

BASIC INCAPACITY & ESTATE PLANNING CONSIDERATIONS  
[3P= third party]

I. Documents for Incapacity & to Avoid Guardianship

1. Durable Power of Attorney  
-3P can take over all non-medical matters for you
2. Health Care Surrogate  
-3P can make all medical decisions for you
3. Pre-Need Guardian  
-Names guardian of your choice during your incapacity
4. Stand-By Guardian  
-Names successor guardian if guardian unable to serve
5. Do Not Resuscitate Order  
-Tells paramedics NOT to resuscitate you
6. Living Will  
-Tells hospital not to keep you alive artificially
7. Living Trust (Inter Vivos Trust) - revocable/irrevocable  
-Document names trustee of your assets & beneficiaries  
-You can receive income during lifetime from it, and during any period (s) of incapacity  
-Trust assets need to be retitled in trust name  
-Excellent to avoid guardianship, to avoid probate, for family members with special needs, for minors, for large life insurance policies, & may be required to receive/retain govt. benefits
8. Insurance: life, disability, health, long term care, etc.

II. Documents Effective Upon Death

1. Last Will & Testament (probate instructions)  
-Document names your personal representative & beneficiaries for any assets you own alone at death
2. Testamentary Trust (trust in a Last Will & Testament)  
-Trust is established after you die via probate process
3. Living Trust (Inter Vivos Trust) - see above I/7
4. Life Insurance

III. Federal Estate Taxes [Estate and Gift Tax Individual Exemption]

In 2002-03: \$1 million; In 2004-05: \$1.5 million;  
In 2006-08: \$2 million; In 2009: \$3.5 million; In 2010: 0 tax;  
In 2011-2013: \$ 5.25 million; In 2014: \$5.34 million; In 2015: \$ 5.43 million;  
In 2016: \$ 5.45 million; In 2017: \$ 5.49 million; In 2018: \$11.2 million

IV. Probate (upon death )

Probate, a judicial process, occurs if one dies leaving assets titled in one's name alone.

To avoid probate, one can:

- (a) title all assets jointly or in trust for 3P - OR
- (b) establish a living trust.

**REMEMBER: EVERY ONE IS UNIQUE AND SO IS THEIR FAMILY SITUATION.  
THEREFORE, A PLAN THAT SUITS ONE PERSON MAY NOT SUIT ANOTHER.  
CONSULT A PROFESSIONAL TO DISCUSS THESE TOPICS IN DETAIL AND TO  
LEARN THE ADVANTAGES AND DISADVANTAGES.**

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