ARAG
Legal Insurance

Your Final Gift: A Guide to End-of-Life Planning

Table of Contents

Let's be honest, no one likes to think about death. And with death come some serious decisions that have to be made. The earlier you can figure out these end-of-life details, the better.

With a little planning, you can help make sure your wishes are followed. And you can help make things much easier for your loved ones at a difficult and emotional time.

Creating Advance Directives

We each have the right to make our own health care decisions. But often, the biggest health care decisions need to be made when we're unable to make them.

An **advance directive**, also known as a **living will**, lets you put your wishes regarding end-of-life medical treatments in writing now – so they can be followed down the road if needed and you are no longer able to communicate your wishes.

A **health care power of attorney** lets you appoint someone to make health care decisions for you in the event you are unable to make or communicate decisions about your health care.

Before you create these documents, think about these questions:

- What loss of function would make life too burdensome?
- What procedures would be simply out-of-bounds for you to endure?
- What values or concerns guide your health care decisions?

Once you've made your decisions, share them with the people you appoint to act on your behalf. They need to understand your preferences – and the reasons for them.

An attorney can help you create the legal documents. And they can help you with other end-of-life planning, as well.

Health care powers of attorney may also be known as:

- Appointments of agent for health care
- Durable powers of attorney for health care
- Appointments of health care representative
- Designations of health care surrogate
- Appointments of health care proxy
- Medical powers of attorney
- Designations of patient advocate
- Proxy directives

Organ donation

Do you want to donate your organs or tissues when you die? If so, make sure that's documented now. Any of these steps will work:

- ✔ Register with your state's donor registry
  Check the list at OrganDonor.gov.
- ✔ Designate your choice on your driver's license.
- ✔ Sign and carry a donor card. Cards are available from OrganDonor.gov.

It's also important to tell your family that you want to be a donor. Hospitals ask for consent from the next of kin before removing organs (although this usually isn't required if you're registered with your state's donor registry).

The best way to ensure that your wishes are carried out is to put them in writing. Include your wishes in your living will and/or health care power of attorney, as well as on your driver's license.

If you don't want to be an organ donor, you should also put that in writing. You can do that through your advance directive.

Funeral Arrangements

Planning for a funeral and burial or cremation involves personal (and often pricey) decisions. A lot of people put general instructions, like whether they want to be buried or cremated, and other desires for their funeral in their wills – but usually don't include much in terms of details.

If you want to make sure your final arrangements are done exactly the way you want, consider a pre-need arrangement. This lets you specify:

- How you want your remains handled.
- What ceremonies you want (if any).
- How much you're willing to spend.
- Where you want to be buried or if you've already purchased a funeral plot somewhere.

These arrangements can vary a lot – especially in terms of the costs and the safeguarding of your pre-payments. Make sure you understand the details of any contracts before signing and/or paying.

One big advantage of this approach is that you can pay in advance. This means your arrangements won't put a financial strain on your family (as long as they follow your wishes).

Don't want to create a pre-need arrangement? You still can create written instructions for how your remains will be handled. A lot of states have laws that let you name – in writing – an agent to carry out your instructions. Your family is then legally bound to follow these instructions.

If you do this, keep funeral and disposition costs in mind. Your estate will need to cover the costs.

Ultimately, financial responsibility for funeral arrangements and burial/cremation will fall on the person who makes those arrangements with the service providers. Generally, that expense can be charged to and paid out of the estate (assuming there are enough assets).

You should also consider the laws of the state where expenses are incurred. Those laws may assign responsibility for costs.

Consumer protection for funeral expenses

Funeral services and costs can be confusing. To help protect consumers, the Federal Trade Commission (FTC) created a rule for funeral services, contracts and pricing disclosures. It gives consumers the right to:

- ✔ Buy goods and services separately (you don't have to buy a pre-packaged arrangement).
- ✔ Get price information over the phone – without giving a name or contact information.
- ✔ Receive a list of all items and services offered and the cost of each.
- ✔ See a separate container price list (outer burial containers aren't required by law but may be required by the cemetery).
- ✔ Get a written statement showing what's being purchased and the costs.
- ✔ See a written description of any legal, cemetery or crematory requirement that requires the consumer to buy specific goods or services.

Beneficiary Designations

Pre-planning and written instructions can be really helpful to your loved ones. But it's also critical to know how your beneficiary designations are stated on financial accounts and insurance policies. If the beneficiary designation differs from your other written instructions, including your will, the beneficiary designations generally trump other instructions.

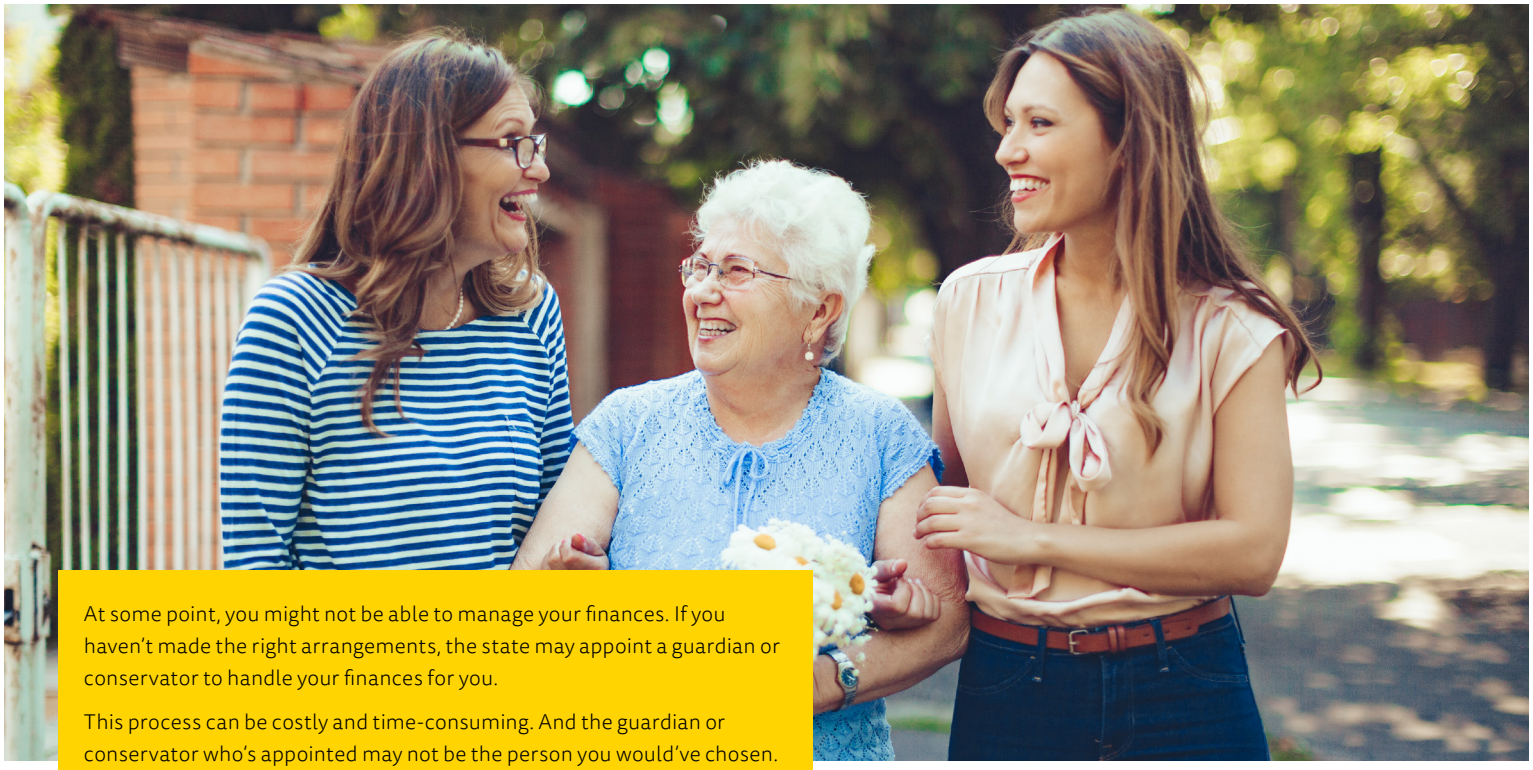
Here's an example. Let's say you have a beneficiary designation on a 401(k) plan from your first job. Over the years, your life changed. And the person you want to get the money in that account now isn't the person you listed when you started that first job.

But even if you created a will years later that said all your assets should go to specific people, those 401(k) assets would probably still go to the person named as the beneficiary on the account.

Taking a little time to review and update your beneficiary designations can avoid a lot of headaches down the road. Make sure you review designations on any:

- 401(k) accounts
- IRAs
- Bank accounts
- Security accounts
- Certificates of deposit (CDs)
- Life insurance policies
- Annuities

Accessing Financial Accounts



At some point, you might not be able to manage your finances. If you haven't made the right arrangements, the state may appoint a guardian or conservator to handle your finances for you.

This process can be costly and time-consuming. And the guardian or conservator who's appointed may not be the person you would've chosen.

Preparing for this ahead of time could make things a lot easier for you and your loved ones. These options can help.

Using a durable power of attorney

You can appoint someone as your agent in a durable power of attorney to act for you in specific personal and financial matters when you are unable to do so yourself. After proving his or her authority to act, the agent can access accounts. This agent's authority and access to the accounts ends at your death.

Designating a bank account as a power of attorney account

You can put specific accounts in your name and list your agent's name as power of attorney on that account. This lets both you and your agent access the accounts. Your agent's right of access ends at your death.

Setting up a joint account

You can set up a joint account in your and your agent's name. This way, your agent could freely access the account both before and after your death. If you want this account available only for post-mortem and pre-probate costs, you may want to consider keeping just enough funds available for those purposes. Keep in mind that with a joint account, both people listed on the account have shared interest and access to the account. If you go this route, you'll want to make sure it's someone you trust not to drain your funds.

Creating a revocable trust

A revocable trust can name you as the trustee and your agent as a successor trustee upon your incapacity or death. Arrange (with your financial institution) to hold the account in your trust's name so your trustee can access the account as needed for the purposes of the trust. That could include handling financial obligations before and after your death.

Managing Debt and Other Obligations

Just about everyone will leave behind some lifetime debts. These could include a home, credit cards or end-of-life health care costs. Here are some issues to understand about your debts – and how you can manage them proactively.

A lot of people wonder if their survivors will be responsible for their debts. The basic rule is that your lifetime debts are your responsibility or the responsibility of your estate. However, there are exceptions. If someone else co-signed your debt, they may be responsible for paying the debt. Depending on state law, your spouse may be responsible for paying a particular debt, such as your health care expenses.

State laws create a system of exemptions and debt priorities. These affect how much of your assets can be used to satisfy debts – and which kinds of debts get priority. If there isn't enough money in the estate to satisfy all or any of the debts – especially unsecured debts like credit cards – those debts will be uncollectible.

Debt collectors may potentially contact surviving family members. But the estate is responsible for payment (if non-exempt assets are available).

If contacted by a debt collector, family members can decline to assume any responsibility or make payments. If collection contacts continue, family members may want to hire an attorney to help end the contact.

Debts secured by collateral

Debts that are secured by collateral (like mortgages or car loans) present a special issue. That's because the collateral might be important to either the estate or the surviving family members.

To prevent foreclosure or repossession, it may be good for the family to make a voluntary payment or two before the estate is opened. The family member(s) can then be reimbursed from the estate. In case you're wondering, those family members don't become responsible for the debt just because they made payments on it.

Anyone thinking about such a payment needs to determine if the estate will want to keep the property – or if there's a different, specifically named beneficiary for this property. Before making a payment, your family will want to consider if it's worth spending funds for something that may be surrendered or passed directly to someone else.

Keep in mind that any obligation with a security interest in collateral actually involves two separate things:

- The debt itself (represented by a promissory note or installment contract).
- The security interest (represented by a mortgage on realty or a security interest lien on personal property).

Unsecured debt

If you have an unsecured debt on your home or another place where you have assets, your surviving family members may want to make payments on them in order to protect those assets for eventual estate handling.

For example, if you lived in an apartment and had valuable furniture, art or collectibles, continuing to pay the rent would keep those assets in a safe place. Making utility payments or keeping alarm services active may protect the residence and property from damage or theft.

If any family member does make voluntary payments, they need to tell the payee, in writing, that making a payment doesn't mean they assume personal responsibility. Also, the family member should keep full records of payments made.

Contacting service providers

If people or companies provide services to your property – like utility services or property maintenance – they'll probably continue with those services until they're told to stop (or if payments are missed).

If you don't make money available to pay these service providers after you die (and before your estate is opened), one or more of your surviving family members will need to pay. Then they would be repaid from the estate.

In your planning documents, it may help to tell family members what services they need to keep going until the estate is administered. These could include:

- Services that aren't critical but may be canceled if payments aren't made.
- Services that are necessary to protect the property.

Handling Income

You may have different sources of income that need to be stopped or redirected to the estate or beneficiary.

Shareholder or partnership deposits

Are you a key shareholder, member or partner of a corporation or limited liability company? If so, you may need to include a provision for this in your end-of-life documents. The provision would specify how the entity needs to adjust for your death.

Savings, checking and investment payouts

If you're the sole owner of any savings, checking or investments accounts, your surviving family members will be denied access to those accounts. The institutions will look instead to the estate fiduciaries.

Government and private entity payments

In your planning materials, it's important to list any government payments. These could include Social Security benefits, veteran's benefits, unemployment or workers compensation that would typically end at death.

Surviving family members will need to notify the payor of your death. This will prevent improper payments that would otherwise have to be returned.

This also applies to payments from annuities, structured settlements, dividends or interest, rents or loan repayments. However, some payments (such as dividends, interest, rents, loan repayments, etc.) will continue after death – even if the beneficiary is someone other than yourself.

While access to bank accounts may be blocked, those accounts can likely continue to receive deposits. If a surviving family member receives a payment, it could be safely direct-deposited into the account (with proper documentation of the source).

Trust payments

If the payment is from an asset held by a trust you set up, then it can be given to the currently acting trustee. Once a formal estate fiduciary has been authorized, the safest course for your family is to consult with the fiduciary and generally redirect all payments which were yours, either solely or jointly.

In general, payments are best seen as property of the estate – not the property of surviving family members. (That's at least until the legal proceedings for handling the estate begin and proper distribution can be made.)

A Gift to Those You Leave Behind

Dealing with our own mortality is a conflict as old as time. Along with the real personal struggle, it can trigger a range of tricky legal issues and expenses.

One of the greatest gifts you can leave to surviving family members is to specify legally how you want those matters and expenses handled. It can be your way of continuing to care for your loved ones – even after you're gone.

Take Control with ARAG

If you're planning your legacy and don't have an attorney, ARAG can help. Visit ARAGlegal.com to learn more about how ARAG legal coverage gives you an affordable way to manage legal matters and the freedom to live the life you dream of.

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