

Estate Planning - Documents for Disability or Incapacity



Written by: [Robin Gorenberg](#)

ESTATE PLANNING: RELATED DOCUMENTS

PLANNING FOR DISABILITY OR INCAPACITY

As important as a Will or Trust might be to ensure that your wishes are followed upon death, the following documents are essential because they deal with your decisions in the event that you are *alive* - but incapacitated or disabled.

1. **Health Care Proxy/Living Will**

This is a document where you appoint a Health Care Agent ("Agent") to make medical decisions on your behalf in the event that you are unable to make or communicate your medical decisions. You can also name an Alternate Agent should the first-named agent be unable to act.

Depending on your personal preference, this document can also contain "Living Will" language as guidelines for the Agent. This section would state your intentions that you **DO NOT WANT** artificial life support if you are in an irreversible medical state. The Health Care Proxy can either include or not include this provision.

You also have the option of specifying that you want organ donation.

You should also have the related "HIPAA" Authorization, naming someone to be able to obtain your medical information. This can be a separate documents or included in the Health Care Proxy.

2. **Durable Power of Attorney**

The durable power of attorney is a document where you appoint an agent (also known as "attorney-in-fact" or "attorney"), to handle your day-to-day general and financial affairs. You can also designate a successor attorney or co-attorneys if you so choose. Although this is intended to be used if you are incapacitated, it is effective upon signing and survives incapacity. This means that you do not have to prove incapacity in order to use the Power of Attorney.

A less typical type of Power of Attorney is one that only becomes effective **upon** incapacity - called a "Springing" Power of Attorney (it "springs into effect" upon incapacity). However, you should note that this type of Power of Attorney needs a doctor's certification of incapacity in order to be accepted.