

# Plan Well. Live Well. Manage Incapacity and Disability.

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Incapacity and disability are not guaranteed like death and taxes, but the risk is not zero either. This adds an element of uncertainty to every estate planning process that is often underestimated due to a natural tendency towards optimism. Where an existing situation exists, it can help to clarify the challenges to be addressed, but it does not eliminate risk entirely. In either case, an honest and conservative approach to planning can help ensure access to appropriate financial and other resources to allow all affected persons to adapt and thrive in the face of incapacity or disability.

An important consideration is the possible need for substitute decision making where capacity or declining capacity is a concern. Powers of attorney are cheaper and simpler to implement than a guardianship application. However, trusts can also be an important asset management tool to supplement the need for financial decision making that can even have tax benefits in some cases.

**How the Process Works** – In conjunction with the overall estate planning process, the beginning point is an understanding of your needs and expectations for quality of life at various stages, if you are doing your own planning, or that of the person you are seeking to benefit – a life plan if you will. This is not something that can necessarily be done in one sitting and may require the assistance of other professionals, including those with a healthcare background.

The next step is to recognize that incapacity and disability do not just impact the person facing the challenges. It can also impact the overall household environment to which the person is connected. Where the person does not live with family full or even part-time, this can mean that there are overlapping households such as group or care homes, and a family home.

**How to Prepare** – For your initial meeting, be prepared to provide or discuss the following in addition to the usual information that is outlined is a separate information sheet that provides an overview of estate planning:

- Medical history and expected progression
- How daily life is impacted currently and expectations for the future

- Employment and recreational activities
- Level of capacity to make financial or personal care decisions and how this may change
- Supportive family and friends
- Community and government resources

Depending on circumstances, you may also wish to consider the following:

- Religious or philosophical dictates to be observed

**When to Start Incapacity and Disability Planning** – Today. Make an appointment with a lawyer who specializes in estate planning, including disability planning; put it in your calendar and set any related tasks; tell your family, and those you care about, that you are going to get this done – by a certain date.

**Reminder:** Maintaining an organized estate during your lifetime is a gift you give yourself and those about whom you care.

**When to Review** – About every five years unless there is a change in circumstance such as:

- Marriage or divorce
- Birth or death of beneficiaries, executors, trustees, attorneys for care or property
- Illness or disability of you, beneficiaries, executors, trustees, attorneys for care or property
- Purchase or sale of major assets or change in financial plans
- Bankruptcy or insolvency
- Change in residence or citizenship
- Change of advisors

#### **Related Advice and Services:**

- Wills, trusts, powers of attorney and guardianship
- Charitable gift planning
- Corporate reorganizations and estate freezes
- Tax law advice

**Related Practice Areas** – Estate and disability planning is part of a broad industry group sometimes referred to as “Private Client” that encompasses several areas of legal practice including:

- Wills, trusts and estates
- Business law
- Real estate
- Family law
- Charities law
- Employment law
- Intellectual property
- Tax law

**Related Planning** – Estate planning is a companion piece to comprehensive financial planning, both of which share much of the same core information and goal-setting exercise to help clients

understand where they are and where they are going. When both types of planning are done together, the result is an even stronger foundation to live well and leave an organized estate.

**This is particularly true when disability or incapacity planning is involved as the needs of beneficiaries can vary greatly as well as their access to various resources and benefits.**

The information contained in this article is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.