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# Incapacity Planning

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*In planning for incapacity, one should consider the consequences in relation to:*  
Personal affairs  
Financial affairs  
Legal affairs

Most people do not consider the consequences of incapacity. As a result when incapacity strikes they are unprepared for the issues that they will face. In order to develop a comprehensive incapacity plan is important to consider the nature of incapacity, the personal consequences of incapacity, the financial consequences of incapacity, and the legal consequences of incapacity.

## Nature and Consequence of Incapacity

### **Incapacity may be short term:**

Incapacity may stem from an accident resulting in broken limbs, concussion or other trauma which may be treated and restored with time. It may be caused by illness, such as a virus or bacteria, which may be treated and overcome.

### **Incapacity may be long-term:**

Incapacity may result from progressive illness, hereditary disease or permanent disability resulting from traumatic injury. These may affect physical and mental capacity which in turn will affect social capacity.

Perhaps the greatest effect of mental or physical incapacity is the transfer of added responsibility to family members. The loss of physical capacity will result in considerable physical and emotional demands being placed on family members to support and care for a loved one. Time spent attending to the physical and mental needs can be quite considerable for the care-givers. The financial consequences of incapacity can be devastating, as a result of the loss of income, the cost of care and the cost of lost opportunities. The most vulnerable group of care-givers are professionals and business owners whose business income is dependent upon their personal contribution, because in that situation their financial dependents also include their employees.

The stress may be magnified when the loved one is not able to discharge their legal capacity. This is particularly true where business owners have not contemplated who will be able to act on behalf of the company in their absence, or where trustees of family trusts become incapable and there are not alternate trustees. Ensuring that spouses, key staff or trusted advisors have the ability to act on personal and business financial affairs (including real estate, investments, bank accounts and credit facilities) will significantly reduce this stress, especially if there has been meaningful discussion regarding these matters.



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## Developing an Incapacity Plan

In order to develop an effective incapacity plan it is important to address how to deal with the issues of legal incapacity, and how to address some of the financial consequences.

Legal incapacity will generally involve government participation in order to protect the rights of the individual who has become incapable. This government interference can be specifically addressed by one of three documents:

### Enduring Power of Attorney

Having an Enduring Power of Attorney (POA) grants immediate authority to somebody to act as our attorney or agent in all potential matters. It is called “Enduring” because it endures beyond our capacity to terminate it. These powers are granted to our attorney immediately upon the execution of the document. As long as we have mental capacity we may revoke a power of attorney and issue a new one in favour of anyone else that we choose.

### Appointment of Committee

Appointment of Committee grants authority to somebody to act on our affairs only after we have been medically certified to have lost mental capacity. Again, this document may be changed or revoked at any point prior to certification.

### Healthcare Representation Agreement

A Healthcare Representation Agreement may be used to grant authority to a person different from the Enduring Power of Attorney to govern decisions related to health care and well being. This document may empower family members to gain access to medical information in order to assist loved ones in the management of their health care both prior to, and after loss of mental capacity.

In order to deal with the financial consequences of incapacity, it is appropriate to consider income replacement insurance, business overhead insurance, critical illness insurance and long-term care insurance. While some of these benefits may be considered within a group benefits plan, coverage is generally not proportional to the needs of the business owner and specific planning should be considered to protect the family’s quality of life.

## Risk Management and Incapacity

The best plan for incapacity is to manage the risks that might cause such incapacity. Personal considerations include healthy lifestyle, nutrition, exercise and relaxation. Clearly we need to consider occupational risks that stem from a work environment and be careful not to take unnecessary chances or shortcuts. In recreation we need to consider carefully the risks that we take and always take the appropriate protective measures and wear protective clothing. Consider the fact that you insure your buildings, offices, equipment, and vehicles against the risk of fire, theft or other loss. As the business owner you are more important than any of these assets to the success of the business. You need a comprehensive Incapacity plan to ensure the success of your business, protect your family quality of life, and ensure your financial security in the event of incapacity.

