NAVIGATOR NEWSLETTER

Charting Your Financial Future

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Tax-saving strategies to help offset TCJA changes affecting charitable deductions.

By Eva Stark, JD, LL.M.

The Tax Cuts and Jobs Act of 2017 eliminated many itemized deductions while simultaneously increasing the standard deduction.[1] The result of the combination of these changes is that most individuals may no longer receive a tax benefit for charitable giving. This increases the importance of two tax-saving strategies that may benefit certain taxpayers: the qualified charitable distribution and the donor advised fund.

Qualified Charitable Distribution - For Individuals Age 70½ and Older

HOW IT WORKS: A qualified charitable distribution (QCD) allows individuals age 70½ and older to direct the transfer of money from their IRAs to qualifying charities, up to $100,000 annually. If all the requirements of a QCD are met, the distribution from the IRA is excluded from the donor's gross income and also can count toward required minimum distributions from the donor's IRA.

BENEFITS: One of the greatest benefits of the QCD is income exclusion, which can be substantially more advantageous than a charitable deduction. An income exclusion is tantamount to a 100% automatic deduction, whereas the tax benefit of a charitable deduction may be limited or precluded altogether by the increased standard deduction or limitations related to the taxpayer's adjusted gross income. A reduced gross income obtained using a QCD may additionally help reduce taxes on Social Security benefits or reduce Medicare premiums.

The table below illustrates the potential federal income tax benefit of a QCD for a couple intending to make a $20,000 charitable donation.

In order for a distribution to qualify, it must meet strict requirements, some of which include:

1. The distribution must be made directly by the IRA trustee to a qualifying charitable organization (donor advised funds and certain

Potential Income Tax Benefit of a QCD

	Deduction-Eligible Donation	Qualified Charitable Distribution
Non-IRA taxable income	$70,000	$70,000
Intended charitable donation	$20,000	$20,000
Required minimum distribution	$30,000	$30,000
QCD	$0	$20,000
Taxable IRA distribution	$30,000	$10,000
Total income	$100,000	$80,000
Itemized deduction for gift	$20,000	$0
Other itemized deductions	$10,000	$10,000
Total itemized deductions	$30,000	$10,000
Standard deduction (65+)	$26,700	$26,700
Deduction taken	$30,000 (itemized)	$26,700 (standard)
Taxable income	**$70,000**	**$53,300**

1 In 2019, the standard deduction is $12,200 for single filers, $24,400 for married filing jointly and $18,350 for head of household. Additional deduction for aged or blind is $1,300.

supporting organizations and private foundations are excluded).

2. The distribution must be made on or after the IRA owner attains age 70½.
3. The entire donation must otherwise qualify for the charitable deduction (e.g., the donor has not received goods or services in return, etc.). Percentage limitations relating to the taxpayer's adjusted gross income are generally ignored.
4. Not all IRA types are eligible (SIMPLE and SEP IRAs as well as employer-sponsored retirement plans may not be eligible in certain circumstances).
5. The taxpayer cannot take a deduction for a donation that was part of a QCD.

Donor Advised Fund - For All Other Individuals

HOW IT WORKS: A donor advised fund (DAF) is akin to a "charitable checking account," which is typically set up with a public charity. The donor may subsequently make recommendations for distributions from the account to benefit qualifying charities.

While the public charity is technically the owner of the funds and is not required to follow a donor's recommendations, charities are incentivized to do so in order to avoid alienating donors.

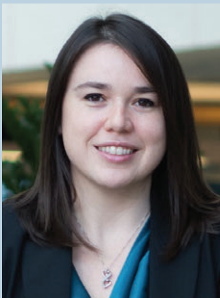
BENEFITS: A DAF is convenient and easy to set up, and it can offer substantial flexibility for subsequent giving. The donation is immediately eligible for a charitable deduction, if requirements are met. Because contributions to a DAF can be immediately deductible, a DAF may be used to "bunch" or "accelerate" multiple years' worth of charitable gifts for a greater tax benefit. Funds in the account grow tax-free, allowing for a greater charitable distribution.

The table below illustrates the potential federal income tax benefit of utilizing a DAF for a couple who plans to donate $10,000 annually to qualifying charities.

While experts recognize that tax savings are not the chief motivator for charitable giving, QCDs and DAFs can offer important tax and other savings for those who choose to support charitable endeavors. Individuals considering these strategies should explore their specific tax circumstances with their advisors, including any state and local tax implications that may not follow federal income tax rules.

Potential Income Tax Benefit of Using a DAF

	No Donor Advised Fund	Donor Advised Fund
Income	$100,000	$100,000
Charitable donation	$10,000/year	$10,000/year
Other itemized deductions	$12,000/year	$12,000/year
Standard deduction	$24,400	$24,400
Amount contributed to DAF	$0	$30,000 (3 years of donations)
Deduction taken	$24,400 (standard)	$42,000 (itemized)
Taxable income	**$75,600**	**$58,000**



Eva Stark, JD, LL.M., joined The Nautilus Group in 2014 to assist with the development of estate and business plans. She also performs advanced tax research. Eva graduated summa cum laude with a BS in economics and finance from The University of Texas at Dallas. She earned her JD, with honors, from Southern Methodist University, where she served as a student attorney and chief counsel at the SMU Federal Taxpayers Clinic. She received her LL.M. in taxation from Georgetown University Law Center. Prior to joining Nautilus, Eva worked in private practice in tax controversy, business law, and litigation.

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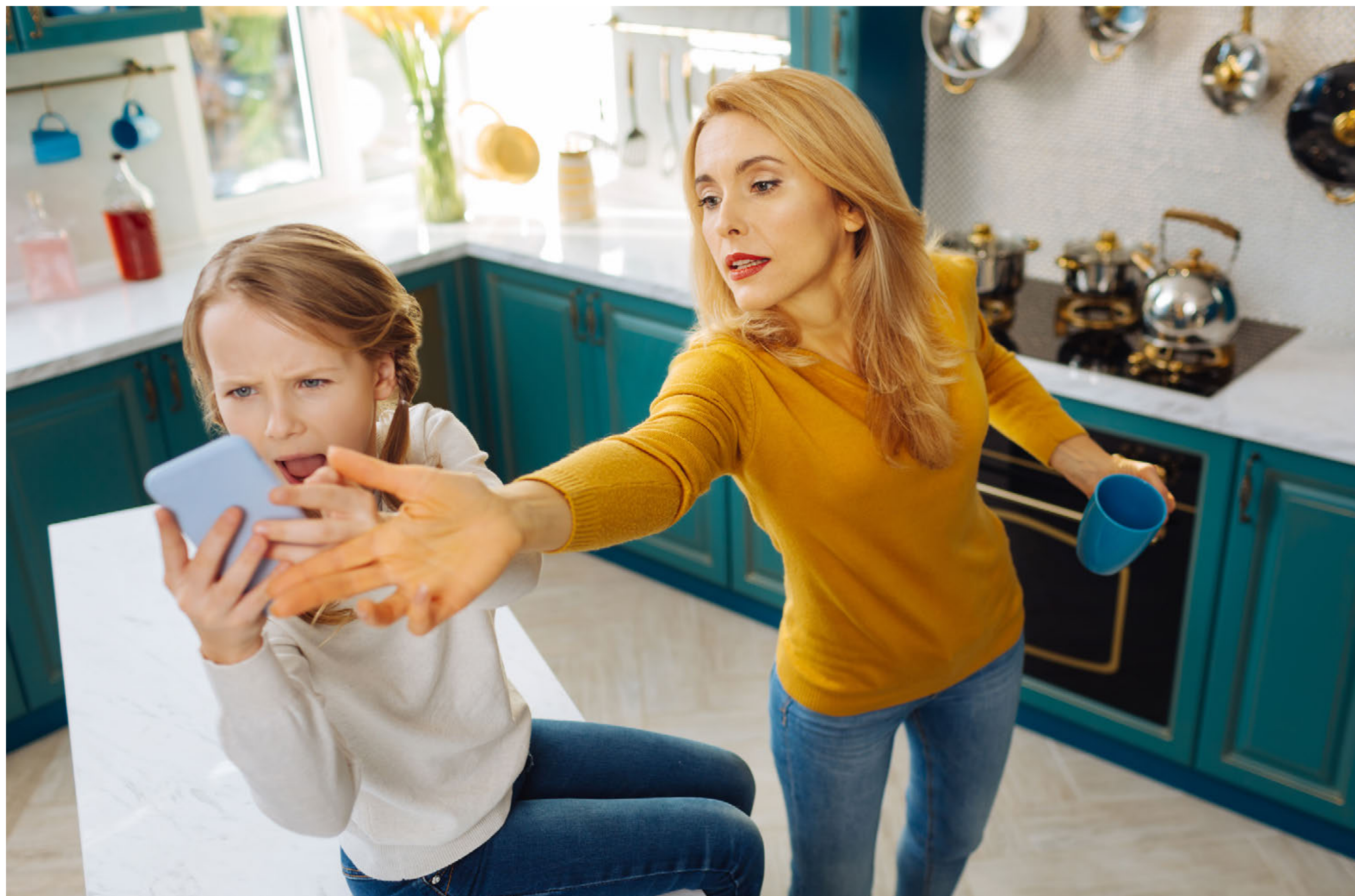
Estate Planning

Parenting stress in affluent families.

By Patricia M. Annino, JD, LL.M.



It is very hard to hold the line in a world that is constantly upping the ante, in which there is ever-growing pressure to be constantly improving, upgrading, keeping up with the Joneses, being in tip top physical shape, raising smart children, and surpassing your peers.

Your children feel this overwhelming pressure too.

They know how important it is that they excel academically, athletically and socially to get in the right schools and achieve success. Barry Schwartz of Swarthmore College points to mounting evidence that shows children of affluent families are becoming "increasingly troubled, reckless and self-destructive."

Likewise, Professor Suniya Luther of Arizona State University notes that children growing up in wealthier households are more likely to suffer from anxiety and depression. Both experts say that there are comparable levels of delinquency for lower and upper income families, the difference being that in wealthier families, children steal from their parents and peers.

In a piece for Atlantic Monthly, Hanna Roisin writes that one reason for this is the great amount of pressure they feel from their parents, teachers and even themselves. When they don't meet the high expectations set for them, they often feel inadequate and alone.

What can you do about this?

Start with self-evaluation. Examine what your core family values are and whether you are instilling them in your children effectively. Are they learning hard work, persistence and compassion? The values you impart

affect the way your children perceive and deal with the demands of life. If you are presenting a lifestyle in which material consumption and luxury goods are a priority, your children will imitate this. What they see and hear at home becomes their example, so make sure that your family values are prioritized and practiced by yourself first.

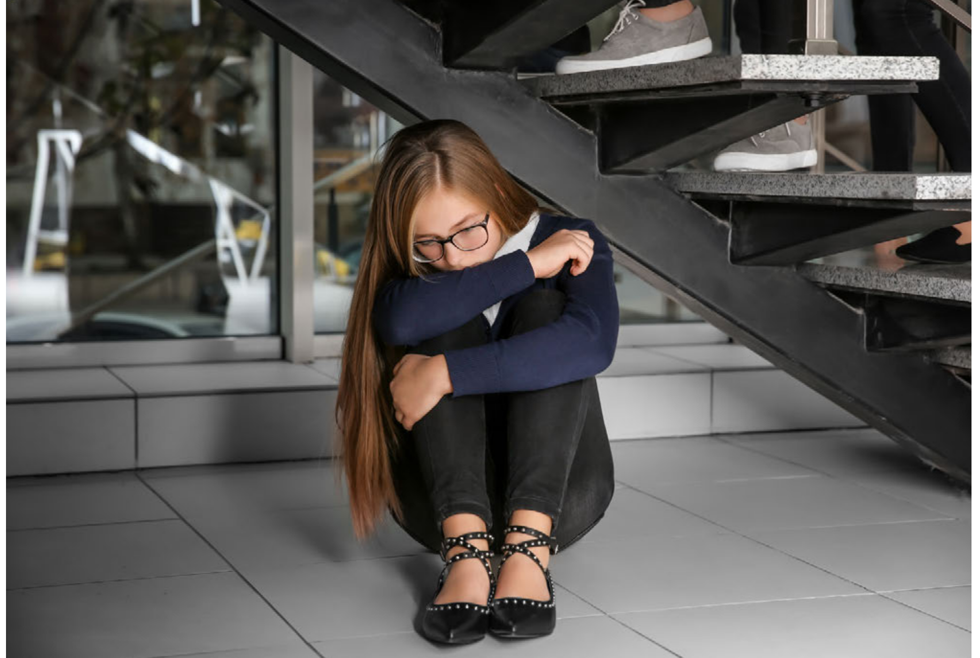
You might also want to ask yourself whether you spend enough quality time with them by evaluating how often you have dinner together or go on family trips, as well as the quality of conversations you have with them. Keeping tabs on what they are going through will help you recognize warning signs that your child is feeling too much pressure.

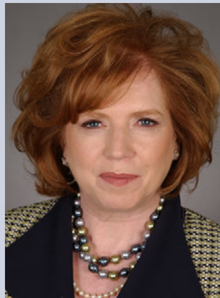
Also, it will give you a chance to discuss what your expectations are, what happens if they don't meet them, and how they feel about them.

Consider consulting with a pediatrician, clergy, family member or trusted friend to talk about the levels of stress and the accompanying issues it has on you, your children and the rest of your family.

Giving your children a space to explore these issues will help avoid more serious problems as they become older.

If you notice your children are already acting out by hitting your liquor cabinet or stealing money, it may be that they cannot cope. Stop and think about the pressures you impose both on yourself and on your children. Are they appropriate levels of pressure or are they too much for them to handle? Maybe step back for a moment and look at the bigger picture. Think about what will happen if your children don't reach the high bar you have set or what they will have to sacrifice to reach it. Ask yourself if these expectations or the appearance of a certain kind of life are more important than your children's mental and emotional wellbeing.





Patricia Annino is a nationally recognized authority on estate planning and taxation, with more than 30 years of experience serving the estate planning needs of families, individuals, and owners of closely held and family owned businesses. She has written five books and also writes a monthly column for AICPA's CPA Insider, a newsletter sent to more than 320,000 CPAs. Patricia is a graduate of Smith College (A.B.), Suffolk University School of Law (J.D.) and Boston University School of Law (L.L.M. in Taxation). She is a Fellow of the American College of Trust and Estates Council, and a member of the Board of Directors of Family Firm Institute, the Board of Directors of Business Families Foundation, and the Advisory Board of the Indiana University Women's Philanthropy Institute.

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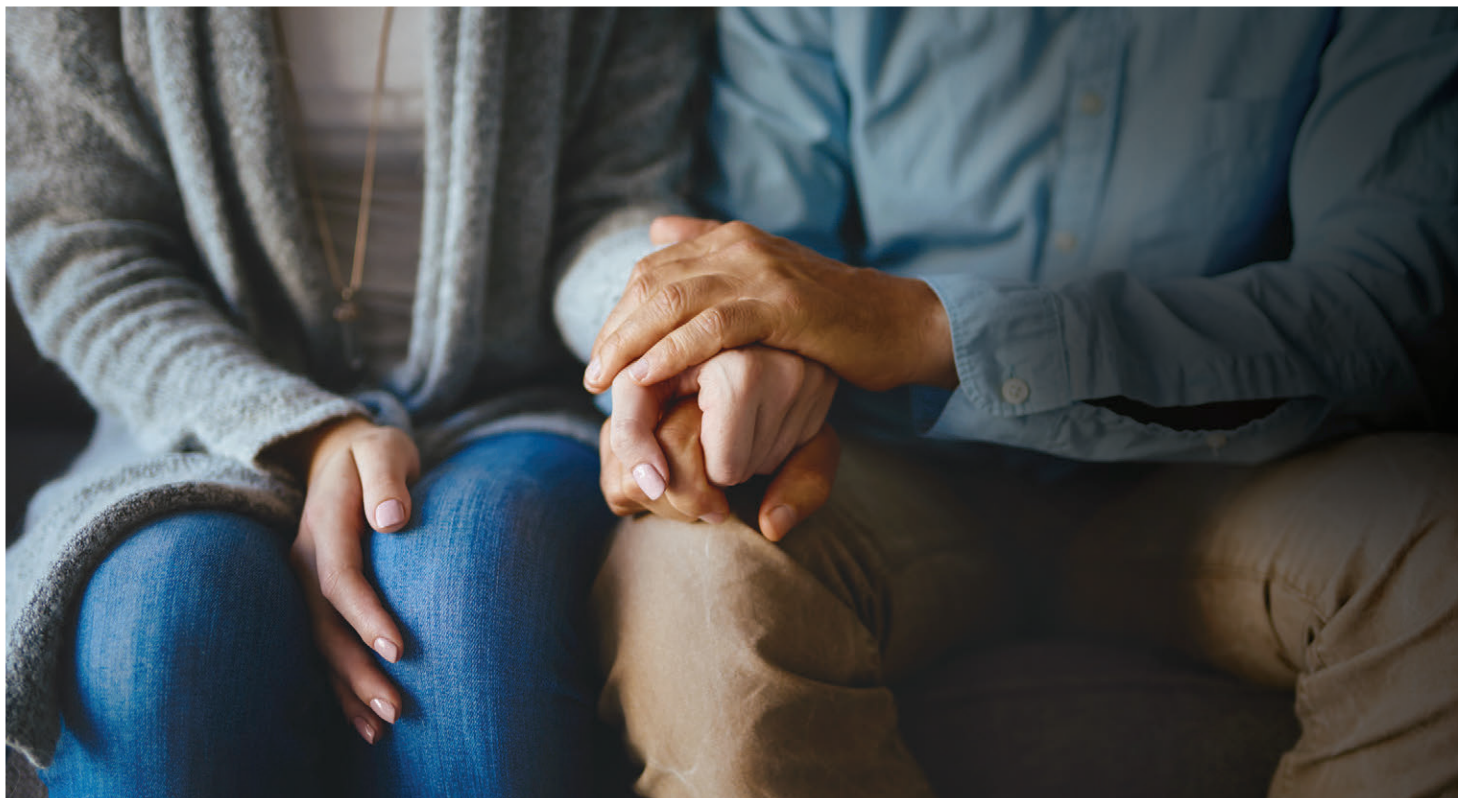
Estate Planning

Planning for incapacity or disability.

By David Toups, JD, MBA, CFA®, CFP®, CTFA



As people grow older and, hopefully, wiser, their mortality becomes a more frequent consideration, and estate planning takes on an ever-increasing importance. Modern medicine and healthier lifestyles have greatly contributed to Americans living longer than ever before. Diseases and infirmities that previously ended lives in prior generations are now remedied or treated; however, those remedies and treatments that prevent a fatality are increasingly resulting in incapacity or disability instead.

In our fast-paced life in the United States, younger adults rarely consider their own mortality, much less the possibility of disability or incapacity. Unfortunately, for younger adults, the likelihood of being disabled or incapacitated greatly exceeds their chance of dying. Individuals in their 30s are three to four times more likely to be disabled than to die, and those in their 40s are over twice as likely to be disabled than die. Failing to plan for incapacity or disability can prove costly without the provisions and structures designed to handle such a contingency.

As a legal foundation for capacity planning, the law in the United States presumes the capacity of an individual upon their 18th birthday and all of the rights recognized in the Constitution spring into effect at that time. Restricting or limiting any of those rights requires affirmative legal action to do so. A guardianship or conservatorship proceeding is such an action, and it seeks to restrict or limit those rights for the good or benefit of an individual alleged to be incapacitated.

Similarly, just as the law presumes capacity at 18, the law presumes incapacity for minors. Even though a teenager may demonstrate a maturity exceeding most 30-year-olds, the law draws a bright-line rule and until the age of majority, without an emancipation proceeding, minors may not represent themselves in court, have contractual agreements enforced against them, or receive medical treatment without parental consent.

Whether it's for mental incapacity, physical disability, or legal agency, capacity planning comprises an important part of a solid estate plan.

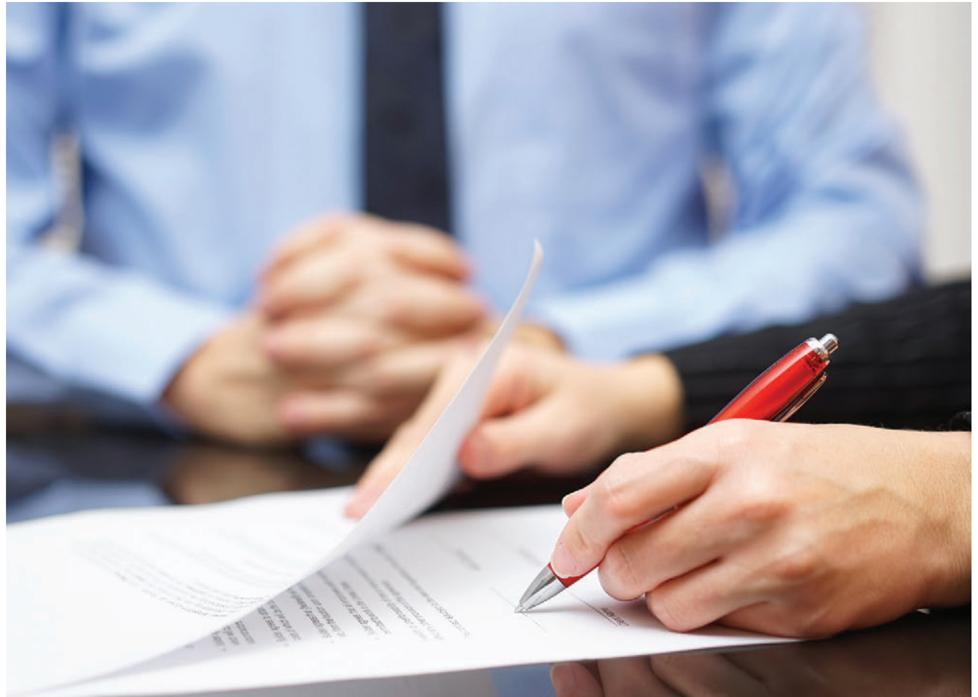
The following documents can help to address certain needs that arise when incapacity or disability strikes.

Power of Attorney

A power of attorney is a legal document which permits a person to designate or name another person to act on his or her behalf as an agent. The powers granted to the agent can be broad or very narrow, for as long as the principal indicates, up until the principal's death. The power of attorney can be made durable, which means that the named agent(s) may continue to act for the principal even if the principal has become incapacitated.

For capacity planning purposes, a durable power of attorney permits the agent to act for the principal, but the document does not remove the principal's ability to act. It is a great tool to help avoid costly guardianship proceedings since someone can conduct the personal and business affairs of the principal without having a guardian appointed. However, if the principal is suffering with an impairment that waxes and wanes, such as mild Alzheimer's disease, and third parties would not be aware that the person is incapacitated when doing business with them, a guardianship may be needed to remove the principal's ability to act.

At the time of execution, the principal must have capacity to execute and name agents to act on his or her behalf. A person without capacity may be able to physically sign his name on a document but, without capacity, legally the document is invalid. Also, if the persons assisting or inducing the power of attorney to be signed know that the person is incapacitated, they may be liable for their actions. Additionally, for entrepreneurs and executives who have built companies and established business holdings, a business succession plan should contain a specific power of attorney for business decisions naming agents capable of managing those holdings if the other business succession plan documents do not specifically address such an event or contingency.



Medical Power of Attorney

A medical power of attorney is a power of attorney that is specifically structured to address health care decisions. The principal names agents to act on his or her behalf regarding medical treatment and services to be provided in the event the principal is unable to provide the direction.

From a legal perspective, patients provide consent to physicians to perform medical examinations and procedures; otherwise, the procedure would constitute a battery for which the doctor could be liable. Assumed in the interactions performed in hospitals and doctors' offices daily is the capacity of the patient to consent. Absent capacity, a patient cannot provide the necessary consent for the doctor or provider to perform the medical procedure or service.

Without a durable medical power of attorney, upon incapacity, a guardianship may need to commence in order to designate someone who may consent to medical services and treatments for that person.

Revocable Trusts

Trusts often prove to be a useful tool for capacity planning, especially when the grantor's holdings and properties are plentiful, diverse, or exist in more than one state. For single entrepreneurs, if your next drive on the highway results in an accident, leaving you incapacitated, the likelihood that your friends or family know all of the places you have businesses, accounts, policies, properties, or holdings is rather remote and exceptionally unusual.

A trust is the separation of legal and equitable title to property recognized under the law. A revocable trust permits the creator or grantor the ability to amend or revoke the trust after its creation. When properly funded with the grantor's assets, it functions as a convenient treasure house for his or her holdings. A

grantor typically names himself or herself as trustee, who manages and administers the assets in the trust. Additionally, the grantor typically appoints successor trustees to act. Upon the grantor's disability, the successor trustee can immediately step in with authority to act, provide direction, and care for the incapacitated grantor. Property located out of state, if properly transferred to the trust, would not require legal proceedings to transfer or administer the assets. Additionally, the nature and extent of the assets and holdings would not be subject to public disclosure, which may occur if guardianship or conservatorship proceedings related to the estate had to commence.

Designation of Guardians or Conservators

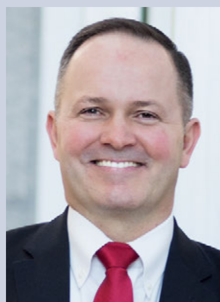
Certain states provide statutory legal forms that may be used to designate a guardian or conservator in the event one is necessary. These documents should be executed as part of an overall estate plan. If the document proves unnecessary, the cost of its preparation should be negligible; however, if the need arises for a guardian, it prevents a problematic child or greedy relative from serving as guardian or conservator or subjecting the estate to litigation to become guardian or conservator over others more deserving. Some estate planning attorneys include language in their client's powers of attorney indicating that certain named agents should serve as guardian or conservator if such proceedings were to commence. In some states, the filing of a guardianship or conservatorship proceeding suspends the powers of designated agents under a durable power of attorney, which may lead to gamesmanship as attorneys jockey to have their client appointed as guardian or conservator of the estate.

Guardianship or Conservatorship

If no planning exists or circumstances require it, a guardianship or conservatorship proceeding may commence for the incapacitated person. A court of law must determine if the person is incapacitated and, if so, what powers the guardian or conservator may exercise in his or her best interest. The court provides oversight of the guardian or conservator, often with periodic reporting back to the court regarding the health and status of the incapacitated person or his or her estate. Without capacity planning documents, strangers determine who will serve as guardian or conservator of the incapacitated person and his or her estate. Since legal proceedings and oversight exist, the cost associated with guardianship or conservatorship proceedings rise quickly. Also, entrepreneurs serve as the foremost experts on how to operate, manage, and profitably conduct their businesses and properties, but if the entrepreneur fails to designate anyone to serve in his or her place, a judge without the benefit of such knowledge and experience does so—often with far less favorable results to the estate.

The necessity of an effective capacity plan is directly proportional to the uniqueness and size of a person's estate and holdings. As the number of persons able to effectively manage and administer a person's assets decrease, the importance of creating a succession plan in the event of the principal's incapacity becomes critical; otherwise, the losses resulting from delay, indecision, or mismanagement may prove devastating, leaving the incapacitated person and their loved ones in an economic state far below that previously enjoyed.

Discussing capacity planning and other available planning alternatives with a trusted financial advisor may prove to be the wisest action you take this year.



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