

LAW OFFICE OF
JOHN T. ANDERSON
1741 EAST WARDLOW ROAD
LONG BEACH, CALIFORNIA 90807

JOHN T. ANDERSON*

LISA R. NORMAN

ERIN M. PROTZMANN

*Certified Specialist in Estate Planning, Trust and
Probate Law by the State Bar of California Board of
Legal Specialization

TEL (562) 424-8619

FAX (562) 595-9662

John@trustlaw.ws

www.trustlaw.ws

PLANNING FOR INCAPACITY

Legal Matters You Need To Be Aware Of

- I. Married Couples:**
 - a. More options are available while both spouses have “capacity.”
 - b. Spouses have rights as to spousal property management.

- II. Unmarried Individuals:** Planning is easier while you have “capacity.”

- III. Must Have Legal Documents:**
 - a. Estate Plan**
 - i. It may include only a Will, or a Living Trust may be more appropriate for you.
 - ii. A healthy spouse should not use a Living Trust to pass benefits/assets to an incapacitated spouse.

 - b. Advanced Directive for Healthcare (formerly called a “Durable Power of Attorney for Healthcare”) with “HIPAA” Provisions:**
 - i. Your Advanced Directive for Healthcare must include “HIPAA” provisions.
 - ii. This is a grant of authority to one or more persons you select to make medical decisions for you if you are unable to do so.
 - iii. This could be for ongoing medical treatment, surgery, therapy, long-term care, or life support/end-of-life decisions.

 - c. Durable Power of Attorney (Finance):**
 - i. Also known as “a license to steal”
 - ii. This may be immediately effective or “springing.” If “springing,” it becomes effective upon a physician certifying your incapacity.
 - iii. Name only a person to be your “agent” or “attorney-in-fact” whom you have absolute confidence in to care for you and pay your bills and not steal from you.

- d. An Advanced Directive for Healthcare and a Durable Power of Attorney help avoid the time and expense of the legal system of obtaining a conservatorship.
 - i. A conservatorship is a court-supervised appointment of a person to handle personal decisions for you and/or financial matters.
 - ii. A conservatorship is an expensive process but it provides some protection because the court may look over how you are cared for or how your assets are used for your care.

IV. Professional Care Managers:

- a. They generally have training in areas concerning care for the incapacitated.
- b. They often have financial, medical, and social care backgrounds.
- c. These are professional who are aware of the type of services available and can help you decide which services at what expense will be best for your needs.

V. Medicare:

- a. A benefit through Social Security
- b. It will pay up to 100 days of convalescent care after a minimum of three days in an acute care hospital. It does not otherwise provide for nursing home care.
- c. It is not “Needs-based.”
- d. You are eligible or not based on Social Security eligibility.

VI. Medi-Cal:

- a. Called “Medicaid” in most states.
- b. It is a Federal/State/County benefits program which includes some benefits for long-term care if you qualify.
- c. It is a “Needs-based” welfare program.
- d. You must qualify based on your income and assets (resources) or receiving SSI.
- e. The Federal government contributes funds and rules. The State provides funds and rules. The county you are in provides the actual administrations of the program under direction of the state.
- f. You do not have to be “broke” or “homeless” to qualify for Medi-Cal.
- g. You do need expert advice and planning.
- h. The rules are constantly changing.
 - i. The State of California is several years behind qualification requirements of the Federal government.
 - ii. Laws are being changed, hearings are being held on key regulations, but planning is still advisable.

***DISCLAIMER:** The information contained in this handout is intended to inform the reader, generally, of issues in estate planning and planning for incapacity. It is not to be the final resource and should not be considered legal advice. To obtain detailed information or advice regarding a specific legal problem, you should contact a qualified attorney in your geographic area and state.*

We Look Forward to Serving You!