

Properly planning for incapacity requires specific estate planning strategies

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Most estate plans focus on what happens after you die. But without arrangements for what will happen in the event you become mentally incapacitated, your plan is incomplete. If an accident, illness or other circumstances render you unable to make financial or health care decisions — and you don't have documents in place to specify how these decisions will be made, and by whom — a court-appointed guardian will have to act on your behalf.

Choosing the right tools

There are several tools you can use to ensure that a person you choose handles your affairs in the event you cannot:

Revocable trust. Sometimes called a “living trust,” it's designed to hold all or most of your assets. As trustee, you retain control over the assets, but in the event you become incapacitated, your designee takes over.

Durable power of attorney. This authorizes a designee to manage your property and finances, subject to limitations you establish.

Living will. It expresses your preferences regarding life-sustaining medical treatment in the event you're unable to communicate your wishes.

Health care power of attorney. Sometimes referred to as a “durable medical power of attorney” or “health care proxy,” this authorizes your designee to make medical decisions for you in the event you can't make or communicate them yourself.

HIPAA authorization. Even with a valid health care power of attorney, some medical providers may refuse to release medical information — even to a spouse or child — citing privacy restrictions in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). So it's a good idea to sign a HIPAA authorization allowing providers to release medical information to your designee.

For these tools to be effective, you must plan ahead. If you wait until they're needed, a court may find that you lack the requisite capacity to execute them. Also, be sure to check the law in your state. In some states, certain planning tools aren't permitted, or go by different names. We can help you address incapacity in your estate plan.

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The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com