

# 8/16/2025 Getting reacquainted with key documents like durable power attorney, advanced health care directive, living will, medical power of attorney by *Mike Lonich*

## Bio

Mike Lonich has 40 years of experience as an estate planning lawyer. He joined the law firm Lonich, Patton, Ehrlich & Policastri in 1994 and works to provide Estate Planning for people, both clients and their caregivers, in an organized way so when the time comes and things happen, the correct documents are in place to seamlessly and respectively benefit both.

## Purpose

- **Reviewing legal documents** is essential for effective estate planning and to avoid common red flags.
- Plan to review and update documents regularly.

## Key Documents & Their Roles

### 1. Advance Healthcare Directives (Personal)

- Designate a healthcare agent.
- Often much more important earlier in life than people realize.
- Carefully consider who serves as agent; often a child, but this isn't always the best choice due to capacity or experience.

### 2. Durable Power of Attorney (Financial)

- Appoints someone ("agent") to handle financial matters if incapacitated.
- Be wary of potential for fraud.
- Bank access is critical (to pay bills, keep financial matters current).

### 3. Trusts

- "A **trust** is a legal relationship in which the owner of property, or any transferable right, gives it to another (trustee) to manage and use solely for the benefit of a designated person. Trustees have a fiduciary duty to manage the trust for the benefit of the equitable owners."
  - You can choose what assets to transfer into a trust. Ideally, the trust should own everything, e.g. real estate properties, personal properties, etc.
    - Trust should be consistent with DPA (Durable Power of Attorney)
- It's very important for all three documents to be working together.

Advance Healthcare Directives (AHCD) and Durable Power of Attorney (DPA) are statutory. Both documents have uniform probate codes that are very similar across all 50 states. However, one should consider “tweaking” the documents if relocating to another state.

\*\* AHCD and DPA lost their powers when the person passes away. \*\*

### **Advance Healthcare Directives**

- Kaiser has its own (with more gentle questions)
- Sutter Health / PAMF have good information about AHCD on their websites:
  - <https://www.sutterhealth.org/health/advanced-healthcare-directives>
- You can download a state-specific AHCD form from:
  - <https://prepareforyourcare.org/en/prepare-for-your-care/advance-directive/advance-directive-welcome>
    - You can specify your religious beliefs in the AHCD. As such, you can outline your wishes for spiritual support, rituals, or other religious observances so medical professional and hospital can take that into treatment consideration in case you are incapacitated

### **Durable Power of Attorney**

- In general, DPA covers banking, insurance, and dealing with trust.
- **Best practice:** Mike recommended excluding gifting and self-gifting when setting up a DPA.

### **How Often to Review & Update?**

- Best if current to the last 5 years.
  - Even if the laws haven't changed, documents may not always stand the test of time as a person's life situation can change.
  - Updates should typically occur every 5 years or following any significant event.
- **Best practice:** Review estate planning documents after major life changes (marriage, divorce, relocation, death, etc.).

### **Choosing and Updating Agents**

- **Agent selection:**
  - Typically defaults to a spouse or child, but that's not always the best choice.
  - Choose someone capable and trustworthy.
  - You can and should change agents as circumstances change.
- **Agent powers:**

- Agents must be able to pay bills, keep utilities running, and manage affairs.
- Consider alternatives if your chosen agent is not up to the task.
- **Succession and oversight:**
  - Avoid co-agents if possible to prevent conflicts.
  - Successor agents should be specified and be capable of assuming responsibility smoothly.

## Handling Major Life Changes

- **Events requiring updates:**
  - Children becoming adults, divorce, death, health changes, moving out of state, shifts in family dynamics, or new assets.
  - Review beneficiaries and notify them if there are important changes.

## Practical Considerations

- **Storage and access:**
  - Keep all documents accessible and up to date.
  - Avoid out-of-date or unsigned copies.
- **Coordination among documents:**
  - The trust, DPA, and health directives should work together.
  - Ensure that who serves as trustee aligns with who holds other roles for smooth management.
- **Transitions for incapacity:**
  - Consider establishing joint accounts for easier transitions.
  - A signatory (not an owner) can help avoid account freezes.
- **Conservatorship:**
  - Suggest avoiding. It's expensive (typical setup costs ~\$25,000), and requires court interview and monitoring.

## Additional Notes

- **HIPAA and Agent Rights:**
  - Make sure agents have the necessary legal authority to access medical records.
- Part of AHCD now.
  - **Attorney and Advisor Readiness:**
    - Your advisor and family should be ready to act if the need arises.
  - **Costs and Practicalities:**
    - There is a setup costs for establishing a trust
    - Trustees have broad discretion—make sure family is aware.

## Activating Power of Attorney

- Two main ways:
  - Upon execution (effective immediately).
  - Upon incapacity, typically requiring a doctor's note or certain triggers (recommended for trust).

## **Final Reminders**

- Don't leave "default" or outdated designations in place.
- Regular reviews are necessary because documents can become obsolete or lost.
- Consider consulting with qualified professionals and include family in planning to avoid confusion and conflict.

## **Legal requirements concerning notification to beneficiaries when a Trust creator becomes incapacitated (Probate Code 15800)**

Excerpt from <https://codes.findlaw.com/ca/probate-code/prob-sect-15800/>:

"(1) Within 60 days of receiving information establishing the incompetency of the last person holding the power to revoke the trust, the trustee shall provide notice of the application of this subdivision and a true and complete copy of the trust instrument and any amendments to each beneficiary to whom the trustee would be required or authorized to distribute income or principal if the settlor had died as of the date of receipt of the information. If the trust has been completely restated, the trustee need not include the trust instrument or amendments superseded by the last restatement."