
The Five Most Important Tools for Incapacity Planning

When you think about “**tools**”, what comes to mind?
Probably rakes, shovels, wrenches, and more, right?
You are exactly right!

Did you know that documents and plans are tools too?

We use documents in nearly every part of our lives, from driver’s licenses, to birth certificates, passports, and menus. And we plan for events or trips. Who hasn’t wished they had a better plan when your trip starts with missing shoes? Documents and plans are just “tools” used to help complete a task or a project.

Incapacity is that time when you need just a little more help to make decisions. And, as you might guess, “incapacity” requires planning too, because you never know when you will need it.

So, it is **critical** to be prepared.

The “tools” of planning help you be prepared.
But, wait, you **know** that ... why should you read on?

Because if you are like more than half the country, you probably **don’t** have all the documents you need. And that means that ...

When you need it most, without a plan ***you won’t be ready!***

I do know what you need to be ready, and I can help you get there. As an Elder Law attorney, I help people reach peace of mind about their futures by ***planning*** and through use of important ***documents***.

Elder Law attorneys think about different topics and issues than a general practitioner might. For example, we consider what happens during a period of ***incapacity***.

The key question Lawyers ask ...

Do you understand the decision you are making?

Most legal documents or processes assume you have some degree of capacity to *understand* ... such as the “intent” to commit a crime, or the ability to understand right from wrong. But, in the elder law world, our clients or their parents face a time of growing fear of “incapacity,” or temporary or permanent loss of the decision-making powers.

How does a family address this issue? ***Planning***, of course!

We help you plan ... and we create peace of mind.

We do this by granting certain people powers to handle decisions on behalf of another.

This whitepaper defines several of the tools most often used by our clients in planning for incapacity, including powers of attorney, advance directives, and trusts.

When you are ready, call us!

919-883-2800

1. The First Tool – Financial Power of Attorney

A **financial power of attorney** is a document that confers important financial and business powers to another person.

The person granting powers is the “**principal**” and the person to whom the powers are granted is the “**agent**”. The list of powers can be as specific as necessary (i.e., “sell my car”), or general (“take care of my health affairs when I cannot”). The document can be effective right away or at a future date. It can expire at a future date if necessary.

The **financial power of attorney** permits the agent to perform a wide range of financial actions on behalf of the principal.

Financial actions include transactions like banking, making investments, or buying and selling of property. Some additional powers are often important for our clients, such as the ability to create and fund trusts.

The agent is authorized to do nearly everything that the principal could personally do for himself.

A financial power of attorney can be revoked by the principal at any time if the principal is competent to do so.

Why is it important? When you can’t make financial decisions yourself, someone will have to step in to help. You will feel better **knowing when and who** is taking over financial decisions.

2. The Second Tool – Medical Power of Attorney

A **medical power of attorney** grants decision-making powers to an agent for decisions related to medical care.

It allows a designated person (a "health care agent") to make medical decisions for an individual if he or she is unable to make such decisions for him/herself. Parents can use a modified version of this form for children if the parent will be unavailable for a short period of time.

In addition to making medical decisions, a power of attorney also permits the agent to decide where the principal will live or recuperate.

The **Health Care Power of Attorney** is essential to getting your health care needs met the way you want them.

A health care power of attorney can be revoked at any time, as long as the Principal is able to make and communicate health care decisions. A person may simply name a new health care agent, in a new document.

Why is it important? You need peace of mind – knowing that the person you named **will make the decisions you want!**

3. The Third Tool – Advance Directives

The **Advance Directive** is also called the “Living Will”. It describes how you want to be treated as you near end-of-life.

This arises in three specific conditions:

- i) A terminal illness or an incurable or irreversible condition;
- ii) Unconsciousness, when it is unlikely that consciousness could be regained (often referred to as a permanent coma); or
- iii) Advanced dementia, Alzheimer's or other illness resulting in substantial and irreversible cognitive loss.

A living will ("**advance directive**") permits a patient to declare his or her wishes regarding life-sustaining treatments.

The principal makes a declaration of desire for a natural death. Also, the principal can direct his or her health care providers not use extraordinary means, artificial nutrition, or artificial hydration (i.e. feeding tubes and intravenous fluids) to sustain his or her life.

Why is it important? Medical professionals must make every effort to keep you alive **unless instructed otherwise**. The Advance Directive (and the DNR) are documents that ensure **your voice will be heard**.

4. The Fourth Tool – The DNR (Do Not Resuscitate)

The DNR order is not the same as the Advance Directive because the Advance Directive addresses how much the physician *can do* to help you. **The DNR specifies when the physician *must stop* helping you.**

If you wish to prepare more specific written instructions about your medical choices, those can be written in a separate letter, in your own words, and stored with the original legal documents. You need to discuss end-of-life decisions with your doctor. An attorney cannot write a DNR for you or anyone else.

A DNR form requires doctors to **stop resuscitating** you if your breathing stops or your heart stops.

A similar form used in some medical settings is the MOST form (the Medical Order for Scope of Treatment). This is more flexible and broader in scope than the DNR. It also can only be prepared by a physician, such as your family doctor.

Why is this important? With a DNR in place, you will know that **doctors will abide by your wishes** to avoid extraordinary procedures.

5. The Fifth Tool - Revocable Trusts

In some cases, a family may choose to utilize a **revocable trust** to plan for incapacity. This document can provide rules for management of funds, for treatment of the principal, and for distribution to family members both before and after the principal's death.

Trusts are especially useful in cases with special needs children who need support and funds if the parent becomes unavailable. If you are interested in a revocable trust, please contact an elder law attorney for an appointment. This is a very complex document – not a do-it-yourself.

A Trust can establish **policies for management** of your assets while you are living, with rules you control.

Why is this important? A Trust might be right for you if you worry about things like: who will manage your assets; how your special needs children will be protected; or how you will be treated during incapacity.

Your family will be better able to help you if you tell them how you want to be treated and if **your rules and policies** are known.



We hope that you have found this information valuable.

Call us today at 919-883-2800

to update your powers of attorney or other tools for planning.

Even if you have documents in place, if things have changed in your life recently, give us a call to review them with you.

It is always better to be safe than sorry when it comes to planning for incapacity.