

The Wealth Advisor

A monthly newsletter for our valued clients

What if you don't die?

Why Ignoring the Importance of Incapacity Planning Can Have Serious Consequences

It's a common misconception that all your efforts to create a comprehensive estate plan are focused on what happens after your death. That is very much not the case, and it's a dangerous misconception to plan by.

Estate planning does *not* equate to death planning. There are several ways in which your estate plan can drastically impact you and your loved ones' quality of life well before you pass away. That is why it's also crucial that your plan includes up-to-date provisions for what will take place if you don't die.

The relationship between incapacity and your estate plan

Many people become legally incapacitated, where they lose the ability to make their own legal decisions on either a temporary or permanent basis. This legal incapacity is not the same as being disabled for social security or workers compensation purposes. Rather, it is the result of coma, cognitive impairment caused by degenerative illnesses, or other situations in which a person is no longer able to make their wishes known due to loss of physical or mental function.

What if you don't die and are instead in need of help because you can't manage your finances any longer? A robust, trust-based estate plan will include the necessary documents to make sure your wishes are carried out to a T — even if you aren't able to express those wishes at the time.

You need a plan that will protect your privacy, free you from court interference, help you protect and manage your assets, save you money on taxes, and enable you to name the people you trust the most to act on your behalf. Without a comprehensive incapacity plan in place, a judge can appoint someone to take control of your assets and make all personal and medical decisions for you through a court-supervised guardianship or

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Condie & Adams, PLLC is a values-driven law firm committed to providing individuals, families and small businesses with personalized, client-centered legal services in estate planning, probate and trust administration, tax planning, and related legal matters.



conservatorship. You and your loved ones could lose valuable time, money, and control until you either regain capacity or die.

The components of your plan that impact incapacity

- **A revocable living trust:** In the typical situation, you will be the trustmaker, the trustee, and the beneficiary of your revocable living trust. But if you ever become incapacitated, your designated successor trustee will step in to manage the trust assets for your benefit.
- **Powers of Attorney:** Be they medical or financial (you should have both in place), powers of attorney give your agent the authority to pay bills, make financial decisions, manage investments, file tax returns, mortgage and sell real estate, and address other financial matters that are described in the document. Powers of Attorney come in two forms: “durable” and “springing.” A durable power of attorney goes into effect as soon as it is signed, while a springing power of attorney only goes into effect after you have been determined to be mentally incapacitated. Keep in mind that medical powers of attorney can also be called health care proxy or advance directive.
- **Living Will:** This legal document memorializes your medical decisions about end of life care. The goal is to keep you as comfortable as possible, but not extend your life with useless medical heroics. Even though these may not be legally enforceable in some states, they can provide a meaningful sharing of your wishes to help guide your decision makers.
- **HIPAA Authorization:** Federal and state laws dictate who can receive medical information without the written consent of the patient. This legal document gives your doctor or other health care provider the authority to disclose your health information to the agent selected by you.
- **Nomination of Guardians:** You can nominate guardians for yourself as well as for minor children. You may also want to create a legal pet trust if you have strong feelings about who you’d like to care for your animals should you become incapacitated.

Don’t let a lack of incapacity planning damage your quality of life and cause undue stress for your loved ones. Let’s schedule a time to make sure your estate plan has solid, up-to-date provisions in place that make your wishes regarding incapacity plain and clear.

This newsletter is for informational purposes only and is not intended to be construed as written advice about a Federal tax matter. Readers should consult with their own professional advisors to evaluate or pursue tax, accounting, financial, or legal planning strategies.

You have received this newsletter because I believe you will find its content valuable. Please feel free to [Contact Me](#) if you have any questions about this or any matters relating to estate planning.

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