



Legal Insurance



*Caregiving:*  
**An Overview**

Providing care for a loved one can be a rewarding and often challenging experience. As you enter the caregiving role, it is important to begin by having an open conversation with your loved one to better understand their current legal needs. Start with the following questions, always being sure to frame them in the context of what you can do to help them.

### **Questions to discuss with your loved one**

- Do you have a will and a plan to protect your assets?
- Do you have a health care power of attorney in case someone needs to make medical decisions on your behalf?
- Do you have a living will, which spells out your wishes about medical and life-sustaining procedures?
- Do you have a durable power of attorney, which gives someone else financial decision-making power if you become incapacitated?
- What is your financial situation?
- Have you thought about your housing needs? Do you have a plan in place in case you become incapacitated?

Based on their answers to these questions, you will want to walk through the various legal issues outlined on the following pages. As you learn more, be sure to discuss options with other family members, hire professionals as needed and use available local resources for support.

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# Estate Planning

Estate planning is important to protect your loved one's assets and plan for the distribution of those assets upon their death. A secure plan will make your loved one's wishes clear, outline who will make financial and medical decisions and may also help avoid or minimize death taxes.

Encourage your loved one to establish an estate plan as soon as possible. During an emotional time, such as an illness or death of a loved one, confusion and uncertainty can lead to family conflicts. An estate plan may prevent disputes among family members and reduce stress for everyone involved at a time when you need each other for support.



## 6 steps to help your loved one create an estate plan

1. Take an inventory of your loved one's assets. This includes items like homes, cars, jewelry and other objects that may be valuable to you or someone else.
2. Take an inventory of your loved one's debts. This includes credit accounts, mortgages, business debt and any other debts that may be owed.
3. Recommend your loved one create a will and other legal documents such as a trust, powers of attorney and a living will.
4. Make a list of your loved one's legal documents and financial accounts and where they are located. Keep copies in a safe place like a safe deposit box and/or with family members.
5. Recommend your loved one write instructions on issues such as funeral and burial wishes, who to notify following death and how to handle urgent financial issues.
6. Encourage your loved one to discuss their legal and personal decisions with family members.

# What Makes Up an Estate Plan?

An estate plan consists of property protection during life, property distribution after death and planning for incapacity based on your loved one's financial and medical wishes. The following legal documents may be part of an estate plan.

## Will

A will ensures that your loved one's wishes are carried out by clearly naming who will receive assets, real estate and personal property, cash, bank accounts, charitable gifts and special request items upon their death. Keep in mind that a will cannot allocate assets from jointly held survivorship property or property in a trust, life insurance, 401(k)s, IRAs, pensions or other investments where a beneficiary is named.

A person's will designates someone, known as an executor, to administer the estate. The executor distributes assets and makes contributions to charities as outlined in the will. When choosing an executor, your loved one should select someone they trust to carry out their final wishes.

If your loved one has any minor children, their will can also name guardians for those children.

### **Beneficiary:**

An individual, institution, trustee or estate that receives proceeds or benefits from certain policies or contracts.



### *Did you know?*

If your loved one does not have a will, the state where they live decides what happens with all the property, assets and any minor children.

## **What you need to know about estate and inheritance taxes**

When your loved one dies, their estate will owe estate taxes (sometimes referred to as "death taxes") on the transfer of property and assets such as insurance proceeds, retirement plan assets, annuities and trusts. Those people who inherit assets or property from your loved one generally have to pay an inheritance tax on the assets they receive.

There are ways to decrease your loved one's taxable estate, including:

- Transfer the entire estate to the surviving spouse so the estate is not subject to any estate taxes. (Note that, depending on the size of the estate, there could be taxes due upon the surviving spouse's death.)
- Give away assets during your loved one's life.
- Create a trust with tax reduction or avoidance provisions.
- Make charitable donations upon death.
- Consult a financial planner or tax advisor for the tax consequences of these actions.

## Trust

A trust holds property for the benefit of your loved one or their beneficiaries (the people entitled to the property upon death). A trustee is named to manage the property on behalf of your loved one.

There are two main types of trusts. A **testamentary trust** is created by a will and takes effect only upon death. Many people use testamentary trusts within a will to be more specific about how and when beneficiaries will receive certain assets or parts of the estate. For example, if your loved one has minor children, a testamentary trust can ensure that those children receive a steady income when the loved one dies. It can also give a specific age or date upon which children receive the final proceeds of the estate.

A **living trust** is established to manage the assets of the trust's creator during and after their lifetime. Because a living trust is effective during the creator's lifetime, your loved one may be the original trustee of their own living trust. A living trust can be either revocable or irrevocable. Revocable trusts can be changed or terminated at any time. An irrevocable trust is generally permanent, which means the terms can't be changed absent compelling reasons and then only after court approval.

### There are several advantages to setting up a living trust:

- Unlike a will, which is public record, a living trust is confidential.
- If your loved one becomes incapacitated, a living trust is more comprehensive than a durable power of attorney.
- Your loved one can give a known trustee specific investment instructions.
- A living trust may help lower death taxes.
- A living trust typically avoids probate, which can be time-consuming and expensive.

### Items that can be placed in a trust

- Cash
- Stocks
- Bonds
- Certificates of deposit (CDs)
- Retirement benefits
- Investment income
- Real estate
- Personal property (e.g. jewelry)

### Special types of trusts

**Bypass trust:** commonly used by married couples with large estates who do not want their heirs to be taxed twice on their estates. It allows someone to take full advantage of their own estate tax exemption while ensuring the most effective marital deduction for the surviving spouse.

**Qualified terminable interest property trust (QTIP Trust):** provides for the surviving spouse for the rest of their life, and then spells out who will receive the remainder of the assets after the surviving spouse's death. This type of trust is commonly used by individuals who have children from another marriage.

**Special needs or supplemental needs trust:** provides benefits to, and protects the assets of, someone with a physical or mental disability while allowing them to maintain eligibility for government benefits such as Medicaid.

## Beneficiary designations

A beneficiary is an individual, institution, trustee or estate that receives proceeds or benefits from certain policies or contracts. Most policies have a simple beneficiary designation form that your loved one can fill out to name beneficiaries. A primary beneficiary receives the proceeds first, and a contingent beneficiary receives the proceeds if the primary beneficiary is not living.

Having up-to-date beneficiary designations can help avoid a lengthy and expensive probate court hearing. In the absence of current beneficiary designations, the proceeds of the insurance or retirement plans may be paid by default to the loved one's estate and thus governed either by the person's will or by the state's intestacy law.

### Be sure that your loved one has named beneficiaries for their:

- Insurance policies
- Retirement plan assets
- Annuities
- Bank accounts

## Durable power of attorney

A durable power of attorney appoints a person (referred to as an "agent") to make decisions when your loved one is incapable of making them. The document specifically lists financial and personal matters for which the agent has power, such as:

- Insurance policies
- Retirement plan assets
- Annuities
- Bank accounts

### Agent:

Person authorized to act for another through a contract.

Depending on your state's laws, your loved one can make the durable power of attorney effective immediately (i.e., as soon as it is signed and witnessed and/or notarized) or upon incapacity (i.e., when your loved one is unable to handle financial and personal affairs). If it is effective as of incapacity, parties (such as a bank, an insurer or the government) dealing with the agent may require proof of incapacity, which could cause a delay in transactions.

The existence of a durable power of attorney is proof to all other parties that the agent is authorized by your loved one to act on their behalf. Once the durable power of attorney is effective, those other parties must rely on what the agent says and does on behalf of your loved one.

### Tips to help your loved one select a durable power of attorney agent

- Choose someone your loved one knows well and trusts.
- Think about the agent's decision-making style: Does it match your loved one's?
- Consider the agent's experience in financial and personal matters.
- Select someone who would most likely reach the same conclusions as your loved one in the same situation.

## Health care power of attorney

A health care power of attorney document is similar to a durable power of attorney, but is specific to medical decisions and gives an agent authority to make health care decisions on your loved one's behalf. Your loved one can declare a primary agent and an alternate agent, who can act if the primary agent is unavailable, unwilling or unable.

Depending on the state's health care power of attorney law, your loved one can choose when the agent is eligible to begin making health care decisions, such as:

- When your loved one does not have the capacity to make their own decisions.
- When a specific event happens.
- Immediately, if your loved one wants someone to make their decisions now even though they are still capable of making such decisions.
- On a certain date.

Your loved one can also specify that the agent's authority will end on a certain date or when a particular event occurs. Regardless, your loved one can always make their own health care decisions when capable of doing so.

The agent may have full decision-making power or your loved one may put limits on the types of care decisions the agent can make. The agent will be able to make healthcare decisions in connection with life-sustaining procedures and food and fluids, unless your loved one restricts that authority.

### Who cannot be an agent?

Check with your state for laws regarding qualifications of who can be an agent. Many states have laws that disqualify certain people from being your agent, such as:

- People who may inherit from you
- Medical providers
- Your spouse once you are divorced, or in some states, once you file for legal separation, annulment or divorce



## Living Will

An advance directive, or living will, is a document your loved one can use to share their wishes about life-prolonging medical treatments. A living will can declare whether your loved one would want certain health care procedures provided, withheld or withdrawn if they are in a terminal condition and death is imminent, or is permanently unconscious.

Regardless of what is stated in a living will, your loved one may make health care decisions as long as they are capable of making and communicating those decisions. Your loved one can cancel an advance directive at any time and in any manner that effectively communicates the intent to cancel it.



### *Did you know?*

Although they all sound similar, a “living will” is not at all like a “will” or “living trust.” All three perform different functions within an estate plan.

Each state has its own laws regarding living wills. State laws may allow living wills to include directions on:

- Artificially provided food or hydration
- Pain medication
- Consent to autopsy
- Organ donation
- Disposition of bodily remains (i.e., burial or cremation)

## Appointment of Health Insurance Portability and Accountability Act (HIPAA) representative

This document gives someone the authority to review and discuss your loved one’s health information with health care providers. HIPAA is a federal law that protects privacy of medical information of patients,

but your loved one can expressly permit named representatives (spouse, family, friends) access to information.

This is important when your loved one becomes incapable of accessing the information on their own. It is also convenient, for example, when wanting a spouse to have access to medical records to help with decision making.

Keep in mind that HIPAA personal representatives are automatically named in these situations:

- A child’s parent or legal guardian is usually the child’s personal representative.
- If an agent is appointed in a health care power of attorney, the agent is considered the personal representative for HIPAA medical information.
- When someone dies, the personal representative for the deceased is the executor or administrator of the estate.

## Declaration of designee for final disposition

Most states now permit people to give directions for how they want their bodily remains handled or funeral arrangements to be; and many states permit people to designate an agent to make and carry out those decisions.

A document referred to as a declaration of designee for final disposition allows your loved one to choose a person – the “designee” – to make decisions concerning the bodily remains and ceremonies after death. The designee has authority over the funeral, burial and/or cremation and any other materials relating to the bodily remains or funeral arrangements.

Know where copies of your loved one’s health care power of attorney and living will are stored. Consider giving copies to their doctor and/or hospital to keep on file.

# Working with an Attorney

When an attorney is hired to provide legal services for your loved one, the attorney has an ethical duty to act in the best interest of your loved one – not you or whoever has hired or paid the attorney. The attorney will meet alone with your loved one, unless they request that you be there. Keep the following in mind:

- The attorney has been hired to serve your loved one's legal interests, not yours or anyone else's.
- The attorney may ask for help from family members, but it's typically to collect background information.
- The attorney has a duty to keep all information and communications confidential. Your loved one must give permission before the attorney shares information with you or other family members.
- If your loved one lacks capacity, the attorney will still provide the same level of service as they would to any other client. The attorney will meet privately with your loved one to assess their capacity.
- If your loved one does not have the capacity to create a legal document, such as a will or durable power of attorney, the attorney is required to consider other options to protect your loved one, such as a court appointed guardianship.



# Planning for Incapacity

As your loved one gets older, they may develop a disease or mental disability, such as Alzheimer's disease or dementia, making your loved one incapable of making sound financial and personal decisions. As a caregiver, you should proactively prepare for the possibility of your loved one's incapacity. The first step is encouraging your loved one to create legal documents such as a will, power of attorney and a living will. See the section "What Makes Up an Estate Plan" (page 4) for more information.

## Legal guardian or Conservator

If your loved one is declared to lack capacity and they have not appointed an agent through powers of attorney documents, the state will appoint a legal guardian or conservator to make decisions on their behalf. The guardian has the authority to make financial, medical and legal decisions for the incapacitated person, defined as the ward; in states that appoint conservators, the guardian handles the personal matters of the ward and the conservator handles the financial matters of the ward. For convenience, we will simply refer to these appointed agents as the "guardian."

The guardian is required to make decisions and handle affairs in the best interests of your loved one. The court may appoint:

- A spouse
- A professional guardian
- An adult child
- An agency
- Another family member
- A corporation, such as a bank trust department
- A friend

The extent of the authority granted to a guardian depends on the extent of the ward's incapacity as determined by the court.



## Process for declaring incapacity

The legal requirements for declaring incapacity vary by state. A judge typically considers a person incapacitated if he or she:

- Has a disabling condition (e.g., a mental disorder, dementia, altered consciousness or chronic use of drugs).
- Is unable to receive and evaluate information or to make or communicate decisions.
- Is unable to meet the necessary requirements of physical health, safety or self-care without help.

The court will impose strict reporting guidelines in order to protect your loved one from fraud. The guardian will be required to provide reports of financial matters, residential status, living arrangements and medical care. Since the process of using a court-appointed guardian is typically expensive and time-consuming, it is in your loved one's best interest to have powers of attorney in place before becoming incapacitated.

When the state declares a person as incapacitated, they are no longer able to:

- Enter into a contract
- Create a will
- Consent to medical treatments
- Give authority to others through powers of attorney
- Transfer property



# Housing Considerations

Your loved one may need to revisit their living situation at some point. If you are helping your loved one choose the best option, make sure they consider:

- Financial resources and health needs
- Safety and security
- Availability of community resources
- Proximity of support services
- Personal comfort levels

Housing options may include remaining in the home, renting an apartment, moving to an assisted living or residential care facility or living with a family member. The right living situation may change over time as your loved one moves from being able to live independently to needing additional on-site resources.

Use the checklists on this and the next page to help your loved one decide where to live.

## Owning a Home

YES NO

Is the home safe?

Does the home need to be remodeled? Are there home repairs needed?

Can your loved one afford these costs on a fixed income?

Are there community resources or other support services nearby?

Is the home close to you or other family members and friends?

Does your loved one need assistance with daily living activities, such as laundry, shopping, cleaning and cooking? Are there local agencies available to help with such services?

Is there someone to help with outdoor maintenance (mow, shovel, rake, etc.)?

Will your loved one be able to get to the doctor and other appointments?

Is your loved one ready to move from their home?

## Renting a Home

YES NO

Do you have to sign an agreement or contract? If so, are the terms acceptable?

Can your loved one afford the costs?

Will your loved one have to move if they can't afford to live there later?

Are there government programs available to supplement the cost?

Is there availability?

Does the facility provide adequate services (bathing, eating, dressing, toilet use, laundry, physical and medical services)?

Does the facility have high ratings when compared to other similar facilities?

Are there any complaints about the facility?

## Assisted Living Facilities, Residential Care Facilities and Nursing Homes

YES NO

Is the rental agreement acceptable (cost, terms, tenant and landlord responsibilities, etc.)?

Can your loved one afford the rent?

Can the landlord raise the rent? Are there limits on when and how much it can be raised?

Are there government programs available to supplement the rent?

Does the landlord treat tenants well (ask current tenants about their experiences)?

Is the property safe (e.g., locks on doors, proper lighting, working elevator, secure building)?

Are the rental unit and building in good condition?

Is all maintenance included in the rent?

Is the rental property close to you, other family members and friends?

Will your loved one be able to get to the doctor and other appointments?

# Other Issues

## Financial and insurance issues

Make yourself familiar with your loved one's assets and debts, bills, expenses and insurance policies. To assist your loved one with their financial and insurance issues:

- Help your loved one set up and follow a budget.
- Keep track of any bills owed. Ensure your loved one is not being harassed by debt collectors.
- Make certain your loved one's personal and financial information is safe to avoid identity theft.
- Review your loved one's insurance policies on an annual basis. Determine what is still needed, what can be dropped and if you need to increase any insurance amounts.
- Find out if you or your loved one has access to long-term care (LTC) insurance. LTC plans often allow participants to cover parents, grandparents and other family members on their policies.
- Research whether your loved one is eligible for financial and/or medical benefits from Social Security, Medicare or Medicaid.
- If your loved one is covered by Medicare or Medicaid, review any medical billing statements against the explanation of benefits statements before paying covered bills.

## Funeral plans

When the time is appropriate, discuss your loved one's wishes for a funeral or other ceremony. Determine if your loved one wants a burial or cremation and if they wish to be an organ donor. You can even make specific funeral plans and purchase a burial plot and a casket. If these decisions have not been made, your loved one's declaration of designee for final disposition (if they have prepared this document) will appoint someone to make the decisions after your loved one's death.



The following websites can provide information about governmental benefits for which your loved one may be eligible:

- Social Security Administration: [ssa.gov](https://www.ssa.gov)
- Medicare: [medicare.gov](https://www.medicare.gov)
- Medicaid: [medicaid.gov](https://www.medicicaid.gov)

## Taking care of yourself

Being a caregiver for a sick or dying loved one can be demanding both physically and emotionally. To be the most help to your loved one, remember to take care of yourself as well. Here are some tips:

- Maintain a balance between your home, work and caregiving.
- Watch your stress level and take time off when needed.
- Eat three healthy meals a day.
- Stay well rested. Get a good night's sleep every night or take a nap to catch up on your sleep.
- Exercise several times a week.
- Take a walk, stretch your legs and get some fresh air.
- Don't try to do it all yourself – seek help from professionals and other family members.
- Join a caregiving support group. Your local hospitals or nursing homes may be able to refer you to a support group in your area.

# Next Steps

Once you have identified your loved one's potential legal issues, it's important to take action:

- 1** Help your loved one with any necessary paperwork relating to beneficiary designations, government benefits and financial and insurance policies.
- 2** Determine any legal documents your loved one needs and decide the best approach to getting these completed. Does it make the most sense to hire an attorney, use online resources or do them yourself? Set a realistic timeline for completion.
- 3** Consult with an attorney for more complex issues related to estate planning –particularly a will, trust, living will and powers of attorney.

## Resources

### U.S. Government Information and Services

[usa.gov/disability-caregiver](https://www.usa.gov/disability-caregiver)

### Medicare

[medicare.gov/care-compare/?providerType=Hospital&redirect=true](https://www.medicare.gov/care-compare/?providerType=Hospital&redirect=true)

### U.S. Department of Health and Human Services

[eldercare.acl.gov/home](https://www.eldercare.acl.gov/home)

### HIPAA Privacy Rules

[hhs.gov/hipaa/for-individuals/index.html](https://www.hhs.gov/hipaa/for-individuals/index.html)

### Medicare – Nursing Home Comparisons

[medicare.gov/care-compare/?providerType=NursingHome&redirect=true](https://www.medicare.gov/care-compare/?providerType=NursingHome&redirect=true)

### U.S. Department of Housing and Urban Development

[hud.gov](https://www.hud.gov)

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