

The Time to Plan for Disability is Now!

Part Two

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It is often difficult to step off of the hamster wheel of life and create a game plan for disability and death, but it is essential we do so, not only for our own financial and health well-being, but also for the security and comfort of our families. That game plan starts with the legal documents needed during lifetime: a durable financial power of attorney and a healthcare advance directive. A financial power of attorney is a document in which you give another person the authority to manage your financial affairs. Similarly, the agent appointed in a healthcare advance directive has the authority to communicate with healthcare providers, direct the course of your care, and make care decisions in the event you are unable to make or communicate your wishes.

The **first article** in this series focused on describing these documents, what might happen if these documents are not in place, and helping you choose an appropriate agent to make decisions in the event you are unable to do so. Now, we will get to the meat and potatoes of language an elder law attorney likes to see in these crucial documents.

What language should be included in a financial power of attorney and healthcare advance directive? While most states have statutes that provide “boiler plate” language for these documents, discussing your unique set of facts with an experienced elder law attorney is crucial. An elder law attorney considers a client’s present and future care, legal and financial needs as she ages or possibly experiences a period of disability. For example, the client may need access to public benefits such as VA aid and attendance or Medicaid in order to pay for care.

Most elder law attorneys draft documents that include the following elements.

- The appointment of successor agents to serve in the event the first agent becomes disabled or dies.
- An accounting clause which provides that the agent must account to other individuals such as adult children, a friend, or a trusted advisor.
- A “durability” clause which states that the power of attorney or advance directive remains effective even if the person who signed the document (the principal) is disabled to the extent that she lacks capacity to manage her financial affairs or healthcare decisions.
- A clause stating whether the power of attorney or healthcare advance directive is immediately effective or effective only upon the principal’s disability.
- If the document is effective only upon disability, the document should contain a description of how disability will be proven. This is important in order for bankers, brokerage companies, and healthcare providers to honor the documents.
- The authority to access and manage digital assets.

- The authority to establish trusts including the authority to establish certain Medicaid-friendly trusts such as the pooled trust, qualified income trust, and special needs trusts.
- The authority to make unlimited gifts with the guidance of an experienced elder law attorney.

In addition, the healthcare advance directive should describe a quality of life that is acceptable or unacceptable to the principal and describe treatment options when a quality of life is unacceptable to the principal. Before and after signing a healthcare advance directive, it is crucial to have conversations with your chosen agents and the rest of your family about the quality of life you value, and treatments you would or would not want in the event your quality of life is significantly diminished. The Conversation Ready Project has a “[Conversation Starter Kit](#)” and other resources to help you begin that conversation. Expressing your care and end of life wishes to your family is a gift that will give them great comfort during a time that is charged with emotion and often guilt.

Revocation. If an agent gets “too big for their britches,” or fails to follow your wishes, you may revoke either of these documents. The law and hopefully the document, describe how to revoke the agent’s authority. A healthcare advance directive may be revoked at any time by advising your healthcare provider, or it may be revoked in writing with a copy provided to your healthcare providers. A financial power of attorney may only be revoked in writing with a copy delivered to the agent, and the original revocation filed in the county of your residence.

Now that you are armed with knowledge about the foundation of your legal and financial planning, check out these websites to find a qualified elder law attorney near you:

- [The National Elder Law Foundation](#)
- [The National Academy of Elder Law Attorneys](#)