



# PREPARING FOR INCAPACITY

## AN ESSENTIAL OF ESTATE PLANNING

**Taking the time to create an estate plan can seem daunting, but your loved ones will appreciate it down the road. Regardless of age or income level, estate planning applies to everyone.**

### WHY CREATE A PLAN?

An estate plan is essential because it can help protect you and your loved ones, especially as you get older. It can also help provide peace of mind about the future. Not having a plan in place can be costly and personally challenging. It can help you:

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

Estate planning is not only about preparing for what happens once you're gone. It can also help ensure your end-of-life wishes are fulfilled.

### UNDERSTANDING LEGAL CAPACITY

With respect to finances and legal matters, an individual must demonstrate legal capacity — the ability to appreciate the nature and consequences of one's actions — to make decisions and complete legal documents. Individuals can become incapacitated due to a number of conditions including Alzheimer's disease and other dementias, stroke, or a terminal illness. If you become incapacitated before preparing an estate plan, it becomes more difficult to properly execute a power of attorney and advance healthcare directives.

### IN THE ABSENCE OF PREPAREDNESS

Without prior directives, the courts must appoint someone to act on behalf of the incapacitated individual, known as a ward. Wards might not wish for their rights over their own affairs or care to be governed by anyone else. In these instances, due process is necessary to appoint a guardian to act as a fiduciary for the ward, meaning the ward cannot legally act on their own behalf, and power is assigned, or vested, to the guardian. A fiduciary is legally bound to place the ward's interests ahead of his or her own.

---

**More than 6 million Americans are living with Alzheimer's disease, the most common form of dementia.\* That's nearly the equivalent to the population of Maryland.\*\***

\* "2021 Alzheimer's Disease Facts and Figures," Alzheimer's Association

\*\* "Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010, to July 1, 2019," State Population Totals and Components of Change: 2010-2019, United States Census Bureau

## THE LEGAL PROCESS



Individual becomes incapacitated and lacks legal capacity to make decisions or care for their well-being.



A petition is filed with the court to have a guardian appointed.\*



A hearing is held to present evidence proving the perspective ward is incapacitated.



The appointed guardian is responsible for the ward and will be required to report back to the court periodically.



**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

---

**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. The National Academy of Elder Law Attorneys ([naela.org](http://naela.org)) can help you find a local professional.

## 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.

Transamerica and its agents and representatives do not provide tax or legal advice. This material is for informational purposes and should not be construed as legal or tax advice. For legal or tax advice concerning your situation, please consult your attorney or professional tax advisor.

1749098

© 2021 Transamerica Retirement Solutions, LLC



TRANSAMERICA®