

# PREPARING FOR CALIFORNIA INCAPACITY - PART 2 OF 2

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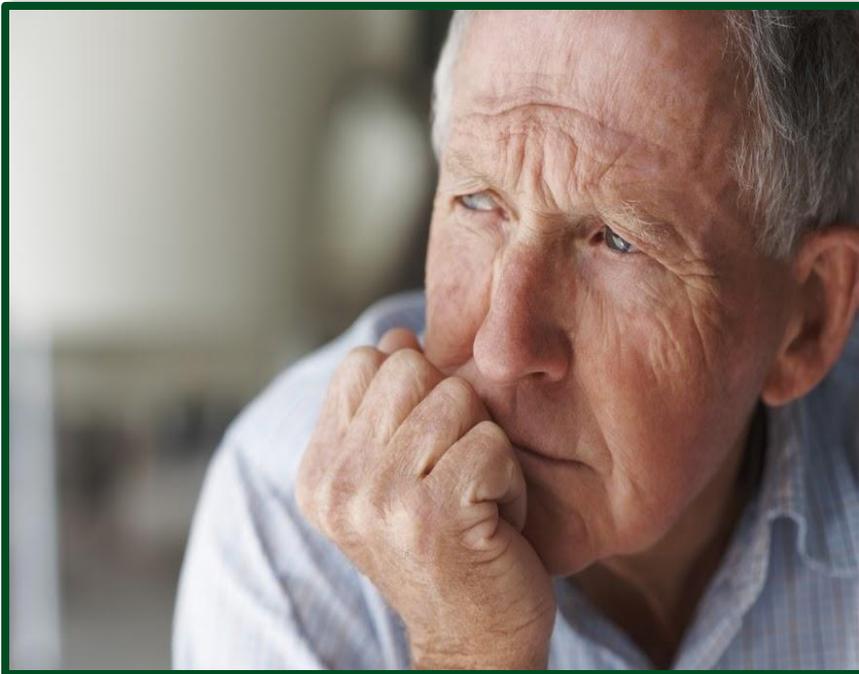


In our first discussion on preparing for incapacity in the state of California, we looked at general ideas surrounding incapacity planning. In this discussion we are going to take a look at some of the specific options you have when creating an incapacity plan.

As with any legal device or tool, it's always essential to speak with an experienced and qualified estate planning attorney before you make any final decision about incapacity planning steps you want to take. Until then, educating yourself about your options, thinking about the questions involved, and discussing your concerns with friends, family, loved ones is essential.

## FINANCIAL DECISIONS

People who become incapacitated because of a serious illness, unexpected injury, or because of any other reason, do not stop having responsibilities. Their bills will still need to be paid, their property will still need to be managed, and all the other duties they have in their day-to-day life will still need to be met. But if



you are no longer around to communicate your wishes and take care of your responsibilities on your own, who will step in to do it for you?

When you create an incapacity plan you get to address these types of questions by appointing

an agent under a durable financial power of attorney. A power of attorney is a document in which you can name an individual who will receive the legal ability to make decisions for you should you become incapacitated. The person you appoint will become known as your agent, or attorney in fact, and will be able to look after your affairs when you can no longer do so.

## MEDICAL DECISIONS

One of the most important issues any incapacity plan must address is the question of what you want to happen to you if you are incapacitated and require medical treatment. When people, especially those who are facing a serious or terminal medical condition, consider the kinds of care they want to receive when incapacitated, the types of decisions they are forced to make are very personal in nature. These decisions have to reflect our deeply held beliefs about life, spirituality, ethics, and many other factors.



Fortunately, if you want to make decisions about the kind of health care you do or do not wish to receive if you are incapacitated, you can create an advance health care directive. Also commonly referred to as a medical directive, living

will, and power of attorney for health care, an advance health care directive, as it is called in California, is the primary document through which people in California can make health care decisions that will take effect if they become incapacitated.

A California advance health care directive contains two essential components. First, there is the power of attorney for health care. Like a power of attorney for finances, the power of attorney for health care gives you the ability to select an



agent who will represent your wishes and make decisions on your behalf. The health care agent will have the authority to make medical decisions for you when you can no longer do so. This agent will have the legal authority to communicate

with your health care providers, review medical records, and make decisions about your care and treatment.

The second key part of the advance health care directive is the “instructions for health care.” This part of the directive is sometimes referred to as a living will or directive to physicians. Through the instructions for health care, you can make a range of health care decisions that you might have to face if you are

incapacitated. For example, you can choose to accept or refuse heroic efforts that prolong your life. You can also choose to accept or refuse pain medication at any time, even if such medication is detrimental to your health. Further, you can state any additional wishes you like, and can be as specific as you wish.

It's also important to point out that the advance health care directive will require any agent you select to abide by the decisions you make in your instructions for health care. If there are decisions or issues that you do not address in your instructions, the agent you appoint under the power of attorney for health care has the right to make those decisions for you.

## **DEVELOP AN INCAPACITY PLAN TODAY**

The single most important lesson to take away from our discussion of incapacity planning in the state of California is this; you can choose what you want to happen to you if you become incapacitated, but only by making the decision to create an incapacity plan.

If you fail to make a plan you leave it up to others to make important, and potentially life changing, decisions for you. Without a plan you will have



no control over who gets to make those choices, nor will you get to direct what kind of choices those people will make on your behalf.

In the worst-case scenario, someone who becomes incapacitated and who does not have a plan in place could cause friends and family to fight over who gets to make the decisions. In such cases a costly, and lengthy, legal battle might not be the only side effect. Simply by not having an incapacity plan in place you could inadvertently cause significant harm to the relationships between your closest loved ones.

If you are wondering what kinds of decisions you can make in incapacity plan, the steps you have to take to make sure that your wishes will be honored, or simply have questions or need advice, you should take the time to contact the an experienced estate planning attorney in your area.



At the Northern California Center for Estate Planning and Elder Law, we have years of experience helping our clients do exactly this. Whether you are single, married, have children, are nearing retirement, or anything else, we can give you the guidance and help that you need to make sure that your incapacity plan will address all the issues that are important to you.

## About the Author



### Timothy P. Murphy

Timothy P. Murphy is an estate planning and elder law attorney whose practice emphasizes helping people to build, preserve and pass on their wealth. He works with his clients to accomplish their goals while avoiding unnecessary court proceedings and minimizing or eliminating exposure to death taxes. Mr. Murphy also assists families facing the myriad of problems associated with dealing with a loved one's declining health and rising needs for care. He has practiced law in the Sacramento area for 29 years, first with a large firm, and then with his own firm since 1987.

Tim has written a regular column on legal issues for Senior Magazine. He also was a regular featured guest on the Money Experts radio program heard locally on KFBK (AM 1530). Tim has been featured in the Sacramento Bee, Sacramento Business Journal, Sacramento Magazine, Comstock's Magazine and other publications on estate planning and related topics. He also assisted local Channel 3 (KCRA) in an investigative report on the trust mill problem in the Sacramento area and was featured on Channel 10 (KXTV) in its series on personal financial planning.

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