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Planning for Illness and Incapacity

Preparing for illness or incapacity before a crisis occurs can make difficult decisions easier for everyone involved. This guide explains some of the legal documents that can help ensure your wishes are known and respected.

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Build Your Family Library

This guide is part of a growing series designed to help Maryland families understand estate planning, probate, and important decisions—one topic at a time.

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Important Note

This guide is provided for educational purposes only and is not legal advice. Maryland law may change, and every family's circumstances are unique. Please consult an attorney or other qualified professional regarding your specific situation.

Most Families Don't Think About Incapacity Until They Face It

Most people hope they will always be able to make their own decisions. But illness, injury, or changes in health can sometimes affect a person's ability to communicate wishes or manage important matters. Planning ahead allows you to make thoughtful decisions while you are able.

Inside This Guide

What Is Incapacity?

Incapacity generally means a person is unable to make or communicate certain decisions because of illness, injury, or another condition affecting the ability to understand, evaluate, or act.

What Happens If There Is No Plan?

Without preparation, families may face uncertainty about medical decisions, financial responsibilities, and who has authority to help. Planning ahead helps your family understand your wishes and can reduce confusion during difficult moments.

Who Makes Decisions When Someone Cannot?

Different decisions require different types of legal authority. Being a spouse, adult child, or other family member does not automatically provide authority for every situation.

Understanding Advance Directives

An advance directive allows you to communicate your wishes about future medical care and appoint someone you trust to make health care decisions if you cannot communicate for yourself.

Health Care Agent

An advance directive allows you to choose someone you trust, called a health care agent, to make health care decisions if you are unable to do so.

Financial Power of Attorney

A Financial Power of Attorney allows you to appoint someone to manage financial matters according to the authority you grant.

Power of Attorney vs. Guardianship

Power of Attorney	Guardianship
Chosen by you while you are able to make decisions.	Appointed by a court.
Created through advance planning.	May be necessary if no planning exists.
Allows someone you trust to act for you.	Court determines who serves.
May help avoid a court proceeding.	Requires a legal court process.

Planning ahead allows you to choose who may make decisions for you. Without advance planning, the court may need to appoint someone to act on your behalf.

What Does Conservator Mean?

Some states use the term conservator for a person appointed by a court to manage another person's finances. In Maryland, this role is generally called a guardian of the property. A guardian of the person makes decisions about personal needs, while a guardian of the property manages money and other assets.

Choosing the Right Person

Choose someone who understands your wishes, communicates well, remains calm under pressure, and will act in your best interests.

Questions Families Often Ask

Do I need these documents if I am healthy? Yes. Planning documents are most useful before they are needed.

Can my spouse automatically make decisions for me? Not always. Legal authority depends on the situation and the documents you have in place.

Can I change my decisions later? Yes. Review and update your planning documents whenever your wishes or circumstances change.

Your Illness and Incapacity Planning Checklist

- [ ] I have thought about who I trust to help make decisions.
- [ ] I have discussed my wishes with that person.
- [ ] I understand the purpose of health care and financial planning documents.
- [ ] I understand the difference between planning documents and court processes.
- [ ] I will review my choices when life circumstances change.

Next Steps

Planning for illness and incapacity does not have to happen all at once. The important step is to begin. Each conversation, document, and decision helps provide clearer guidance for the people who may one day need to help you.

When Professional Advice May Be Helpful

Consider consulting a qualified Maryland estate planning or elder law attorney if your circumstances involve aging, incapacity, long-term care planning, Medicaid planning, complex family relationships, or questions about guardianship.

Trusted Maryland Resources

- Maryland Register of Wills — registers.maryland.gov
- Maryland Courts — mdcourts.gov/legalhelp/willsestates
- Maryland Legal Aid — mdlab.org
- Maryland Court Help Centers — mdcourts.gov/helpcenter
- Maryland State Bar Association — msba.org
- Maryland Access Point — marylandaccesspoint.211md.org
- Maryland Department of Aging — aging.maryland.gov
- Alzheimer's Association — alz.org

REMEMBER

Preparing for the future is one of the greatest gifts you can give your family. Planning ahead cannot eliminate uncertainty, but it can reduce confusion, lessen stress, and help ensure that important decisions reflect your wishes.

How to Become Better Prepared

Explore the Complete Family Guide Library

The Family Guide Series provides practical, easy-to-use guidance to help Maryland families prepare, stay organized, and make informed decisions before information is urgently needed.

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