

What will happen if you become incapacitated?



If you cannot handle your personal affairs, who would you want to handle them for you?

Your children?



Your attorney?

The court?



If you had a stroke or an accident that left you mentally or physically incapacitated, you would need someone to manage your affairs. Sooner or later, your signature would be needed to manage a bank account, pay a bill or handle your property.

Being that you have become unable to handle your affairs
a court will have to get involved
unless you plan ahead!

The flaws of a Simple Will...

Many people are surprised to find out that a simple will does not keep the court from intervening into their affairs if they become incapacitated.

Without planning for incapacity, you could find yourself, and be putting your family into a difficult situation.

Last Will and Testament

**No Protection
for
Incapacitation**

Court Appointed, Family Member, or Trusted Friend?

Typically a conservator or adult guardian is appointed when a court decides that you cannot make a decision, or if you have an illness such as Alzheimer's disease. In this case you are physically or mentally incapable of managing your affairs.

Here comes the Judge!



Conservatorship is the process where the court gets involved in the management of the estate in the event you are incapacitated. The reason why the court would step in is to prevent someone from taking control of your assets and misusing them.

The court would make financial decisions for you and look after your welfare. Otherwise they may name a conservator to manage your estate.

The court could name your spouse, a child, a family member or an outside institution. It is THE COURTS decision, not yours.

Conservatorship is expensive and open to the public...

Once someone has been determined to be mentally incapacitated and the court establishes a conservatorship, there are a lot of fees and expenses that must be paid by the person who will be the guardian (or conservator) of the ward.

There are expenses *before* the conservatorship is established by the court *plus* ongoing expenses.



Expenses Before a Conservatorship is Established may include:

- Court costs for filing the initial petition to determine.
- Attorney's fees for filing the petition to determine capacity.
- Fees for physicians, nurses and/or social workers.
- Attorney's fees for the alleged incapacitated person's court appointed attorney.
- Costs of notifying family members about the legal proceedings.

Fees and Costs After a Guardianship is Established:

- Attorney's fees for the guardian or conservator.
- Attorney's fees for the ward's attorney.
- Accounting fees.
- Court fees.

The court costs, legal bills, fees and bonds take away from the value of your estate.

And the conservator is required to report to the court.



The most significant cost has nothing to do with money that all this cost. It's the emotional cost of the complete loss of control by both the ward and the ward's family.

This is why we encourage everyone to plan ahead.

Your Durable Power of Attorney for Property may not be enough...

AS SURE AS THE SUN RISES

Hospitals and health care providers don't want to be responsible for making your health care decisions for you. A Durable Medical Power of Attorney allows a trusted person to make health care decisions on your behalf.



One option that many use is durable power of attorney. A durable power of attorney is an arrangement whereby one person authorizes another to take action on the first person's behalf as his or her Agent.

This agent has the authority to conduct business for you.

1. A durable power of attorney has a few downsides if used alone. Unfortunately, many banks and financial institutions have come up with their own forms of power of attorney and will not act on the basis of other powers of attorneys or will do so only after persuasion. As a result sometimes institutional forms are needed in addition to a durable power of attorney.
2. Another downside is the easy access a durable power of attorney will have. This could open up the risk to giving someone access to your funds without accountability. Many stories have been reported of people recovering an illness only to find nothing left in their name.

Advantages of the Funded Living Trust - a blanket of security!



With a "Fully Funded Living Trust" you can decide in advance and appoint the person who would manage your assets if you should become incapacitated.

A distinct advantage a funded Revocable Living Trust has over just a durable power of attorney is that the Trustee(s) has the legal right to manage the assets.

This makes communication with banks and financial institutions a lot easier. Third parties such as banks are many times more comfortable dealing with a Trustee than they are dealing with just a durable power of attorney.



When you prepare a Living Trust a power of attorney is still a good idea. Generally a financial durable power of attorney is used for assets not in the trust name such as IRA's and a health care power of attorney gives someone else the authority to make health care decisions for you in the event you are unable to make them for yourself.

Here are more details on the powers of attorney.

Financial Durable Power of Attorney:

If you are incapacitated, this document gives another person full legal authority to sign your name on your behalf and manage your finances for all assets not owned by your trust. Your Revocable Living Trust gives your Successor Trustee or surviving spouse Financial Powers of Attorney of assets owned by the Trust.

For tax reasons you should own certain assets outside your Revocable Living Trust; e.g., IRA's, annuities, pension plans. Since they are not owned by your trust, your successor trustee has no authority to deal with them. The Financial Durable Power of Attorney names an Attorney-in-Fact to make decisions regarding such assets.

Health Care Durable Power of Attorney:

The Health Care Durable Power of Attorney applies in all situations in which you are unable to make health care decisions for yourself, not just when you are terminally ill.

The Health Care Durable Power of Attorney you created only becomes effective upon your incapacity.

It gives broad powers of health care decisions to whomever you have named as your Attorney-in-fact. In addition, unless you direct otherwise, this document gives your Attorney-in-fact the power after you die to (1) authorize an autopsy; (2) donate your body or parts thereof for transplant or therapeutic or educational or scientific purposes; and (3) direct the disposition of your remains.

No one has the legal authority to act for a family member if that individual is unconscious or incompetent unless they have Power of Attorney to do so. **Even parents of adult children cannot authorize emergency treatment for them without a Power of Attorney.** If no one has been appointed as your Attorney-in-Fact, it is up to the courts to make decisions on your behalf.

(Note – We do not recommend that you proceed without proper legal counsel! It will be necessary to coordinate all of your financial issues to make sure you are making the right moves. Wealth planning cannot be done in a vacuum. It is important to tie together all of the pieces of the puzzle!)

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