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Office Hours Study Guide

*Core Estate Planning Documents*

# Planning for Incapacity

## *Why Powers of Attorney Are the Most Overlooked and Most Critical Documents*

When clients think about estate planning, they usually focus on what happens after death. In practice, however, some of the most urgent and disruptive situations arise during life when someone becomes incapacitated and cannot make financial or medical decisions for themselves.

That is why incapacity planning documents are not secondary. In many cases, they are the most important documents in the entire estate plan. Understanding how these documents function and where mistakes commonly occur allows advisors to prevent some of the most stressful scenarios families face.

### THE DURABLE POWER OF ATTORNEY FOR FINANCES

The durable power of attorney for finances (sometimes called a financial power of attorney) authorizes someone to manage a client's financial and legal affairs if the client cannot.

**This may include:**

- Paying bills
- Managing investments
- Handling real estate transactions
- Accessing accounts
- Dealing with financial institutions

A critical point that clients often miss: a power of attorney ceases to function the moment the individual dies. At that point, authority shifts to the executor or trustee.

For that reason, continuity matters. In many cases, it makes sense for the financial power of attorney, the trustee, and the executor to align. While they serve different roles at different times, having consistent leadership reduces confusion and transition risk.

Without a properly executed financial power of attorney, families may be forced into guardianship proceedings —a public, time-consuming, and expensive process that can often be avoided with simple planning.

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## THE HEALTH CARE POWER OF ATTORNEY VS. THE LIVING WILL

Clients frequently assume that a living will and a health care power of attorney accomplish the same thing. They do not.

A living will provides written instructions about end-of-life care—such as preferences regarding life support, feeding tubes, or resuscitation.

A health care power of attorney, on the other hand, appoints a person to make medical decisions on the client's behalf when they cannot. That agent steps into the client's shoes and makes real-time decisions based on the circumstances at hand.

The distinction is significant. A living will provides guidance. A health care power of attorney provides authority. Both are important. Neither replaces the other.

## A COMMON MISUNDERSTANDING: Spousal Authority

Many long-married clients are surprised to learn that spouses often do not automatically have the legal authority to make financial or health care decisions without being formally named in the appropriate documents.

Even after decades of marriage, institutions may require properly executed powers of attorney before granting access or authority. Assumptions in this area frequently lead to unnecessary court involvement during medical crises.

## A SUBTLE BUT SIGNIFICANT SPOUSAL PITFALL

Another issue that frequently arises involves married couples naming different financial agents.

On its face, this may seem harmless. However, when most assets are jointly owned and both spouses become incapacitated simultaneously, different agents may suddenly have authority over the same accounts. This situation can create conflicting instructions, competing actions, and administrative chaos.

For jointly held assets, it is generally advisable for spouses to mirror their financial powers of attorney by—naming the same primary decision maker —to prevent unintended conflicts.

Health care powers of attorney can differ, since those decisions are personal and separate. Financial authority, however, should be coordinated carefully.

## THE RISK OF JOINT DECISION MAKERS

One of the most common drafting mistakes is naming co-agents—two people serving at the same time. While this may feel fair, it often creates paralysis. If co-agents disagree, decisions can stall. In high-stakes medical situations, that delay can have serious consequences.

The practical rule is simple: name one decision maker at a time, with clearly designated successors. A veto in a co-agent arrangement effectively halts action. In crisis situations, that is rarely acceptable.

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## AN OVERLOOKED POPULATION: Young Adults

Incapacity planning is not only for older clients. Once someone turns 18, parents lose automatic authority to access medical information or manage finances, even if the child is still living at home or in college.

**For that reason and many others, young adults should have:**

- A financial power of attorney
- A health care power of attorney
- A living will

These documents are often treated as an afterthought, but emergencies involving young adults are exactly when they become essential.

## THE BOTTOM LINE

Incapacity planning is often the most underestimated component of an estate plan—and the most consequential when overlooked.

When these documents are missing or improperly structured families face court intervention, medical decisions stall, accounts freeze, conflict increases, and stress compounds during already traumatic moments.

Properly executed and coordinated powers of attorney provide continuity, clarity, and authority exactly when they are needed most.

For advisors, raising these issues proactively can prevent some of the most difficult outcomes families encounter and reinforce your role as a comprehensive planning partner.

To learn more about this topic, please watch our **Office Hours video** or reach out to your investment consultant.

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