



Information for People Who Provide Care for Elders

Caregiver

FACT SHEET

Bulletin #4211

Putting Legal and Financial Affairs in Order

Regardless of age, situation or health condition, it is always helpful to have personal records, legal papers and instructions for final arrangements organized and available for family members or friends. None of us knows when an accident, sudden illness or death might require someone to have access to records or to make important decisions for us. In this fact sheet, you'll find useful information on legal and financial records that will help you and elders you care for.

Important Information to Collect

There are many helpful booklets and programs available to help you organize data. Check your local bank, bookstore, library, county Extension office or Area

Agency on Aging. Most material suggests finding, identifying, and recording the following:

Personal Data and Records: Date and place of birth, birth certificate, marriages, divorces, deaths of immediate family members, military service, personal/family history.

Employment History: Social Security number, places and dates of employment, pension

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plans, union membership, benefits.

Assets: Bank account numbers, real estate, mortgages, rental property, savings bonds, stocks, securities, personal property with inventory, and other assets (debts owed you, royalties, trust income). Type of ownership on assets (i.e. sole, joint, tenancy in common) should be noted; it affects

access and estate status.

Insurance Policies: Life insurance beneficiaries, medical/hospital/disability/medi-gap policies, Medicare and property and car insurance (include policy numbers, agent, phone number).

Professionals and Family to Notify: Names, addresses and phone numbers of attorney, banker, doctor, employer, insurance agents, accountant, clergy, funeral director, executor of estate, fraternal and professional groups, relatives and friends.

Wishes/Instructions: Will, burial instructions, advance health care directives (living will), guardianship/conservatorship, power of attorney, etc.

Having these items recorded and kept in an identified site will save loved ones hours of anxiety and grief. It can also provide a sense of security that someone's wishes will be known and honored.

Wills: Planning for the Later Years

In our society, you have the legal right to make decisions that affect you, and you keep

this right as long as you are considered competent. Further, a person is presumed to be competent until proven otherwise. The law states that an individual is incompetent or incapacitated when he or she is unable to make responsible decisions about property because of an illness or disability, physical or mental. Wills are an important part of securing your legal rights, no matter what the future holds.

Understanding a Will

A will usually contains five parts:

- (1) the opening recitation**, which tells who is making the will, where that person lives, that the testator (person making the will) is competent, and that all previous wills are revoked;
- (2) the dispositive clauses**, which indicate who gets what;
- (3) the administrative clauses**, which name how the dispositive clauses are to be carried out (administrators and guardians are named in this section);
- (4) the testimonium clauses**, which end the will with the testator's signature as proof of the will's approval; and
- (5) the attestation clause**, which contains the witnesses' signatures and tells that the person who is making the will is the actual signatory on the document.

Making a Will

The process of making a will allows you to make arrangements for the final disposition of

property and assets according to your wishes. Wills may be made, revoked or changed throughout a person's lifetime. A will only comes into effect when a person dies. The actual steps involved in making a will cause a person to critically examine his or her assets. Therefore, the first step in making a will is to document what constitutes the "estate" of the person making a will. An "estate" simply means all the property a person owns. That property may be land, houses, bank accounts, certificates of

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deposit (CDs) and personal items.

Steps in Making a Will

The eight steps in making a will are to

1. determine assets;
2. list potential heirs;
3. decide distribution of property;
4. list names of heirs;
5. select an administrator of the estate (a personal representative);
6. have an attorney draw a draft will;
7. sign the final version; and
8. make two copies.

The signed original should be placed in a safe deposit box. One copy can be left with

the attorney, and the other can be used for reference at home. Remember, a will may be changed at any time.

Planning for Incapacity

Most people do not like to think that they might be unable to handle affairs without help. But anyone can become "incapacitated" and need a hand. Some people may get help from family members or attorneys and bankers, but many elders find themselves confused, "ripped-off," and vulnerable to the decisions of others.

If people take time to think and plan ahead, there are many ways to make sure that their wishes for the future will be honored. These wishes can include choosing someone to make decisions about finances, property, living arrangements and health care.

Advanced planning is ideal. Most legal planning can only be made voluntarily by a "competent" person. A lawyer can explain competency requirements, and can also take special steps in case someone's competency might be challenged in the future.

Tools to Organize Affairs in Case of Incapacitation

Banking Assistance for Bill Paying: Banks can arrange to pay designated accounts automatically, such as utilities, charge accounts, health care and others.

Direct Deposit: Direct deposit is available for Social Security checks and some other pension checks. Call 1-800-772-1213 or contact your local social security office to request a direct deposit form for Social Security checks.

Joint Accounts: The other person can make deposits and withdrawals and sign checks; he or she is considered a co-owner, so upon death the survivor owns the account, and it won't go through probate. (Note: A co-owner could withdraw all the money, or their creditors could tie up your account. This is used only with spouses or at a lawyer's advice.)

Authorized Signer Account: Also called a convenience account or power of attorney account. This account allows the other person to make deposits, withdrawals and sign checks. He or she could withdraw all the money. However, he or she is not a co-owner, so the account is not liable to creditors, and he or she doesn't become the owner. Any remaining funds belong to the estate of the deceased.

Payable on Death Account: This names one or more people to automatically own an

account when you die, without having to go through probate. However, during your lifetime, they have no power to make deposits or withdrawals, or to write checks.

Power of Attorney: This gives written authorization for someone (termed the "attorney-in-fact") to handle property or financial matters for you (termed the "principal") in whatever way you spell out. It may be limited to specific decisions, accounts or properties, or may be very broad and authorize general power over all property and finances. This authorization ends if the "principal" becomes

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incompetent.

Durable Power of Attorney: With this document, the power of attorney continues to be valid even if the principal becomes incompetent. Some states (Minnesota, for example) allow residents to use a durable power of attorney short form, but be cautious how much complete authority you give your attorney-in-fact. Safeguards to consider are to request an annual account report, to name two attorneys-in-fact and to name a successor to take over if the first attorney-in-fact dies or becomes incompetent.

Living Will: Also known as "Advanced Health Care Directive," a living will is a written declaration in which individuals state their wishes regarding health care treatment they wish to have or not have in the event they are terminally ill, unconscious or otherwise unable to communicate for themselves. To be valid, the living will must follow a certain format, be witnessed and meet other criteria. Guideline forms are available from the Area Agency on Aging, senior centers and legal service agencies.

Trust: This is a legal arrangement where a person or financial institution ("trustee") holds legal title and manages assets for the benefit of some person ("beneficiary"). The person who creates and funds the trust is called the "grantor."

Testamentary Trust: The grantor creates the trust to take effect after he or she dies. This is a planning tool to provide for loved ones.

Living Trust: Created during the grantor's lifetime, the living trust manages their property for their own benefit, planning for incapacity. Living trusts may also be set up to continue after the death of the grantor, to provide for loved ones. Trusts usually are considered only for larger estates and can be expensive to maintain. If trusts are considered as a means to avoid probate, be aware there are other, less costly ways to do this (joint tenancy ownership, "payable on death" or "in trust for" bank accounts and others). Using



living trusts to qualify for medical assistance and to avoid spending savings for future nursing home care is very risky. Anyone considering setting up a living trust should seek competent legal advice.

If There are No Plans and an Elder Becomes Incapacitated

What if there are no plans? What are your options? Here is a list of possibilities to consider.

Conservatorship: This court proceeding appoints someone (“conservator”) to handle the finances, property and personal decisions for an individual who has become incapacitated (“conservatee”). You may plan ahead and nominate your own conservator, giving instructions on how you would want your personal and financial matters handled, declaring it in a written, witnessed document. Then, if you become incapacitated, the court must name your chosen conservators unless the court finds this would not be in your best interests. Be sure your nominated conservator agrees to serve in this way.

If there has not been a “nominated conservator,” anyone can petition the court to be a person’s conservator, whether or not the person wants one. The court will appoint a conservator if it decides that the person is incapable of making decisions for himself or herself.

Guardianship: This is very similar to conservatorship, except that guardianship takes

away more civil rights, such as the right to vote.

Representative Payee: A representative payee is someone designated by a federal agency to manage a person’s social security, veteran’s benefits, railroad retirement or public benefits check. This device is most useful when the older person’s expenses can be covered by the benefit check(s), since the representative payee is not empowered to gain access to the person’s savings accounts or other assets. To arrange for a representative payee status, contact the appropriate agency for an application form and instructions.

Getting Legal Advice and Help

Many of the planning tools mentioned in this fact sheet require expert legal assistance. You can shop for an attorney. Get estimates of their fees for various services and compare. Ask friends, relatives, bankers or pastors to suggest someone, or call the Maine State Bar Association, Lawyer Referral and Information Service at (207) 622-1460 (in Maine). You can also contact area legal services for suggestions, information or low-cost legal aid if you meet income guidelines. Three Maine agencies to try are Pine Tree Legal Assistance (207-942-8241), the Volunteer Lawyers Project (1-800-442-4293) or Legal Services for the Elderly (1-800-750-5353).

Revised by Deborah B. Killam, Extension educator, Aging

and Mature Adult Life Skills.

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