



ESTATE PLANNING



The Fundamentals

Resource Guide for Your Next Steps

- Planning Your Legacy
- Meeting Your Goals
- Supporting Your Family

Everyone should have a purposeful strategy based on what matters most to them.



Spartanburg
County
Foundation

424 E. Kennedy Street
Spartanburg, SC 29302
864.582.0138

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Event field experts and contributors to this guide are listed on page 2.

References

Ponda Caldwell

Spartanburg County Probate Court
180 Magnolia St
Spartanburg, SC 29306
[\(864\) 596-2500](tel:(864)596-2500)

Sonja Parker, CRPC® CEPA®

Edward Jones
7106 SC-9
Inman, SC 29349
[\(864\) 592-1193](tel:(864)592-1193)

James W. Shaw, Esquire, PA

JShaw@dsdlegal.com

and

Virginia Wood, Esquire

Vwood@dsdlegal.com

From

Dennis, Shaw, Drennan & Pack, LLC

www.dsdlegal.com
103 Lafayette Street
Spartanburg, SC 29302
864.582.0708

J. William “Bill” Strickland, Esquire

wstrickland@jwspa.com
3 Summit Trace Court
Spartanburg, SC 29307
<https://jwspa.com>
864.591.5783

Alan M. Tewkesbury, Jr., Esquire

atewkesbury@jhshwlaw.com

Johnson, Smith, Hibbard, & Wildman Law Firm

Shane W. Rogers , Esquire

srogers@jshwlaw.com

Kristin Burnett Barber , Esquire

kbarber@jshwlaw.com

www.jshwlaw.com

220 N. Church Street

Spartanburg, SC 29306

American Bar Association

[Estate Planning](#)

https://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/

Spartanburg County Foundation

424 E. Kennedy Street
Spartanburg, SC 29302
864.582.0138

Troy M. Hanna

President & CEO

thanna@spcf.org



SPCF.ORG

Karen Nichols
Stewardship Officer

knichols@spcf.org

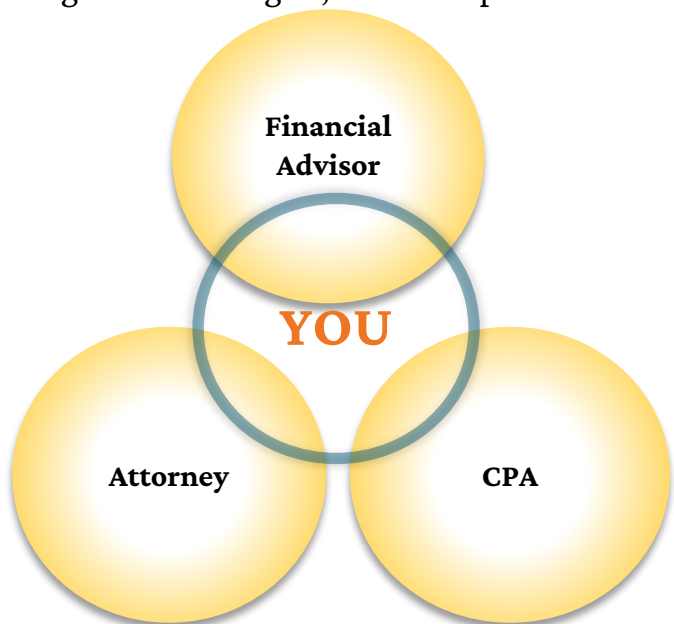
Financial Checklist

Estate Planning isn't only for the wealthy. In reality, everyone should have a purposeful strategy based on what matters most to them. An estate strategy can keep you – not the courts- in control of important decisions.

Team Approach

When it comes to developing and implementing estate strategies, a team of professionals provide can provide specialized expertise.

- Licensed Financial Advisor
- Estate-planning attorney
- Tax Professional



Importance of a Strategy

If you haven't developed your own strategy, State laws and the court may be making the decisions about matters important to you.

The Foundation of your Strategy



Your Estate – Everyone Has One!

Taxable Estate

Changing Ownership (after death) Worksheet

WILL (PROBATE)

Home (one owner or joint tenants in common) \$ _____

Vehicle(s) & furnishings \$ _____

Bank account (one owner) \$ _____

Investment account (one owner) \$ _____

Other real estate (one owner or joint tenants in common) \$ _____

Business (Corp., LLC partnership, partnership, sole proprietorship) \$ _____

***POD**

Payable on death

TOD

Transfer on death

OUTSIDE WILL (NO PROBATE)

Joint vehicle title (**survivor owns**) \$ _____

Joint bank account (**survivor owns**) \$ _____

Real estate (joint with right of survivorship) (\$ _____)
(**survivor owns**)

Life insurance (**beneficiary designation**) \$ _____

Retirement (IRA, 401K), Profit sharing, pension (\$ _____)
(**beneficiary designation**)

Annuity (**beneficiary designation**) \$ _____

TOD/POD* account (**beneficiary Designation**) \$ _____

Revocable Trust \$ _____

Total Will (Probate) \$ _____

Total outside Will \$ _____

Taxable Estate (estate tax) \$ _____

Retirement benefits and annuities subject to **income tax** also

Estate Planning Checklist

- Do I have a **WILL** that...sets forth my current wishes for distributing my assets?...includes a trust where needed? (minor children, second marriage, disabled child or spouse, child with spendthrift or addiction issues, child's protection from divorce, etc.)
- Do I have a **DURABLE POWER OF ATTORNEY** that authorizes someone I trust (first choice and backup) to manage my **finances** and other assets and to make **personal care decisions** for me if I become unable to take care of myself (e.g., stroke, car wreck, etc.)?
- Do I have a **HEALTHCARE POWER OF ATTORNEY** that authorizes someone I trust (first choice and backup) to make healthcare decisions for me if I am not able to make them for myself? (Note – this is limited to healthcare issues only.)
- Do I want a **LIVING WILL** to make sure that if I have a terminal condition or irreversible coma, no medication or treatment will be given that would merely prolong the dying process?
- Is a **REVOCABLE (LIVING) TRUST** appropriate for me to minimize or avoid Probate Court involvement in the transfer of my assets after I die?
- Are my **BENEFICIARY DESIGNATIONS** for any **life insurance, IRA, retirement benefit, and/or annuity** owned by me consistent with my wishes for distributing those benefits and best addressing any income tax payable? Do my beneficiary designations name both a **primary beneficiary** and a **contingent/secondary beneficiary**?
- Is the **FORM OF OWNERSHIP** (e.g., joint ownership) of my assets consistent with my wishes for distributing my property? ... worded properly to avoid probate?
- For any **BUSINESS INTEREST** owned by me and someone else, have I planned for what happens if either of us dies, divorces, or wants to sell or give away our respective interest?
- For long-term medical expenses, do I need any **MEDIGAP INSURANCE** to cover expenses not paid by Medicare?
- For long-term care services, do I need any **LONG-TERM CARE PROTECTION** to cover expenses for home care services and/or nursing home services.
- How does someone (me, my spouse, my parent) qualify for **MEDICAID** for nursing home services? If my spouse or disabled child is receiving Medicaid benefits when I die, will these benefits be terminated if my Will makes a gift to my spouse or disabled child?
- For any lawsuit against me for a serious car wreck or other accident, do I need **UMBRELLA INSURANCE** for additional (inexpensive) liability insurance protection?
- If **OTHER PERSONS** such as a child or parent of mine have not planned for themselves, how will that affect me? (Does my parent have a Power of Attorney if incapacity occurs?)

- What is my **CHARITABLE GIVING PLAN**? Have I set up any paperwork or accounts for the gifts I wish to distribute? (*See Planned Giving below.)

- Have I communicated my wishes to my family members?**

It is important to consider when to involve those affected by your estate strategy in a broader discussion. You may choose to have conversations with individual family members, have a family meeting, or include an attorney, financial advisor, or qualified tax professional in estate plan conversations.

Special Considerations – Business Owners

- Does my/my family business have a success plan?
- How is my/our business impacted by my death (death of co-owner)?
- What happens if a key employee dies? (Do I/we have key employee insurance?)
- Do I/we have business liability insurance?
- How does my/my partner's death impact my/our business liability and liquidity?

*Planned Giving

For donors who wish to benefit the Spartanburg County community through their estate, the Spartanburg County Foundation offers a **Planned Giving Legacy Society**. Whether it be through a will or qualified retirement plan, life insurance policy, trust, or annuity, the Foundation works with donors every step of the way to explore giving options that will meet their charitable goals.

Planned giving is also referred to as legacy giving. It is a donor's intention to contribute a gift to an organization, beyond their lifetime. Arrangements for planned gifts are made in the present, but they are distributed at a later date. Planned giving is not limited by a donor's current wealth. Planned giving enables a donor to contribute gifts that wouldn't ordinarily be possible. The gifts donated end up being larger and aren't dependent on one's regular income. Most planned gifts are distributed from life insurance, equity, or real estate holdings (among others).

Planned giving is about a donor's hopes and dreams.

- What is important to you?
- Who would you like to help? What would you like to help them achieve?

Considerations for ALL*

Category	Objective	Common legal documents and strategies
Control the movement of wealth to beneficiaries either during life or at death	Asset transfer	<ul style="list-style-type: none"> • Will • Transfer on Death • Beneficiary designations • Trusts • Life insurance • Outright gifting
Naming someone to make financial and medical decisions if you are unable to do so	Incapacity protection	<ul style="list-style-type: none"> • Power of attorney • Health care directive • Living Will • Trusts
Providing for minor children or dependents if you are unable to do so	Guardian and Financial support for minor children or dependents	<ul style="list-style-type: none"> • Will • Life insurance • Trusts
Moving wealth to charitable organizations during life and at death	Charitable intent	<ul style="list-style-type: none"> • Outright gifting (cash or assets) • Direct beneficiary designation to charity • Charitable Lead/Remainder Trust • Donor-advised funds • Foundation
Individuals with a larger estate		
Managing income and estate taxes in an efficient manner	Tax control	<ul style="list-style-type: none"> • Outright gifting (cash or assets) • Trusts (e.g. credit shelter, A/B family trust) • Insurance planning (e.g. ILIT, life insurance) • Advanced trust planning (e.g. GRATS)

Probate

STATUTORY REQUIREMENTS IN REGARD TO ESTATE ADMINISTRATION PURSUANT TO THE SOUTH CAROLINA PROBATE CODE*

1. **FILING THE WILL WITH THE PROBATE COURT.**

If the decedent died leaving a Will, the law requires that it be filed with the Probate Court within 30 days of actual notice or knowledge of the testator's death. (Said filing is required whether or not the decedent died owning anything in his/her name alone.)

2. **APPOINTMENT OF A PERSONAL REPRESENTATIVE.**

If the decedent died owning personal or real property in his/her name alone, the appointment of a personal representative to administer the estate is required.

If the decedent died with a Will, the testator's Will nominates the person or persons chosen by the testator to serve as personal representative(s). If the decedent died without a Will, the Probate Code sets out who has priority to be appointed as personal representative.

3. **FIDUCIARY BOND REQUIREMENTS.**

If the decedent's Will requires that a bond be posted by the personal representative, or if the decedent died without a will and the decedent owned personal property, money, etc., in his/her name alone, the Probate Code requires that a bond be posted with the Court in an amount to cover all of the personal assets before he/she embarks upon his/her duties. (The bond is issued by an insurance company, is made payable to the Probate Judge, and basically insures the estate against theft of personal property/money.)

4. **NOTICE TO CREDITORS.**

After appointment of a personal representative (if a year from date of death has not expired), a Notice to Creditors must be published once a week for three weeks giving anyone who may have a claim to be filed against the estate notice that an estate has been opened. Claims must be filed within eight (8) months from the first publication of the Notice to Creditors or one year after death, whichever first expires.

5. **INFORMATION TO HEIRS AND DEVISEES.**

Within thirty (30) days from a personal representative's appointment, information of the appointment and the probate of the will (if applicable) must be given to all persons named in the Will and to those who would inherit if there were no will.

6. **INVENTORY AND APPRAISEMENT.**

Within ninety (90) days after the appointment of a personal representative, the Inventory and Appraisement must be filed with the Probate Court. This form must contain all assets, both personal and real, owned by the decedent in his/her name alone and values as of date of death must be placed on the assets shown thereon.

7. CLAIMS.

Eight months after the first publication of the Notice to Creditors or one year after the decedent's death (whichever first expires), all claims against the decedent's estate are barred. (Secured creditors such as lending institutions who hold a mortgage over real estate generally do not file claims against an estate.)

If the assets of the estate are insufficient to pay all claims in full, payment is to be made in the following order:

1. costs and expenses of administration, including attorney's fees and reasonable funeral expenses;
2. debts and taxes with preference under federal law;
3. reasonable and necessary medical expenses, hospital expenses, and personal care expenses of the last illness of the decedent, including compensation of persons attending the decedent prior to death;
4. debts and taxes with preference under other laws of this State, in the order of their priority, including medical assistance paid under Title XIX State Plan for Medical Assistance as provided for in Section 43-7-460;
5. all other claims.

While a personal representative may pay debts or claims at any time, personal liability may be incurred if any preferred creditor is damaged or injured by such payment.

8. DEED OF DISTRIBUTION.

If there is real estate in the estate, a Deed of Distribution must be completed. The property needs to be distributed out of the decedent's name to those who inherit it. It is suggested that this not be done until all the claims are received, and it is determined that the real estate does not need to be sold to pay the debts.

9. ACCOUNTING, PROPOSAL FOR DISTRIBUTION, AND APPLICATION FOR SETTLEMENT.

Within the later of (i) the expiration of the applicable time limitation for any creditor to commence a proceeding contesting a disallowance of claim pursuant to Section 62-3-806(a); (ii) the time when all legal proceedings commenced for allowance of a claim have ended in accordance with Sections 62-3-804 and 62-3-806; and (iii) if a state or federal estate tax return was filed, within ninety days after the receipt of a state or federal estate tax closing letter, whichever is later, a personal representative shall file with the court:

- (1) a full accounting in writing of his administration, unless the accounting is waived;
- (2) a proposal for distribution of assets not yet distributed, unless the proposal for distribution is waived;
- (3) an application for settlement of the estate to consider the final accounting or approve an accounting and distribution and adjudicate the final settlement and distribution of the estate; and
- (4) proof that a notice of right to demand hearing and copies of the accounting, the proposal for distribution, and the application for settlement of the estate have been sent to all interested persons including all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred, unless the notice of right to demand hearing is waived.

10. NOTICE OF RIGHT TO DEMAND HEARING.

Any interested person has the right to demand a hearing concerning any matter covered in the accounting, proposal for distribution, or application for settlement.

11. CLOSING.

If no hearing has been demanded or if waivers have been received, the Court will instruct that any remaining assets be distributed pursuant to the proposal for distribution (if one was needed) and obtain receipts and releases from all distributees of personal property or monies. Once this has been completed, the Court will issue an order closing the estate and a termination of the appointment of the personal representative.

* Probate laws and regulations vary by state.

TRUST “Bucket”

A **Revocable Living Trust** is a trust document created by an individual that can be changed over time. It is used to avoid probate and to protect the privacy of the trust owner and beneficiaries of the trust.

Minimize Probate - Revocable (Living) Trust

Control After Death (vs. outright gift)

- minor children
- special needs child (government benefits)
- divorce and/or creditor protection for child
- child with poor financial skills, addiction issues, etc.
- spouse with diminished mental abilities
- “second” spouse / your children by prior marriage

Tax Planning

Tax Planning

Can Sweeten the Gift

Assets to gift:

- Cash
- Appreciated securities
- Ownership interest in family business
- Personal property: vehicles, clothing, furniture, jewelry, electronics, etc.
- Real estate
- Life insurance – have one or more beneficiaries designated
- IRA's, qualified retirement plans

Goals:

- Giving the greatest value to charity
- Using the right kind and amount of property
- Getting the best tax benefit
- Timing the philanthropic benefits

Tax benefits:

- Income tax deduction:
- Estate tax deduction for high net-worth estate
- Charitable organizations can avoid income tax = win/win

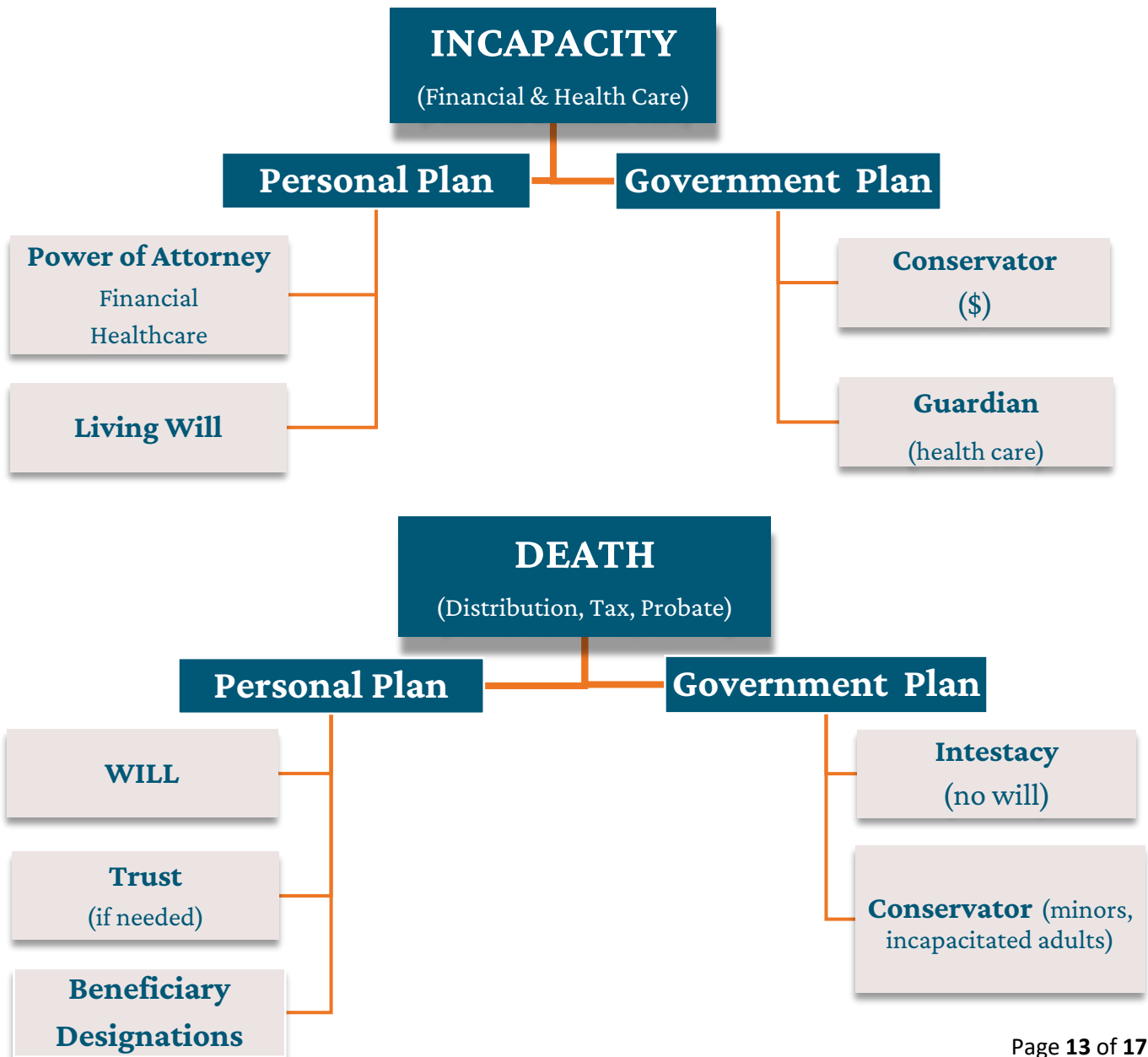
Asset Control

After Incapacity/Death

WHO do I want to act on my behalf? Who will carry out my wishes when I die? Who will make my financial and healthcare decisions if I become incapacitated?

If you have not made a personal plan to manage your incapacity or death, the government plan is what is followed in making decisions for you, your care, and management of your assets.

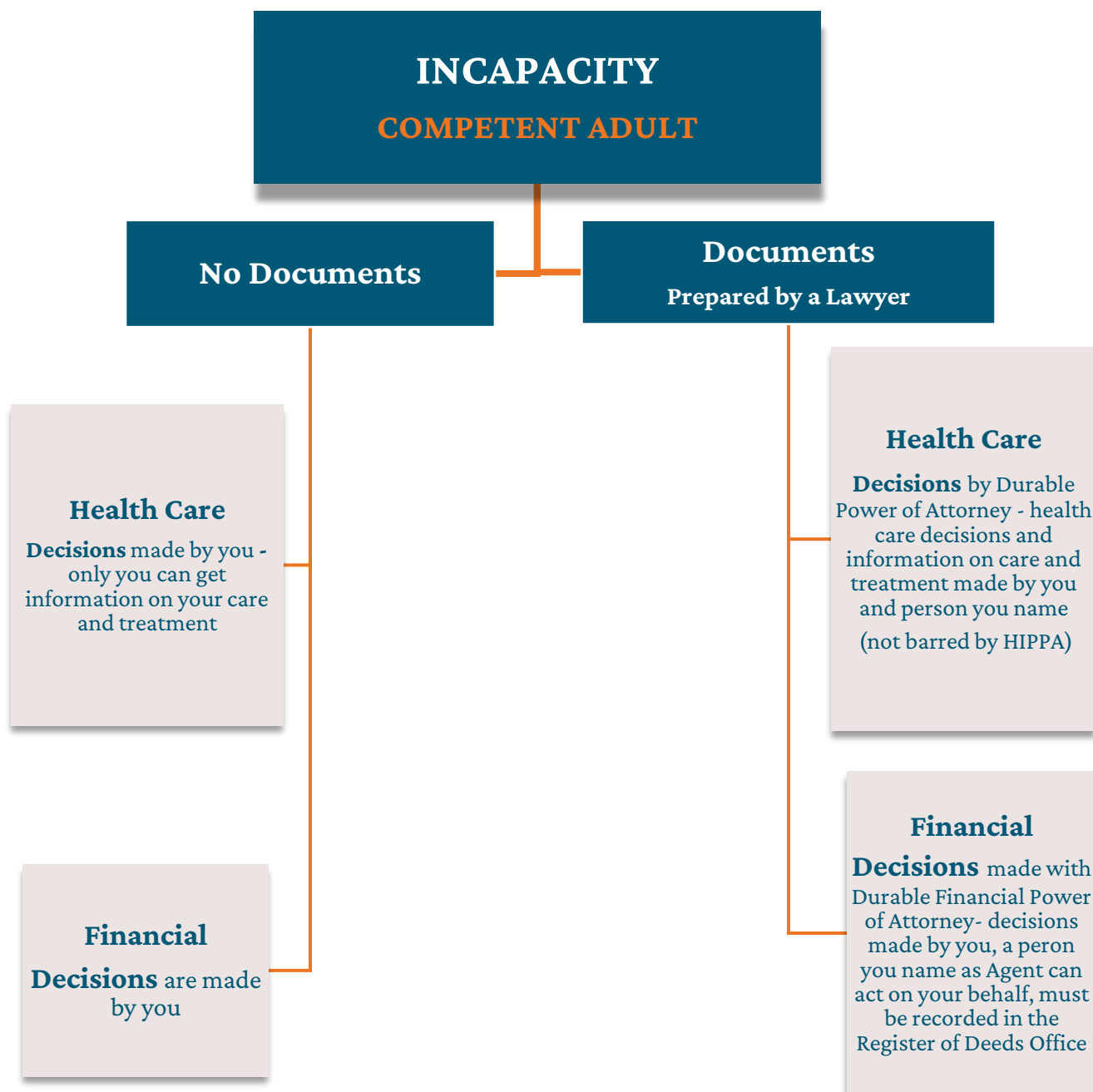
This applies to anyone age 18 or older, including children 18 and older living at or away from home.



Planning for Incapacity

Based on Competency

If you become incapacitated during your lifetime (by accident, illness, etc.) and are no longer able to make financial and medical decisions on your own behalf, probate court involvement is usually required (which can be expensive and time consuming) **unless** you have planned by signing documents such as Power of Attorneys (both Financial and Health Care). **This applies to anyone age 18 or older, including children 18 and older living at or away from home.**



INCAPACITY
Incompetent/Incapacitated ADULT

No Documents

**Documents
Prepared by a Lawyer**

Health Care decisions are made by a Court Appointed Guardian - Court Proceeding is held to have someone appointed Guardian

Financial Decisions
made by a Court Appointed Conservator, requires a bond to be filed and annual Probate Court accountings

"Durable" Powers of Attorney
are able to withstand/survive you becoming incapacitated or unable to make decisions for yourself

No Court Proceeding is required for your Agent to make health care or financial/property decisions for you.

Notes/Plan of Action

This document is meant to help you start planning for the future. It is not meant to replace the legal, financial, or tax advice from professionals with whom you share details of your finances and assets.

