

## ESTATE PLANNING

# PREPARING FOR INCAPACITY

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Estate planning isn't just for the wealthy—it's for everyone. No matter your age or income level, it's an important activity to ensure your loved ones are protected.

## THE VALUE OF AN ESTATE PLAN

An estate plan is essential because it can help protect you and your loved ones, especially as you get older. It can help:

- Avoid probate
- Prevent additional stress for loved ones
- Ensure your assets go to those you choose

## DON'T WAIT UNTIL IT'S TOO LATE

Legal capacity is the ability to make a rational decision and understand the consequences of one's actions. Alzheimer's disease, stroke, or terminal illnesses are among the ways you can lose that ability as you age. If you become incapacitated before preparing an estate plan, it becomes more difficult to ensure your wishes are fulfilled.

## IN THE ABSENCE OF A PLAN

Without an estate plan that includes prior directives, the courts are required to appoint a guardian to act on your behalf, should you become incapacitated. Take steps to ensure the right person is appointed to handle your affairs.

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About **1 in 9** people  
age 65 and older  
has Alzheimer's.\*

## THE LEGAL PROCESS



**A court-appointed guardian may be required if a person lacks the capacity to care for themselves or legally transact financial affairs.**

## POWERS OF ATTORNEY (POA)

You can appoint a POA to help ensure your legal and financial affairs are in order if you become incapacitated. A POA is a written document that allows an individual, known as the principal, to grant permission to another person to act as an agent in legal and financial matters in the event the principal becomes incapacitated. The scope of power can cover all the principal's legal matters or be limited to authorization over a single account.

There are several POA types, and each has a unique purpose.



### GENERAL POWER OF ATTORNEY

Grants broad powers, terminates upon death, disability, or incapacitation



### DURABLE POWER OF ATTORNEY

Includes a durable clause that keeps the POA in force after the incapacity of the principal



### SPECIAL OR LIMITED POWER OF ATTORNEY

The agent is only granted power over limited or specific areas, such as finances or healthcare



### SPRINGING POWER OF ATTORNEY

The POA is not active until the occurrence of a specific event

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**Appointment of a POA before incapacity occurs is one way to avoid the appointment of a guardian.**

\*In some states, a guardianship may be called a conservatorship.

## ADVANCE HEALTHCARE DIRECTIVES

A medical POA is when you appoint someone you trust to make medical decisions on your behalf. Please know that some legal documents used to prepare for incapacity are redundant. For example, a living will and healthcare proxy provide direction about healthcare decisions, but they differ in the scope and powers afforded.

Advance healthcare directives include:



### LIVING WILLS

A document that allows an individual to express their wishes, particularly as it relates to end-of-life care.



### HEALTHCARE PROXY

Another term for a healthcare POA; designates another person to be a proxy for healthcare decisions.



### DO NOT RESUSCITATE (DNR)

A legal document that prevents medical intervention to prolong life artificially, through means such as CPR or life support, in the case of death.



### THE FIVE WISHES®

Uniform comprehensive advance directive that is valid in 42 states.

Many people will want at least two POAs — one for finances and one for healthcare — because many states impose different guidelines for these separate powers of attorney. You and your loved ones can get help with POAs by consulting an elder law attorney.

## KEY TAKEAWAYS

- Create a new POA or review your existing POA.
- Decide whether you want the POA to cover finances, healthcare, or both, and whether you want more than one person to handle the responsibilities.
- It's important to know whether the POA is durable, meaning those you designate maintain POA if you become incapacitated. The POA then terminates if revoked or after death.
- Consider an advance healthcare directive.
- Ensure your documents are easily accessible, and inform someone you trust about where the papers are located.
- The National Academy of Elder Law Attorneys ([naela.org](http://naela.org)) can help you find a local professional.

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