

INCAPACITY PLANNING

Who Will Manage Your Property and Healthcare Decisions?

By Roy W. Litherland



HEALTHCARE DECISIONS

For most of our lives, the greatest risk to our well-being is the ever-increasing likelihood of becoming seriously ill or injured. When illness or injury makes us unable to manage our own affairs, we may face the legal ordeal of a Conservatorship which can be a living nightmare for those who must go through it.

Many people fail to plan ahead for their possible incapacity because they think it only happens to “the other guy.” In reality, every man and woman should take the matter seriously because incapacity strikes a very high percentage of our nation’s seniors.

If you became incapacitated without any type of plan in place, the court could be petitioned via a Conservatorship to designate someone to handle your personal, financial and healthcare choices on your behalf. Conservatorship proceedings are public and can be humiliating. They can also be expensive and time-consuming, often resulting in an outcome very different than what you would have preferred had you been capable of making your own decisions.



This is where incapacity planning comes in. There are a variety of legally binding documents that you can execute to prepare for incapacity which include:

- **Durable Property Power of Attorney.**

This document remains in effect if you become incapacitated. A properly written durable property power of attorney allows you to name your own future decision-makers with regard to your assets, thus there is no need for a Conservatorship hearing to name a person to make those financial decisions for you if you became incapacitated.

- **Durable Health Care Power of Attorney/Advance Health Care Directive.** Like a durable property power of attorney, this document remains in effect if you become incapacitated. It allows you to name people to act on your behalf should you be unable to make your own healthcare decisions. You can also specify your desires with regard to end of life decisions, relief from pain, donation of organs and other medical treatments and procedures.

- **Revocable Living Trust.** This estate planning tool helps avoid the Death Probate. However, this versatile document can also help you dramatically eliminate the risk that so you'll never have to endure the nightmare of a Conservatorship. In your Living Trust, you decide who will serve as your Successor Trustee. This individual will carry out your wishes to the letter and manage your financial affairs as you've instructed should you become legally incapacitated or die. A properly executed living trust estate plan should also include both durable property and healthcare powers of attorney.

Most of us find it hard to admit we're mortal. Death and dying are sensitive subjects we tend to avoid. That helps explain why so few Americans do their estate planning. Even fewer Americans plan for the possibility that injury or illness will make them unable to care for themselves. It is essential that we plan for every contingency—disability as well as death. If you haven't already done so, seek the advice of a qualified and experienced estate planning attorney. The peace of mind that comes with a complete estate plan is priceless.

Roy W. Litherland has practiced law for over 38 years and is a noted speaker on living trusts and estate planning. He is certified as a Legal Specialist in Estate Planning, Trust and Probate Law by the California State Bar Board of Legal Specialization. Roy is a member and designated Fellow of the American Academy of Estate Planning Attorneys. For more information on estate planning, elder care issues and free workshops, please visit www.attorneyoffice.com.

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3425 S. Bascom Avenue, Suite 240 | Campbell, CA 95008

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