a union carpenter, he was always very physically healthy, but his body had broken down. And then he went in for surgery and was administered a type of anesthesia that's no longer used because it causes programmed cell death in the brain. Everything that gave him a sense of vitality started to go away. And he didn't really he hadn't really had the conversation with my husband and the circumstances under which he would not want to live. But my husband knew what he would want to fight for. But unfortunately, that state of being was never going to come back. My father in law had a living will that did not specifically give my husband the right to withhold antibiotics. And very early on in the process, when he was bedridden, and largely non communicative, he developed a UTI, which they had to go ahead and treat, they didn't have the authority not to treat while he lived for many years more and never got any better. And my husband knew he would not have wanted to continue in that state. But his hands were tied from a legal perspective. Now, if you'd had that medical power of attorney, he would have arguably had the right to authorize the doctors to withhold antibiotics. I don't know whether he could have or not sure. It was early on, but at least if he had known for sure, he could have made that decision. It's just tough, the whole process is tough.

Rosanne 33:26

It is because you can't, you can't account for every possible thing that's going to happen. You can't. There are things that come up that you would have never seen correct. And let's be honest, we're not doctors. Now, even if we are you still don't know.

Larisa 33:41

No, you still don't know and medical science is changing constantly. The ability that that doctors have to improve quality of life and prolong life, every day, it increases. So if you have a fixed set of instructions, it might not get the job you want done, done. So that's why I recommend those medical powers of attorney and typically give them out with a set of topics I want folks to talk about. But like Conversation

Project is a good place. If you want to get something off the internet or Five Wishes. That's another one that's, that's quite good for beginning the conversation.

Rosanne 34:19

And they have to be, we have to have these conversations.

Larisa 34:23

We do.

Rosanne 34:23

To protect them, to protect everyone actually

Larisa 34:26

You do and you have to not be afraid to wallow in the details a bit because you can have two trusted helpers, typically children or a spouse and a child who both love you and authentically want to do what you want and what is in your best interests. And yet because of the emotional baggage that we carry in each conversation, those two people might hear two completely different things. So you have to get very, very specific now if I have a surgery, and it's a 50/50 chance I'll survive it and I'm going to die. For sure if I don't, but if I do survive it, I'm still going to be able to have conversations with you tell you I love you understand where I am, even if I'm bedridden, take the risk. But if the most that one can hope for from this surgery is that I will continue to be bedridden and probably won't be able to engage in meaningful conversations with you or tell you I love you, then perhaps just let me go.

Rosanne 34:28

Right.

Larisa 34:56

And then you have to hope they can.

Rosanne 35:28

Yeah, you Well, yes. Yes, you have to hope that they can do that.

Larisa 35:34

And you sort of have to know who about your trusted helpers, I think I shared with you at the beginning of our marriage, I, I had to tell my husband Don't, don't name me as your primary person for end of life decisions, because I don't think I could do that. I don't think I could authorize them to turn off life support, we were young. And as his parents declined, and then my folks fell ill and started to decline, life experiences changed my mind. And I had to tell him, I still love you. I'm hoping you don't shuffle off your mortal coil any sooner. But I can see why being the one to make that decision would be engaging in an act of kindness as opposed to an act causing harm. So now I am his primary person up to bat and hope I never need to use that medical power of attorney.

Rosanne 36:21

When you have medical power of attorney, that also helps you with HIPAA. Correct?

Larisa 36:26

It does. And I typically do separately HIPPA releases, just because they're quick and dirty and easy. And you can I give them some that are signed and notarized and they leave blank. So they can fill in a specific medical practice. Some doctors offices, and some hospitals want you to sign theirs specifically or named then specifically. And that's certainly their, right. And even though the medical power of attorney I produce is good enough to get that job done in the elder law context, if you're an adult child trying to help a loved one, or if you're a spouse trying to help a loved one, sometimes you just want to do what's easiest to so that's why I throw in those HIPPA releases that they can fill in the blanks on later. And then they just turn over a three page document as opposed to the power of attorney and fight about specificity.

Rosanne 37:14

Well, and then all of that also feeds in with Medicaid planning and

Larisa 37:20

Right.

Rosanne 37:21

Long term care planning,

Larisa 37:23

Right.

Rosanne 37:24

Which is separate then estate planning.

Larisa 37:27

Right. Right.

Rosanne 37:28

So all of that, it all goes into the same bucket almost.

Larisa 37:34

Right It does.

Rosanne 37:35

When you're dealing with all of these powers of attorney.

Larisa 37:38

It does. And it's also a good reason why just doing an off the rack one that might be your state statutory form, depending on whether your state legislature has updated the language in that recently or not, or downloading something off Google is probably not the best way to go. Because there's specific things you need in a power of attorney to be able to do government benefits planning for a loved one that can't

do it for themselves. You need to be able to create a trust, you need to be able to engage in a gifting program. And other things. I don't want to go too far into the weeds, but suffice it to say a basic list power of attorneys probably not going to be good enough to help when it's needed

Rosanne 38:23

With Medicaid and the VA. There are specific people that deal with both of those issues for a reason,

Larisa 38:32

Right.

Rosanne 38:33

Because they're such quagmires.

Larisa 38:35

Yes, yes.

Rosanne 38:36

And depending on your state, and depending on your circumstances, you really need to work with someone who specifically deals with those issues, correct?

Larisa 38:45

Your do, you do, because you'll hear a lot of advice from well meaning friends about what to do to qualify for benefits if you need them, or what to do just to make things easier. But there's a lot of pitfalls. Medicaid is a federal program administered by the states and each state has slightly different rules regarding who qualifies and under what circumstances VA is administered by the Veterans Administration, but it has rules that are different from Medicaid. So you want somebody who knows what questions to ask, and who can help you put a legal, ethical plan in place to qualify for benefits in the future, whether the future is in a week or two. Or if you can play a longer game and it's years in advance. They can help you preserve your assets to the greatest extent possible while still getting government benefits paid for your care.

Rosanne 39:42

What do you advise and what warning signs do you look for to give you an idea of when your parents or your spouse or whoever is in danger? What typically are the warning signs for that?

Larisa 39:58

If they're starting to forget At meaningful things, frequently now, there's a difference between forgetting when you're in your mid 50s, unless there's a family history of early onset Alzheimer's and forgetting, you know, in your 60s or 70s. My husband was a really good son. And when his father was dying, he, we had young children, and he was spending every lunch hour with his father in his nursing home trying to help his elderly mother often stopping at the nursing home on his way home from work, plus hold down a job as a practicing attorney. And because he's such a good daddy never wanted to miss anything in the kids lives. And I was starting to tell him things that he would forget. So I got worried that maybe his memory was slipping, insisted that he tell our, our doctor, and her rather terse response was

forgetting what your spouse tells you doesn't count. Hey, thank you. Yeah. And I got my dander up a bit at the time. But with the benefit of hindsight, I realize he was just he was exhausted, and he was emotionally flooded. And it was foolish of me to even make an issue of it because his brain was working just fine. It's just when you're in the elder care crisis, there's only so much you can hold on to and he was doing everything else. Right. The fact that I'd told him three times that he needed to sign off on a permission slip. And the larger, you know, that was immaterial. Yeah. Right. Now, if there's not a whole lot of activity, or anxiety provoking circumstances going on in your parents, or your spouse's life, and they're starting to forget things, or they're losing positional awareness, maybe, perhaps you want to pay a little bit better attention. Because if they're not outside stressors enough to cause you to flood, then maybe it's time, it's time to have some meaningful conversations. But again, you've got to approach those in a way that doesn't affect their dignity. Right? You know, my mother still has one of the best memories of anybody, I'll ever be fortunate enough to me, she's convinced that she doesn't. But her doctors and I both tell her that what she's forgotten is what none of us ever bothered to remember to begin with. But it's terrifying to her because for her, that's a significant loss. Right? Of course, but in many ways, she's still functioning much better than most of my peers.

Rosanne 42:27

Right. Right.

Larisa 42:29

So.

Rosanne 42:30

Yeah, I, I remember, my mother was great with her checkbook, great with her checkbook, I mean, spot on for years and years and years and years and years. And then she start missing messing up the payment for her rent. Yes. So she would either pay the wrong amount, or she wouldn't pay the amount, right. And the first time it happened, I thought, Oh, my goodness, this isn't because that was so huge in her entire life. Right? Right. It was the biggest thing, she paid things before they were due. They were always correct. It was always to the penny, the whole thing. And then the third time it happened, it was over. We'll say like maybe a seven month swing, and I thought, oh, boy, here we go. Here we go. That was that was the thing. And between that and, you know, buying things that, like you said, they were just things

Larisa 43:24

Right

Rosanne 43:25

But it went against type. And we know what you know, we know what's typical,

Larisa 43:31

Right

Rosanne 43:31

In quotes, right? We know it's typical. We know when things change, sometimes we might not want to look at them. But there's a part of you that goes, Oh, well, that's different. And I think we have to pay attention to that.

Larisa 43:44

Not only do we have to pay attention, but we have to honor our own feelings about that. It's so tough to view your parents, not only as adults in the entire sense of the world, there's always a part of us that still wants to view them as mom or dad.

Rosanne 43:59

Yes

Larisa 44:00

And to interact with them as their child.

Rosanne 44:02

Yes.

Larisa 44:03

So it's tough enough to interact as a peer. And then when you have to start interacting as a caregiver, or if they're experiencing significant mental decline as the adult taking care of a child. There's a lot of emotional issues with that. So I think that in the early stages, we have to honor our suspicions and not fly off the handle and insult our loved ones dignity, but still press a little bit and see what you can do to help. And at that point, if you can get those powers of attorney in place, and just have the conversation as we discussed, we just want to create a safety net probably don't need me now. I hope you never need me. But let's go ahead and get it in place while we can. And then it's easier often to talk about things in terms of a catastrophic event as opposed to a gradual decline.

Rosanne 44:53

Right?

Larisa 44:54

Folks are more willing to put a plan in place if you're discussing a potential car accident that results in a head injury as opposed to vascular dementia or just the brain slowing down in other ways.

Rosanne 45:09

Do you think that's the best way to approach it?

Larisa 45:11

It can be

Rosanne 45:12

In case something happens,

Larisa 45:13

Right.

Rosanne 45:14

We're just talking for the people that are really, really resistant, like, don't want to talk about it. You'll figure it out. My favorites are you'll figure it out. You'll know what I want. Okay, thanks. Or, or just flat out? I'm not having this conversation. Do you think that's the best way to try to get in through the backdoor.

Larisa 45:33

That's the way that I've seen work best, under the most circumstances for the truly resistant, they're more willing to think about crisis planning due to an event or crisis planning for an event that is not their fault, somebody hits them, and they have a head injury

Rosanne 45:48

Okay

Larisa 45:49

That's more palatable, they're more willing to begin the conversation, and you have to just keep chipping away at it with the medical powers of attorney because they might be willing to put them in place. And then they don't really want to think about the conversations. So you got to come at it sideways, their lawyers will as I do tell them, you need to have these conversations here, your conversation prompts. Make sure you do it. This is the Spider Man situation with great power comes great responsibility. So make sure they've got the information they need to exercise that power. Yes. And then once you get them in place, if you can, like I said earlier, it's best to make sure that you go ahead and send them off to the institutions that you folks are or your spouse's doing business with, so that in a crisis, you don't have to wait for their legal team to review it and get back to you.

Rosanne 46:38

I have to tell you, I there, there has to be probably 22 copies of my mother's power of attorney with her insurance company, because I would send them and every time I call they say, who are you? And I'd say I'm Power of Attorney blah blah blah. Well, let me say and they pull it up and they'd say, we don't have like, and I sent it, I faxed it I did everything but but you know, tattooed on my forehead and drive to your place. They never had it. They never had it ever.

Rosanne 46:41

That's frustrating. That has not been my experience.

Rosanne 47:12

I love that idea, though. Because here you go. It's pre-emptive.

Larisa 47:15

Yes.

Rosanne 47:15

Here, I'm giving you all the stuff and I don't want to hear it.

Larisa 47:18

Right.

Rosanne 47:18

I don't want to hear it. Because when you are in those moments of needing to pull the POA I'm the POA

Larisa 47:25

Right

Rosanne 47:26

Card out, right. You don't need the Wait, where did I put it? It's a route. Right? I think it's over, you know, right?

Larisa 47:32

And you don't want them to say, Well, you've got to sign our form. No, right. Yeah. Now, there is one important exception to that, the federal government gets to set its own rules. So for Social Security, you might want to go ahead while you're still clear minded and set up a representative payee, you can do that in advance. And that's designating your trusted helper with the Social Security Administration. Do that while you're still lucid, that if you've got a trusted helper in place, then they don't have to jump through all those hoops later. Similarly, with the VA, if you're receiving VA benefits, you want to work with them to go ahead and get a representative pa in PA Payee in place.

Rosanne 48:19

And that's a form from them.

Larisa 48:21

Yes. From

Rosanne 48:22

It's their own form that Okay, right. Right. Okay. I hear a lot of banks that say, No, you need our power of attorney document. You can you can forego that, right, you can

Larisa 48:35

You can most states have a statute in place that says no, a bank can't insist on that.

Rosanne 48:41

Okay.

Larisa 48:41

And this is where the legal Best Practices answer might not be the practical circumstances best answer. A lot of banks will insist that you use their form and you can push back and say, No, don't be

ridiculous. Have your legal team review this. If you're not in crisis, that's what I recommend. Typically, just go ahead force the issue. If you're in crisis, do what's easiest, because taking care of your loved one is more important than going toe to toe with a bank. So if you can get the job done by just signing off on their form, just sign it.

Rosanne 49:15

Yeah but how can you sign off on their form when your person is past that point? Well, that's the problem.

Larisa 49:20

Yeah, that's when you want to go toe to toe, but you can also have circumstances like my family, my father was suffered from a degenerative lung disease. And at the end of his life, he was fully capable of doing anything he wanted or needed to do. He just didn't feel like it. He didn't have the energy. So in that case, in times of crisis, we could have gone toe to toe with different institutions, but he was lucid. And so when we were all struggling with grief over losing him, and he was feeling lousy, he just signed off on stuff and then I'd submit the form

Rosanne 49:56

Right, so the bottom line in the best way to protect your Parents, your spouse's,

Larisa 50:02

Yourself

Rosanne 50:03

Your elders, yourself is the power of attorney to bait is to start. Start there start out of the gate power attorney, medical power of attorney durable power of attorney speak, get thee to a to an elder law attorney.

Larisa 50:20

And you know we were talking earlier about getting them done for college students. It seems strange to go to an elder law attorney for that. But they are important

Rosanne 50:28

And it's the National

Larisa 50:29

Academy of Elder Law attorneys Naila to NAELAorg. And there's another organization that has good elder law attorneys. It's the life care planning law firms Association, they're good ones to know and to contact if you're doing active Medicaid or VA benefits planning because they typically have a nurse or social worker on staff that can help you with a lot of things and elder law attorneys are going to work with you. We are by nature helpers. You don't do this. Don't wake up thinking I want to be an elder law attorney. A lot of us typically got into this because we've seen how helpful it is and we're all just wanting to help make people's lives a little easier.

Rosanne 51:16

A big thank you to Larisa Gilbert for being my guest today. If you would like to reach Larissa, you can do so at the estate planning and elder law group of Duncan Galloway Greenwald with her email LGilbert at DGG-law.com or the office phone number 502-614-6970. I hope you enjoyed our podcast today, head over to Daughterhood.org and click on the podcast section for Show Notes including the full transcript and links to any resources and information from today's episode. You can find and review us on Apple podcasts or anywhere you listen to your podcasts. We're also on Facebook, Twitter and Instagram at Daughterhood, the podcast and on my personal blog. HeyRoe.com Feel free to leave me a message and let me know what issues you may be facing and would like to hear more about or even if you just want to say hi, I'd love to hear from you. Also a very special thank you to Susan row for our theme music the instrumental version of her beautiful song mamas eyes from her album lessons in love that you can find on the Apple store. I hope you found what you were looking for today, information, inspiration, or even just a little company. This is Rosanne Corcoran. I hope you'll join me next time in Daughterhood.