

HOW ESTATE PLANNING CAN BENEFIT YOU WHILE YOU'RE ALIVE

A common misconception is that estate planning equates to death planning. While planning for what happens after you die is important, it is only one piece of your estate plan. Just as important is planning for what happens if you become incapacitated during your lifetime.

Q: What does "disabled" mean?

In the estate planning world, the term “disabled” refers to an individual’s incapacity or the inability to manage day-to-day business affairs such as managing and protecting assets, signing papers, paying bills, and filing taxes. “Disability” or “incapacity” doesn’t mean you’re laid up on the couch with a bad back; instead, it means that you don’t have the physical and mental capacity necessary to manage your personal business.

The Two Essential Strategies for Incapacity Planning

You cannot put a comprehensive incapacity plan into place after you lose the mental ability to manage your finances and personal well-being. Instead, you must be proactive and put in place strategies for incapacity planning and their accompanying documents while you’re still competent. Two of our most common recommendations include:

1. **Proactive Planning for Control of Assets.** A Power of Attorney and a properly funded Revocable Living Trust can work in concert to provide robust control over your assets.

A Power of Attorney gives an Agent you select the authority to pay bills, make financial decisions, manage non-trust-owned investments, file tax returns, mortgage and sell real estate, and address other financial matters that are described in the document, on your behalf.

Revocable Living Trust. In the typical revocable living trust situation, you are the Grantor, Trustee, and Beneficiary of your trust while you are alive and well. If you become incapacitated, someone else is already named in your trust agreement to step in as the Successor Trustee and manage the trust assets for your benefit.

2. **Planning for Medical and Living Decisions.** Much of “traditional” estate planning focuses on assets, but assets are only part of the issue when it comes to incapacity planning. This second strategy consists of ensuring that you have the proper plan and documents in place to allow a trusted person to make medical and living decisions if you are unable to do so.

A Designation of Health Care Surrogate is a legal document giving a Surrogate you select the authority to make healthcare decisions if you become incapacitated. A Living Will is an additional legal document that can provide for withholding consent for heroic medical measures at the very end of life. Finally, a HIPAA Authorization gives a doctor or other health care provider authority to disclose medical information to an authorized recipient.

This authority can be important to ensure that good care is being received and that incapacity issues can be handled without court involvement.

Avoiding Time-Consuming and Costly Guardianship

Without a comprehensive incapacity plan in place, the Courts will become involved and a judge will appoint someone (even a stranger or your most despised relative), known as a Guardian, to take control of your assets and/or make all personal and medical decisions on your behalf under a court-supervised guardianship.

- In most cases, the guardian must report all financial transactions to the court annually. Additionally, investment regulations may force your guardian to sell assets at an inopportune time, with potentially bad tax and investment outcomes.
- The guardian is also typically required to obtain court permission before entering into certain types of financial transactions (such as mortgaging or selling real estate or other property) or making life-sustaining or life-ending medical decisions.

If you become incapacitated and have not been proactive, a guardianship will be an expensive, distracting, and emotionally draining process for your family. You and your loved ones will lose valuable time, money, and control until you either regain capacity or die. But all of this could be avoided by setting up a comprehensive estate plan.

If You've Already Got a Plan in Place, Is Your Incapacity Plan Up to Date?

Once you get your incapacity plan in place, you cannot simply stick it in a drawer and forget. Instead, you need to review your incapacity plan every few years and after any major life event (such as a divorce or death) to ensure that the plan will still work the way you intend it to work if it's ever needed.

Please contact our office now to schedule a convenient time for us to discuss your questions about incapacity planning and to arrange for a plan review. Only an up-to-date estate plan works, and we're here to help you get yours in order.

***TIP: Be sure to name a contingent agent in case your primary agent is unable or unwilling to serve. The same with disability trustees. Be sure to name successor disability trustees in case your named trustees are unable or unwilling to serve when the time comes.*