

## **Practical Probate: Incapacity, Conservatorships and the Probate Court**

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Many people use wills to direct how their assets will be distributed after they die. However, few people plan for legal incapacity, which can occur suddenly and without warning. Wills have no utility while the person who created the will is living. A will has legal significance only after it has been admitted by a probate court.

Imagine that a loved one becomes incapable of managing their affairs – perhaps they cannot communicate, maybe they are unconscious for an extended period of time, or simply cannot understand what is going on around them. Trauma, illnesses such as dementia, or a surgical procedure gone awry are just a few of the real life situations that may give rise to legal incapacity. What medical decisions need to be made? Perhaps decisions on providing or withdrawing life saving or life sustaining medical interventions must be made. Who will make them? What are patient's wishes in that situation?

If the incapacitated person has not planned for such a contingency, it may be necessary to go to the probate court for the appointment of a conservator. Conservatorship proceedings, particularly when someone is incapacitated, can be time consuming and expensive.

How will the incapacitated person's financial affairs be handled? Bills may need to be paid. Assets such as a home or automobile may need to be protected and maintained. Financial accounts may need to be managed. Income, such as social security, pension, interest, or insurance proceeds may need to be deposited. Taxes may need to be paid. Perhaps one or more businesses must be managed. Dependents, such as minor children, may need to be supported. These kinds of situations are stressful; family members may not know what to do; financial institutions and healthcare providers may refuse to deal with family members for fear of inappropriately disclosing confidential information. Assets may be wasted or jeopardized.

While some may find it difficult to discuss, planning for incapacity can go a long way toward reducing the stress and uncertainty families face in such situations by having the legal measures in place in advance to manage the incapacitated person's affairs. Fortunately, there are a number of legal tools available to provide for legal incapacity, so that many or all of these issues can be effectively dealt with without having to go to the probate court. Unfortunately, once a person becomes legally incapacitated, it is too late to create these measures if the incapacitated person hadn't already

done so before they became incapacitated.

Another article on this website briefly reviews power of attorney as a legal tool available in Connecticut to plan for incapacity. Other legal tools, such as appointment of healthcare representative, advance directives, living trusts, advance designation of conservator, and alternative ways of titling assets, such as survivorship, payable on death, and beneficiary designations are the subject of individual articles on this website as well.

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## **About the author**



Dom Calabrese has been a Connecticut Probate Judge since 2002. He's currently the judge in the Region 22 Probate District in Southbury, Connecticut and is a judge in the Waterbury Regional Children's Court.

Dom also practices law with locations in Stamford and Watertown, Connecticut. His areas of practice include probate, estate planning, trusts, wills, planning for incapacity, asset protection, commercial transactions, contracts and agreements, and business counsel.

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