

What Is Incapacity? And What To Do If Your Parent Has It?

As our loved ones get older they may start to lose some of their mental capacity. When is forgetfulness just “senior moments” and when does it become dementia? How do you know if your parents are suffering from a dangerous debilitating disease like Alzheimer’s? You may not know for sure unless you have them tested. However, doctors, in general, do minimal cursory tests that may not give you enough information to make important decisions for the care and safety of your parent. These are hard questions.

One way to protect your parent is to make sure they have a durable power of attorney for asset management and an advance health care directive signed and notarized before they become incapacitated. When you use documents like these the definition of incapacity can be written in to the document. Like many legal provisions you can alter the standard legal definition by writing your own definition in your document.

The legal definition of incapacity provided by the California Probate Code provides:

A person is of unsound mind or lacks the capacity to make a decision or do a certain act when there is a deficit in at least one of the following mental functions and the deficit significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the act or decision in question:

(1) Alertness and attention:

- (A) Level of arousal or consciousness.
- (B) Orientation to time, place, person, and situation.
- (C) Ability to attend and concentrate.

(2) Information processing:

- (A) Short- and long-term memory, immediate recall.
- (B) Ability to understand or communicate with others, either verbally or otherwise.
- (C) Recognition of familiar objects and familiar persons.
- (D) Ability to understand and appreciate quantities.
- (E) Ability to reason using abstract concepts.
- (F) Ability to plan, organize, and carry out actions in one's own rational self-interest.
- (G) Ability to reason logically.

(3) Thought processes:

- (A) Severely disorganized thinking.
- (B) Hallucinations.
- (C) Delusions.
- (D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect: a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

These are the areas of cognizance that are tested to determine if a person is legally incapacitated, such as when a conservatorship is in question. You can write in your parent’s power of attorney that they are considered incapacitated if you get a letter from 2 doctors saying so. This makes it much easier to take control of your parent’s financial affairs when it becomes necessary. For more information please contact us Law Offices of Patricia Rowe (925) 256-1000.