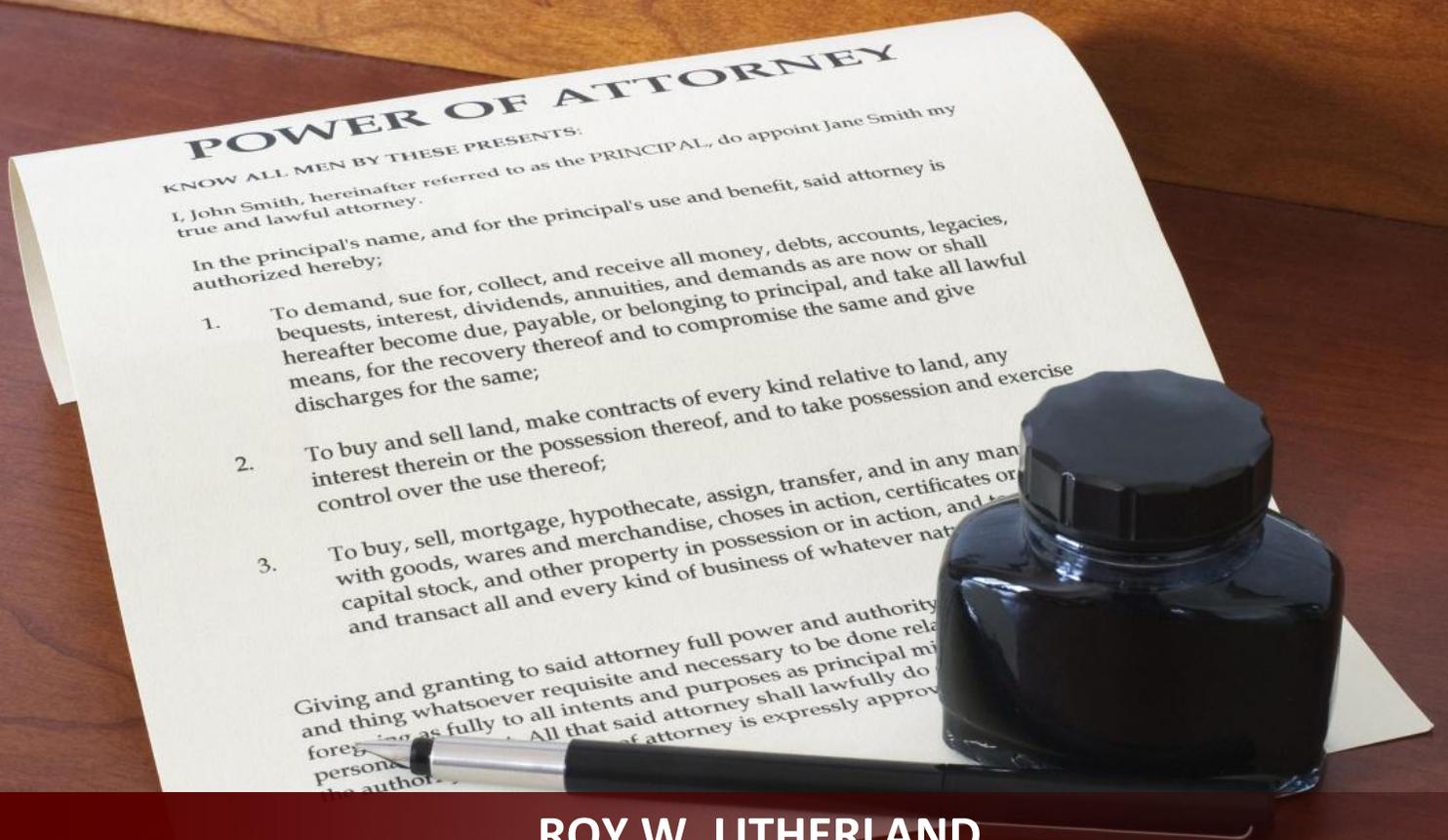


# WHY SHOULD I HAVE A DURABLE POWER OF ATTORNEY?

*A Truly Comprehensive Estate Plan  
Will Address the Eventualities that You May Face During the  
Latter Portion of Your Life*



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*Incapacity planning is important because a significant percentage of elders become unable to manage their own affairs. There are many causes of incapacity, but Alzheimer's disease is a leading culprit, and it is widespread.*



The process of estate planning is going to have a lot to do with monetary matters. You want to make sure that your loved ones receive their inheritances in a timely and efficient manner. It is also important to address any asset protection and/or tax concerns that you may have.

This having been stated, you should ideally take things a step further. A truly comprehensive estate plan will address the eventualities that you may face during the latter portion of your life.

With this in mind, we will look at the value of durable powers of attorney in this paper.

### ***Incapacity Planning***

Incapacity planning is often overlooked because it can be hard to imagine a time when you will no longer be able to handle all of your own affairs. However, when you look at the facts, you see that incapacity is actually quite common among elder Americans.

Some people become incapacitated because they have physical ailments. They simply cannot communicate. Others can communicate on a limited basis, and they may not be able to think clearly.

There are other seniors who suffer from various levels of cognitive impairment. One of the primary causes of impairment is Alzheimer's disease.

We have all heard about Alzheimer's disease, but you may not be aware of how common it has become. The Alzheimer's Association does a lot of great work educating the public about this looming threat. Their website contains a plethora of useful information.



*If you do nothing, the court could be petitioned to appoint a conservator to act on your behalf. There are various drawbacks that go along with a conservatorship*



According to the Alzheimer's Association, one out of every eight seniors suffers from Alzheimer's disease. This is a reasonably significant percentage, but the likelihood of contracting the disease increases as you get older. Studies show that 40 to 45 percent of people who are at least 85 have contracted Alzheimer's.

Alzheimer's disease can cause dementia, and those who are suffering from dementia are typically going to become unable to make sound decisions on their own.

### **California Adult Conservatorship**

If you were to become unable to handle your own affairs due to Alzheimer's induced dementia or for some other reason, interested parties could petition the court to convene a conservatorship proceeding.

The court could ultimately appoint a conservator to handle your affairs.

There are some drawbacks that go along with a conservatorship. For one, the conservator that is chosen by the court may not be someone that you would have selected when you were of sound mind.

Secondly, everyone in the family may not be on the same page. People could disagree with regard to the appropriate choice of conservator.

Lastly, the process can be time-consuming, and this can present difficulties if immediate action is required.



## FREE ELDER LAW REPORT

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Medicaid (Medi-Cal in California) is a government funded program that provide financial assistance for seniors that need help paying for healthcare services such as a nursing home. People must meet certain criteria in order to receive Medicaid. In some cases, trying to meet eligibility for Medicaid can leave a person with nothing, often having to deplete their net worth, or give assets away in order to qualify for Medicaid. But with a little Medicaid Planning, you can use this government benefit and still retain your estate.

## ***Durable Powers of Attorney***

Now that we have provided the necessary background information about incapacity and conservatorship, we can look at durable powers of attorney.

You could create a durable power of attorney to name a decision-maker to act on your behalf in the event of your incapacitation. This would make a conservatorship hearing unnecessary, because a hand-picked decision-maker would already be in place.

Because the document is durable, it will remain in effect even if you become incapacitated. A power of attorney that is not specifically designated as durable would become ineffective in the event of the incapacitation of the grantor.

There are different types of decisions that may present themselves. There are financial matters, and there are health care issues.

The person that you would like to see handling your finances may not be the same person that you would like to empower to make health care decisions on your behalf. You can account for this by executing two different durable powers of attorney: one for health care, and one for financial decision-making. You could name a different agent or attorney-in-fact for each respective purpose.

When you are choosing agents to act on your behalf, you should consider longevity. The person that you choose may be called upon to act many years after you execute the documents.

## ABOUT THE AUTHOR

### ROY W. LITHERLAND



Roy Litherland has been providing legal services in Santa Clara and Santa Cruz Counties continuously since 1975.

Roy has an undergraduate degree in accounting from Indiana State University, and a Juris Doctor degree from Indiana University, where he graduated cum laude. In law school he was a recipient of the Dean Faust Award and received awards and honors in income taxation and estate and gift taxation.

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## Conclusion

Incapacity planning is important, because a significant percentage of elders become unable to manage their own affairs. There are many causes of incapacity, but Alzheimer's disease is a leading culprit, and it is widespread.

If you do nothing, the state could be petitioned to appoint a conservator to act on your behalf. There are various drawbacks that go along with a conservatorship.

When you execute durable powers of attorney, decision-makers of your own choosing would be in place to act in the event of your incapacitation.

To put these essential documents in place, schedule a consultation with a licensed estate planning attorney.

## References

American Bar Association

[http://www.americanbar.org/groups/law\\_aging/resources/health\\_care\\_decision\\_making/consumer\\_s\\_toolkit\\_for\\_health\\_care\\_advance\\_planning.html](http://www.americanbar.org/groups/law_aging/resources/health_care_decision_making/consumer_s_toolkit_for_health_care_advance_planning.html)

Alzheimer's Association

<http://alz.org>