

Working With Financial and Legal Advisors

Planning for Now and for the Future

This pamphlet is part of a series on dementia-related diseases. This series was prepared by Kenneth Hepburn, Ph.D., Geriatric Research, Education and Clinical Center (GRECC) of the Department of Veterans Affairs Medical Center, Minneapolis, Minnesota.

If you are a caregiver for a person with a dementing illness, you have to be concerned with money matters and legal issues. These are not simple matters.

Dementing illness may bring many changes in needs and expenses. Sources of income, tax laws and eligibility rules also change fairly often. Families change, and with this comes change in the amount and kind of help they can provide. Your own role as caregiver is a key element of care. Thus you may be concerned about ensuring the continued care of the impaired person should you die or become too ill to provide care.

At some point you will take charge of money matters and legal issues. Perhaps you are now in charge. To take on this task you need a well designed plan. The plan should cover the person and you, both separately and together. It also helps to have access to expert advisors.

A "financial plan..."

is a major part of taking charge of money matters and legal issues. A "financial plan" is the way you choose to make the best use of the assets you have. Assets include income (from any source), savings, insurance, and things that can be turned into cash (car, house, etc.). A financial plan has several connected concerns. It accounts for how you will meet normal expenses. It seeks to increase or, at least, preserve your current level of assets. It builds in safeguards against major problems in the future.

There are a number of legal and financial tools to help you manage these things. The rest of this pamphlet discusses, in a general way, some of the options that do not require going to court. You may also wish to refer to the pamphlet in this series titled, "Guardianships and Involuntary Treatment" for information on those options which require court involvement.

Not all of these ideas may apply to you right now. Laws and services vary from state to state. You will also need current and detailed advice about how to invest. For all these reasons, you will need to talk to an expert financial advisor.

This pamphlet covers five tools to help you manage the financial and legal affairs of the impaired person. They can also help assure financial security for yourself and your family:

Draw up a will, and (if possible) be sure the impaired person has a will. Set up the right kinds of bank accounts for managing day-to-day expenses. Talk about getting a "power of attorney." Explore a "fiduciary", "protective payee" or "representative payee" arrangement. Think about setting up a trust.

Wills

Wills seem to be the most often overlooked of major legal documents. A will is a document that says how a person wants his or her assets divided after death. Many people never make a will because they have the idea that leaving an estate is for people who have large sums of property or money. This is not true. Anyone who owns any "real property" (house, land, apartment) or any "personal property" (furniture, bank accounts, jewelry, automobile) has an estate. Even money owed to a person is part of the person's estate. In all these cases, a will should be made. In a marriage, spouses each need a separate will.

Find out if the person in your care has a will. If there is no will, be sure one is drawn up before the person is no longer legally competent. (Your lawyer can tell you how "legal competence" is defined in your state.) A will may be found "invalid" (that is, not binding) if written too late in a person's illness.

Benefits

The benefits of having a properly drawn will include these:

- A will assures that, upon death, a persons estate will be divided according to his or her wishes.
- A will may also provide for the least costly division of the estate.
- A will may reduce delay in the transfer of an estate to heirs.
- A will may save on taxes and other expenses involved in settling the estate.

Without a will

If people die without making wills, they are said to have died "intestate". Their estates will be split up according to the laws of their home state. The state's way of dividing the estate may not be how you or the impaired person would choose. It might also not be the way that best meets the needs of your family. **H**ere are some ways an estate might be split up if the owner dies intestate:

- If the husband or wife dies, the surviving spouse receives half of the estate and the other half is divided equally among the children.
- Should the husband and wife die at the same time, the entire estate is divided equally among the children. Minor children become wards of the state until guardians and trustees are appointed.
- If a person dies without leaving a surviving spouse or children, the estate goes to any living relatives, excluding any in-laws or their offspring.
- If a person dies without living relatives, the entire estate goes to the state.

Lack of a will may result in increased settlement costs and taxes. It may also cause needless delays in settlement.

How to write a will

Each state has its own rules about writing a will and how to assure that a will is valid. Speak to a lawyer about this. In most cases, preparing a will is quite simple. A few hours and as little as \$50 to \$100 may be all that is needed. A lawyer can help you draw up a will according to your wishes and protect your legal rights. Members of some state Bar Associations offer, as a public service, to prepare simple wills for senior citizens for a small charge. (Check the yellow pages for the number of your local Bar Association and ask if this service is available.)

Many people think they can save a lot of time, trouble and money by writing their own wills. Such wills are called "holographic" wills. The fact is that only about half of the fifty states accept them as binding. People often lack the legal knowledge and precise knowledge required to ensure that their estate is handled in the manner they want. Also, simple errors, such as failure to include the date or use of a stamped date, may make such a will worthless under the law. All of these problems can lead to bad feelings and very often also result in lawsuits being filed by heirs or others.

If you want to prepare a holographic will, be sure to find out first if it will be binding in your state. Also find out what special rules apply to holographic wills. Check these things with a lawyer.

Keeping a Will Up-to-Date

Review both your own will and the impaired persons will with your lawyer at least every two or three years. Not only may your situation change, but laws (especially tax laws) can change.

- You should also review the wills right away in the following special situations:
- You or the impaired person must move to a new state.
- Your family situation changes (due to a birth, death, marriage, divorce, etc.).
- The estate changes in size or nature. The needs of the heirs change.

Good wills should be seen as a very key part of any family's financial plan .Preparing a will can be hard and can raise a lot of hard feelings. Still, be sure to give this part of your financial planning the time it deserves. What questions do I have about wills?

Special bank accounts

As the caregiver for an impaired person, you need to think about how to manage day-to-day expenses. A range of simple bank accounts can solve some of these problems. These accounts include personal accounts, joint accounts and trust accounts. Discuss your choices with a lawyer who can recommend the right account to set up for your family. If there are other adult family members involved, you may also want to discuss all this with them. You can learn about their concerns and ideas and be sure all approve of your final decision. This step can save you family conflicts later. The account balance should be large enough to pay the impaired person's (if need be, the whole family's) normal household expenses for at least a month.

Why is such an account needed?

The laws of most states "freeze" all the assets of a person who dies. Even assets such as paychecks due may be frozen. This "freeze" lasts until an executor has been named and a list of the deceased person's property has been prepared. This may take two to three weeks or even more.

The special cash account is a reserve fund in the event of the person's death. It permits the caregiver to pay the expenses that are part of daily living until the person's estate has been settled.

Joint bank accounts

If an impaired person needs help to manage money, think about a "joint bank account." Two or more people may open a joint bank account. Money from this account can be withdrawn by any person named on the account. The joint account is easy to open and use. It leaves you with easy access to funds if the person should die.

If the money in the account belongs to the impaired person, the caregiver should write a letter to the bank stating this. Copies of this letter should be sent to other concerned family members.

If the money is your own, be sure to keep receipts showing how much you have spent on the care of the person. You may want to send copies of this information to certain family members. (If the caregiver is a child of the impaired person, for instance, all other children should receive copies.)

Sometimes the joint account has disadvantages. The main disadvantage is that the impaired person can still withdraw money, even after becoming incompetent. A more remote possibility also exists. If one of the co-signers were to go bankrupt, funds from the account might be withheld from the other co-signer(s) and used to pay debts.

Trust accounts

You might want to set up a type of simple passbook account called a "trust account" (Note: This is not the same as "setting up a trust.") In this trust account, one person controls funds "in trust for" an impaired person and can sign checks for that person. Funds are protected from a person's faulty judgment, and you have easy access to funds for meeting expenses. There can be a problem with this type of account. You should leave clear guidelines for what to do if you should die before the impaired person.

List: What questions do I have about special bank accounts?

Power of attorney You might think about having the person for whom you provide care give you power of attorney. A "power of attorney" is a written document which permits one person to make certain decisions for another person. This power gives one person the legal right to manage the finances, property and/or other legal matters of another person.

NOTE: The person granting the power **must be competent. He or she must fully understand the power of attorney agreement at the time it is written.** If there is any question of the competency of the impaired person in your care, a power of attorney **will not** be the appropriate way to solve your problem.

Simple or durable power of attorney

In some states, a power of attorney may be either "simple" or "durable." A simple power of attorney ends when the person becomes incompetent. A durable power of attorney remains in effect even after the impaired person becomes incompetent.

Not all states permit a durable power of attorney. Where it is allowed, the durable power of attorney is a simpler option than a guardianship. The durable power of attorney permits decisions about care, for instance. (See the pamphlet titled, "Guardianship and Involuntary Treatment.")

Limited or broad power of attorney

The power of attorney can also be either "limited" or "broad." A "limited" agreement has defined limits. For instance, it could only be used to pay bills, conduct business or file taxes. A "broad" agreement gives the power to take care of all legal and money matters.

In most states, you are not required to hire a lawyer to complete a power of attorney, but you may save yourself trouble by reviewing things with a lawyer first. A lawyer can help you decide if a power of attorney makes sense in your case. If yes, the lawyer can recommend which type of power of attorney would be best. The lawyer can tell you the right language to give you what you want.

A power of attorney should include the following parts:

- The name of the person granting the power (the impaired person)
- The name of the person to whom power is granted (you or another family member or friend)
- Details of duties and powers being granted
- Details on how long the agreement is to last.

A power of attorney should be signed by both parties before a "notary public." Your bank's staff probably includes a notary. If not, the bank can refer you to one.

The document should be recorded in the County Recorder's office. (This will usually require a small fee.) The procedure will vary from state to state, so ask.

A power of attorney may be cancelled at any time, unless written differently. To cancel, a written and signed statement should be recorded. (Follow the procedure at your County Recorder's office again.)

List: What questions do I have about the power of attorney?

Fiduciary or protective/representative payee

A "payee" is someone who can receive and use an impaired person's benefits in the best interest of that person. This option is used when a person can no longer manage benefits. Agencies that issue benefits, like the Department of Veterans Affairs and Social Security Administration, can appoint payees.

Agencies use several terms to describe the payee. The person is called a "fiduciary" by the Department of Veterans Affairs. The Social Security Administration uses the term "representative payee." State social services, health or welfare departments often use the term "protective payee" (or some similar name). Each state has a different term to describe this arrangement, so be sure to ask.

Each agency has its own way of deciding if a payee is needed and how to choose one. An impaired person can request this kind of help. The government agency may require this arrangement. This varies, depending on the agency involved, so be sure to ask.

List: What questions do I have about fiduciary or payee procedures?

Trusts

In setting up your financial plan, give thought to the option of a trust. Trusts and a will can work well together to manage and divide financial resources. A trust transfers money or property from one person to another, with certain conditions attached. The trust is managed by a third person. The trust continues until its conditions have been met. (A condition might be that a certain date has arrived, or a certain event has occurred.)

The person creating the trust (the impaired person) is the "trustor." The person who receives the benefit of the trust is the "beneficiary." The beneficiary might be the trustor's child, spouse, grandchild or anyone else the trustor chooses, including himself or herself. The person who manages the trust is the "trustee." As a caregiver, you could be the trustee. Someone outside your family could also serve as trustee. Banks offer this service.

Trusts are not only for very wealthy people. Still, they are not the right option for persons with very few assets. In that case, a trust-like document may be drawn up with the aid of a lawyer. A lawyer or a banker can tell you which option best meets your needs.

Trusts are meant to achieve the following goals:

Provide income for beneficiaries. Reduce estate taxes and eliminate some probate fees. Assure that property continues to serve any desired special purpose after the trustor's death. Reduce the trustor's or beneficiary's daily task of money management. VA trust can be written to do many things. The terms could state that the trustee should continue to provide for the care of the trustor (the impaired person) if or when the trustor becomes incompetent. The terms could also state that the trustee should take no action at all unless the trustor becomes incompetent.

Speak to your bank staff or a lawyer about establishing a trust. Going to court is not necessary. The trustor may ask the court to review the operation of the trust. The trust could also allow the beneficiaries to ask for a review by the court.

Common kinds of trusts include these:

Testamentary Trust This is a trust created by awill. It takes effect after the trustor's death. Under such a trust, property need not be divided immediately among all heirs. Instead, it can link the division to some event. For instance, the trust may provide that a widow receive the net income from the trust during her lifetime. Then, upon her death, the rest of the funds will be split among any children or other heirs.

Living Trust People create this kind of trust to help them while they are still alive. It helps them manage their assets. Living trusts can be flexible and controlled by the person. For instance, such a trust can be used to pay the cost of in-home or nursing home care.

Life Insurance Trust This kind of trust can receive proceeds of life

insurance policies. It can make cash available to the administrator of an estate. For instance, this kind of trust can provide income for a family to help meet daily expenses while an estate is being settled.

List: What questions do I have about trusts?