

## Why Plan Your Estate?

The knowledge that we will eventually die is one of the things that seems to distinguish humans from other living beings. At the same time, no one likes to dwell on the prospect of his or her own death. But if you postpone planning for your demise until it is too late, you run the risk that your intended beneficiaries -- those you love the most -- may not receive what you would want them to receive whether due to extra administration costs, unnecessary taxes or squabbling among your heirs.

This is why estate planning is so important, no matter how small your estate may be. It allows you, while you are still living, to ensure that your property will go to the people you want, in the way you want, and when you want. It permits you to save as much as possible on taxes, court costs and attorneys' fees; and it affords the comfort that your loved ones can mourn your loss without being simultaneously burdened with unnecessary red tape and financial confusion. All estate plans should include, at minimum, two important estate planning instruments: a durable power of attorney and a will. The first is for managing your property during your life, in case you are ever unable to do so yourself. The second is for the management and distribution of your property after death. In addition, more and more, Americans also are using revocable (or "living") trusts to avoid probate and to manage their estates both during their lives and after they're gone.

### Your Durable Power of Attorney

For most people, the durable power of attorney is the most important estate planning instrument available--even more useful than a will. A power of attorney allows a person you appoint -- your "attorney-in-fact" -- to act in your place for financial purposes when and if you ever become incapacitated.

In that case, the person you choose will be able to step in and take care of your financial affairs. Without a durable power of attorney, no one can represent you unless a court appoints a conservator or guardian. That court process takes time, costs money, and the judge may not choose the person you would prefer. In addition, under a guardianship or conservatorship, your representative may have to seek court permission to take planning steps that she could implement immediately under a simple durable power of attorney.

A power of attorney may be limited or general. A limited power of attorney may give someone the right to sign a deed to property on a day when you are out of town. Or it may allow someone to sign checks for you. A general power is comprehensive and gives your attorney-in-fact all the powers and rights that you have yourself.

A power of attorney may also be either current or "springing." Most powers of attorney take effect immediately upon their execution, even if the understanding is that they will not be used until and unless the grantor becomes incapacitated. However, the document can also be written so that it does not become effective until such incapacity occurs. In such cases, it is very important that the standard for determining incapacity and triggering the power of attorney be clearly laid out

in the document itself.

However, attorneys report that their clients are experiencing increasing difficulty in getting banks or other financial institutions to recognize the authority of an agent under a durable power of attorney. A certain amount of caution on the part of financial institutions is understandable: When someone steps forward claiming to represent the account holder, the financial institution wants to verify that the attorney-in-fact indeed has the authority to act for the principal. Still, some institutions go overboard, for example requiring that the attorney-in-fact indemnify them against any loss. Many banks or other financial institutions have their own standard power of attorney forms. To avoid problems, you may want to execute such forms offered by the institutions with which you have accounts. In addition, many attorneys counsel their clients to create living trusts in part to avoid this sort of problem with powers of attorney.

While you should seriously consider executing a durable power of attorney, if you do not have someone you trust to appoint it may be more appropriate to have the probate court looking over the shoulder of the person who is handling your affairs through a guardianship or conservatorship. In that case, you may execute a limited durable power of attorney simply nominating the person you want to serve as your conservator or guardian. Most states require the court to respect your nomination "except for good cause or disqualification."

## **Your Will**

Your will is a legally-binding statement directing who will receive your property at your death. It also appoints a legal representative to carry out your wishes. However, the will covers only probate property. Many types of property or forms of ownership pass outside of probate. Jointly-owned property, property in trust, life insurance proceeds and property with a named beneficiary, such as IRAs or 401(k) plans, all pass outside of probate.

### **Why should you have a will? Here are some reasons:**

First, with a will you can direct where and to whom your estate (what you own) will go after your death. If you died intestate (without a will), your estate would be distributed according to your state's law. Such distribution may or may not accord with your wishes.

Many people try to avoid probate and the need for a will by holding all of their property jointly with their children. This can work, but often people spend unnecessary effort trying to make sure all the joint accounts remain equally distributed among their children. These efforts can be defeated by a long-term illness of the parent or the death of a child. A will can be a much simpler means of effecting one's wishes about how assets should be distributed.

The second reason to have a will is to make the administration of your estate run smoothly. Often the probate process can be completed more quickly and at less

expense to your estate if there is a will. With a clear expression of your wishes, there are unlikely to be any costly, time-consuming disputes over who gets what.

Third, only with a will can you choose the person to administer your estate and distribute it according to your instructions. This person is called your "executor" (or "executrix" if you appoint a woman) or "personal representative," depending on your state's statute. If you do not have a will naming him or her, the court will make the choice for you. Usually the court appoints the first person to ask for the post, whoever that may be.

Fourth, for larger estates, a well-planned will can help reduce estate taxes.

Fifth, and most important, through a will you can appoint who will take your place as guardian of your minor children should both you and their other parent both pass away.

Filling out a worksheet will help you make decisions about what to put in your will. Bring it and any additional notes to your lawyer and he or she will be able to efficiently prepare a will that meets your needs and desires.

### Your Medical Directive

Any complete estate plan should include a medical directive. This term may encompass a number of different documents, including a health care proxy, a durable power of attorney for health care, a living will, and medical instructions. The exact document or documents will depend on your state's laws and the choices you make.

Both a health care proxy and a durable power of attorney for health care designate someone you choose to make health care decisions for you if you are unable to do so yourself. A living will instructs your health care provider to withdraw life support if you are terminally ill or in a vegetative state. A broader medical directive may include the terms of a living will, but will also provide instructions if you are in a less severe state of health, but are still unable to direct your health care yourself.

### Trusts

A trust is a legal arrangement through which one person (or an institution, such as a bank or law firm), called a "trustee," holds legal title to property for another person, called a "beneficiary." The rules or instructions under which the trustee operates are set out in the trust instrument. Trusts have one set of beneficiaries during their lives and another set -- often their children -- who begin to benefit only after the first group has died. The first are often called "life beneficiaries" and the second "remaindermen."

### Uses of Trusts

There can be several advantages to establishing a trust, depending on your situation. Best-known is the advantage of avoiding probate. In a trust that terminates with the death of the donor, any property in the trust prior to the donor's death passes immediately to the beneficiaries by the terms of the trust without requiring probate. This can save time and money for the beneficiaries. Certain trusts can also result in tax advantages both for the donor and the beneficiary. These are often referred to as "credit shelter" or "life insurance" trusts. Other trusts may be used to protect property from creditors or to help the donor qualify for Medicaid. Unlike wills, trusts are private documents and only those individuals with a direct interest in the trust need know of trust assets and distribution. Provided they are well-drafted, another advantage of trusts is their continuing effectiveness even if the donor dies or becomes incapacitated.

### **Kinds of Trusts**

Trusts fall into two basic categories: testamentary and inter vivos. A testamentary trust is one created by your will, and it does not come into existence until you die. In contrast, an inter vivos trust starts during your lifetime. You create it now and it exists during your life.

There are two kinds of inter vivos trusts: revocable and irrevocable.

#### **Revocable Trusts**

Revocable trusts are often referred to as "living" trusts. With a revocable trust, the donor maintains complete control over the trust and may amend, revoke or terminate the trust at any time. This means that you, the donor, can take back the funds you put in the trust or change the trust's terms. Thus, the donor is able to reap the benefits of the trust arrangement while maintaining the ability to change the trust at any time prior to death.

Revocable trusts are generally used for the following purposes:

- . Asset management. They permit the named trustee to administer and invest the trust property for the benefit of one or more beneficiaries.
- . Probate avoidance. At the death of the person who created the trust, the "grantor" or "donor," the trust property passes to whoever is named in the trust. It does not come under the jurisdiction of the probate court and its distribution need not be held up by the probate process. However, the property of a revocable trust will be included in the grantor's estate for tax purposes.
- . Tax planning. While the assets of a revocable trust will be included in the grantor's taxable estate, the trust can be drafted so that the assets will not be included in the estates of the beneficiaries, thus avoiding taxes when the beneficiaries die.

#### **Irrevocable Trusts**

An irrevocable trust cannot be changed or amended by the donor. Any property

placed into the trust may only be distributed by the trustee as provided for in the trust document itself. For instance, the donor may set up a trust under which he or she will receive income earned on the trust property, but that bars access to the trust principal. This type of irrevocable trust is a popular tool for Medicaid planning.

### Testamentary Trusts

As noted above, a testamentary trust is a trust created by a will. Such a trust has no power or effect until the will of the donor is probated. Although a testamentary trust will not avoid the need for probate and will become a public document as it is a part of the will, it can be useful in accomplishing other estate planning goals. For instance, the testamentary trust can be used to reduce estate taxes on the death of a spouse or provide for the care of a disabled child.

### Supplemental Needs Trusts

The purpose of a supplemental needs trust is to enable the donor to provide for the continuing care of a disabled spouse, child, relative or friend. The beneficiary of a well-drafted supplemental needs trust will have access to the trust assets for purposes other than those provided by public benefits programs. In this way, the beneficiary will not lose eligibility for benefits such as Supplemental Security Income, Medicaid and low-income housing. A supplemental needs trust can be created by the donor during life or be part of a will.

### Credit Shelter Trusts

Credit shelter trusts are a way to take full advantage of the estate tax exemption. The first \$2 million (in 2006) of an estate are exempt from taxes, so theoretically a husband and wife would have no estate tax if their estate is less than \$4 million. However, if one spouse dies and leaves everything to the surviving spouse, the surviving spouse may have an estate that is greater than \$2 million. When the surviving spouse dies, any part of the estate over \$2 million will be subject to estate tax.

To avoid this problem, the spouses can create a credit shelter trust as part of their estate plan. When one spouse passes away, the first \$2 million of that spouse's estate is put in to a trust. The surviving spouse can receive income from the trust, but as long as he or she does not control the principal, the money will not be included in the surviving spouse's estate when he or she passes away.

### Capacity Requirements

Proper execution of a legal instrument requires that the person signing have sufficient mental "capacity" to understand the implications of the document. While most people speak of legal "capacity" or "competence" as a rigid black line--either the person has it or doesn't--in fact it can be quite variable depending

on the person's abilities and the function for which capacity is required. One side of the capacity equation involves the client's abilities, which may change from day to day (or even during the day), depending on the course of the illness, fatigue and the effects of medication. On the other side, greater understanding is required for some legal activities than for others. For instance, the capacity required for entering into a contract is higher than that required to execute a will.

The standard definition of capacity for wills has been aptly summed up by the Massachusetts Supreme Judicial Court:

Testamentary capacity requires ability on the part of the testator to understand and carry in mind, in a general way, the nature and situation of his property and his relations to those persons who would naturally have some claim to his remembrance. It requires freedom from delusion which is the effect of disease or weakness and which might influence the disposition of his property. And it requires ability at the time of execution of the alleged will to comprehend the nature of the act of making a will.

This is a relatively "low threshold," meaning that signing a will does not require a great deal of capacity. The fact that the next day the testator does not remember the will signing and is not sufficiently "with it" to execute a will then does not invalidate the will if he understood it when he signed it.

The standard of capacity with respect to durable powers of attorney varies from jurisdiction to jurisdiction. Some courts and practitioners argue that this threshold can be quite low. The client need only know that he trusts the attorney-in-fact to manage his financial affairs. Others argue that since the attorney-in-fact generally has the right to enter into contracts on behalf of the principal, the principal should have capacity to enter into contracts as well. The threshold for entering into contracts is fairly high.

The standards for entering into a contract are different because the individual must know not only the nature of her property and the person with whom she is dealing, but also the broader context of the market in which she is agreeing to buy or sell services or property. In *Farnum v. Silvano* in 1989, the Massachusetts Appeals Court reversed the sale of a home by a 90-year-old woman suffering from organic brain disease. The sale was for half of the house's market value. The court contrasted competency to sell property with the capacity to make a will, the latter requiring only understanding at the time of executing the will:

Competency to enter into a contract presupposes something more than a transient surge of lucidity. It requires the ability to comprehend the nature and quality of the transaction, together with an understanding of what is "going on," but an ability to comprehend the nature and quality of the transaction, together with an understanding of its significance and consequences.

As a practical matter, in assessing a client's capacity to execute a legal document, attorneys generally ask the question, "Is anyone going to challenge this transaction?" If a client of questionable capacity executes a will giving her estate to her husband, and then to her children if her husband does not survive her, it's unlikely to be challenged. If, on the other hand, she executes a will giving her estate entirely to one daughter with nothing passing to her other children, the

attorney must be more certain of being able to prove the client's capacity.

While the standards may seem clear, applying them to particular clients may be difficult. The fact that a client does not know the year or the name of the President may mean she does not have capacity to enter into a contract, but not necessarily that she can't execute a will or durable power of attorney. The determination mixes medical, psychological and legal judgments. It must be made by the attorney (or a judge, in the case of guardianship and conservatorship determinations) based on information gleaned by the attorney in interactions with the client, from other sources such as family members and social workers, and, if necessary, from medical personnel. Doctors and psychiatrists cannot themselves make a determination as to whether an individual has capacity to undertake a legal commitment. But they can provide a professional evaluation of the person that will help an attorney make this decision.

Because you need a third party to assess capacity and because you need to be certain that the formal legal requirements are followed, it can be risky to prepare and execute legal documents on your own without representation by an attorney.

## Estate Taxation

Under the tax law enacted in 2001, whatever you own is subject to the federal estate tax upon your death, until 2010. For the year 2010, estates will be entirely free from federal taxation. However, the law that includes this provision expires at the end of 2010. Thus, unless Congress acts in the interim, the estate tax rules will then revert to those prevailing in 2002.

For 2006, the tax rate on estates is 46 percent. Between 2006 and 2009, the top tax rate will gradually be lowered to 45 percent (see box below). That said, not all estates will be taxed while the estate tax is in effect. First, spouses can leave any amount of property to their spouses, if the spouses are U.S. citizens, free of federal estate tax. Second, the estate tax applies only to estates valued at more than \$2 million in 2006 and this threshold will increase incrementally until it reaches \$3.5 million in 2009 (see box). The federal government allows you this tax credit for gifts made during your life or for your estate upon your death. Third, gifts to charities are not taxed.

Most states also have an estate or inheritance tax. But more and more have moved to a so-called "sponge" tax, which ultimately doesn't cost your estate. The way this works is that the states take advantage of a provision in the federal estate tax permitting a deduction for taxes paid to the state up to certain limits. The states simply take the full amount of what you are allowed to deduct off the federal taxes. However, under the 2001 tax law the allowable state deduction was phased out and disappeared in 2005. This means that many states are changing their estate tax laws to make up the difference. These changes may call for a restructuring of your estate plan; check with your attorney.

Tax Year	Tax Rate	Exemption
<b>Equivalent</b>		
2001	37-55%	675,000
2002	41-50%	1,000,000
2003	41-49%	1,000,000
2004	45-48%	1,500,000
2005	45-47%	1,500,000
2006	46%	2,000,000
2007	45%	2,000,000
2008	45%	2,000,000
2009	45%	3,500,000
2010	N/A	N/A

### Making Gifts: The \$12,000 Rule

One simple way you can reduce estate taxes or shelter assets in order to achieve Medicaid eligibility is to give some or all of your estate to your children (or anyone else) during their lives in the form of gifts. Certain rules apply, however. There is no actual limit on how much you may give during your lifetime. But if you give any individual more than \$12,000 (in 2006), you must file a gift tax return reporting the gift to the IRS. Also, the amount above \$12,000 will be counted against a \$1 million lifetime tax exclusion for gifts. Each dollar of gift above \$1 million reduces the amount that can be transferred tax-free in your estate.

The \$12,000 figure is an exclusion from the gift tax reporting requirement. You may give \$12,000 to each of your children, their spouses, and your grandchildren (or to anyone else you choose) each year without reporting these gifts to the IRS. In addition, if you're married, your spouse can duplicate these gifts. For example, a married couple with four children can give away up to \$96,000 in 2006 with no gift tax implications. In addition, the gifts will not count as taxable income to your children (although the earnings on the gifts if they are invested will be taxed).

### Charitable Gift Annuities

Another way to remove assets from an estate is to make a contribution to a charitable gift annuity, or CGA. A CGA enables you to transfer cash or marketable securities to a charitable organization or foundation in exchange for an income tax deduction and the organization's promise to make fixed annual payments to you (and to a second beneficiary, if you choose) for life. A portion of the income will be tax-free.

### Estate Administration

Probate is the process by which a deceased person's property, known as the "estate," is passed to his or her heirs and legatees (people named in the will).



The entire process, supervised by the probate court, usually takes about a year. However, substantial distributions from the estate can be made in the interim. The emotional trauma brought on by the death of a close family member often is accompanied by bewilderment about the financial and legal steps the survivors must take. The spouse who passed away may have handled all of the couple's finances. Or perhaps a child must begin taking care of probating an estate about which he or she knows little. And this task may come on top of commitments to family and work that can't be set aside. Finally, the estate itself may be in disarray or scattered among many accounts, which is not unusual with a generation that saw banks collapse during the Depression.

Here we set out the steps the surviving family members should take. These responsibilities ultimately fall on whoever was appointed executor or personal representative in the deceased family member's will. Matters can be a bit more complicated in the absence of a will, because it may not be clear who has the responsibility of carrying out these steps.

First, secure the tangible property. This means anything you can touch, such as silverware, dishes, furniture, or artwork. You will need to determine accurate values of each piece of property, which may require appraisals, and then distribute the property as the deceased directed. If property is passed around to family members before you have the opportunity to take an inventory, this will become a difficult, if not impossible, task. Of course, this does not apply to gifts the deceased may have made during life, which will not be part of his or her estate.

Second, take your time. You do not need to take any other steps immediately. While bills do need to be paid, they can wait a month or two without adverse repercussions. It's more important that you and your family have time to grieve. Financial matters can wait. (One exception: Social Security should be notified within a month of death. If checks are issued following death, you could be in for a battle.

When you're ready, but not a day sooner, meet with an attorney to review the steps necessary to administer the deceased's estate. Bring as much information as possible about finances, taxes and debts. Don't worry about putting the papers in order first; the lawyer will have experience in organizing and understanding confusing financial statements.

The exact rules of estate administration differ from state to state. In general, they include the following steps:

1. Filing the will and petition at the probate court in order to be appointed executor or personal representative. In the absence of a will, heirs must petition the court to be appointed "administrator" of the estate.
2. Marshaling, or collecting, the assets. This means that you have to find out everything the deceased owned. You need to file a list, known as an "inventory," with the probate court. It's generally best to consolidate all the estate funds to the

extent possible. Bills and bequests should be paid from a single checking account, either one you establish or one set up by your attorney, so that you can keep track of all expenditures.

3. Paying bills and taxes. If an estate tax return is needed---generally if the estate exceeds \$1 million in value---it must be filed within nine months of the date of death. If you miss this deadline and the estate is taxable, severe penalties and interest may apply. If you do not have all the information available in time, you can file for an extension and pay your best estimate of the tax due.

4. Filing tax returns. You must also file a final income tax return for the decedent and, if the estate holds any assets and earns interest or dividends, an income tax return for the estate. If the estate does earn income during the administration process, it will have to obtain its own tax identification number in order to keep track of such earnings.

5. Distributing property to the heirs and legatees. Generally, executors do not pay out all of the estate assets until the period runs out for creditors to make claims, which can be as long as a year after the date of death. But once the executor understands the estate and the likely claims, he or she can distribute most of the assets, retaining a reserve for unanticipated claims and the costs of closing out the estate.

6. Filing a final account. The executor must file an account with the probate court listing any income to the estate since the date of death and all expenses and estate distributions. Once the court approves this final account, the executor can distribute whatever is left in the closing reserve, and finish his or her work. Some of these steps can be eliminated by avoiding probate through joint ownership or trusts. But whoever is left in charge still has to pay all debts, file tax returns, and distribute the property to the rightful heirs. You can make it easier for your heirs by keeping good records of your assets and liabilities. This will shorten the process and reduce the legal bill.

Health and Elder Law Programs (H.E.L.P.), a non-profit organization started by a California elder law attorney, offers a checklist to help survivors sort out and keep track of the things that need to be handled after a person has died.

## Guardianship and Conservatorship

### Introduction

Every adult is assumed to be capable of making her own decisions unless a court determines otherwise. If an adult becomes incapable of making responsible decisions due to a mental disability, the court will appoint a substitute decision maker, often called a "guardian," but in some states called a "conservator" or other term. Guardianship is a legal relationship between a competent adult (the "guardian") and a person who because of incapacity is no longer able to take care of his or her own affairs (the "ward").

The guardian is authorized to make legal, financial, and health care decisions for the ward. Depending on the terms of the guardianship and state practices, the guardian may or may not have to seek court approval for various decisions. In many states, a person appointed only to handle finances is called a "conservator."

Some incapacitated individuals can make responsible decisions in some areas of their lives but not others. In such cases, the court may give the guardian decision making power over only those areas in which the incapacitated person is unable to make responsible decisions (a so-called "limited guardianship"). In other words, the guardian may exercise only those rights that have been removed from the ward and delegated to the guardian.

### Incapacity

The standard under which a person is deemed to require a guardian differs from state to state. In some states the standards are different, depending on whether a complete guardianship or a conservatorship over finances only is being sought. Generally a person is judged to be in need of guardianship when he or she shows a lack of capacity to make responsible decisions. A person cannot be declared incompetent simply because he or she makes irresponsible or foolish decisions, but only if the person is shown to lack the capacity to make sound decisions. For example, a person may not be declared incompetent simply because he or she spends money in ways that seem odd to someone else. Also, a developmental disability or mental illness is not, by itself, enough to declare a person incompetent.

### Process

In most states, anyone interested in the proposed ward's well-being can request a guardianship. An attorney is usually retained to file a petition for a hearing in the probate court in the proposed ward's county of residence. Protections for the proposed ward vary greatly with from state to state, with some simply requiring that notice of the proceeding be provided and others requiring the proposed ward's presence at the hearing. The proposed ward is usually entitled to legal representation at the hearing, and the court will appoint an attorney if the allegedly incapacitated person cannot afford a lawyer.

At the hearing, the court attempts to determine if the proposed ward is incapacitated and, if so, to what extent the individual requires assistance. If the court determines that the proposed ward is indeed incapacitated, the court then decides if the person seeking the role of guardian will be a responsible guardian. A guardian can be any competent adult -- the ward's spouse, another family member, a friend, a neighbor, or a professional guardian (an unrelated person who has received special training). A competent individual may nominate a proposed guardian through a durable power of attorney in case she ever needs a guardian.

The guardian need not be a person at all -- it can be a non-profit agency or a public or private corporation. If a person is found to be incapacitated and a

suitable guardian cannot be found, courts in many states can appoint a public guardian, a publicly financed agency that serves this purpose. In naming someone to serve as a guardian, courts give first consideration to those who play a significant role in the ward's life -- people who are both aware of and sensitive to the ward's needs and preferences. If two individuals wish to share guardianship duties, courts can name co-guardians.

### Reporting Requirements

Courts often give guardians broad authority to manage the ward's affairs. In addition to lacking the power to decide how money is spent or managed, where to live and what medical care he or she should receive, wards also may not have the right to vote, marry or divorce, or carry a driver's license. Guardians are expected to act in the best interests of the ward, but given the guardian's often broad authority, there is the potential for abuse. For this reason, courts hold guardians accountable for their actions to ensure that they don't take advantage of or neglect the ward.

The guardian of the property inventories the ward's property, invests the ward's funds so that they can be used for the ward's support, and files regular, detailed reports with the court. A guardian of the property also must obtain court approval for certain financial transactions. Guardians must file an annual account of how they have handled the ward's finances. In some states guardians must also give an annual report on the ward's status. Guardians must offer proof that they made adequate residential arrangements for the ward, that they provided sufficient health care and treatment services, and that they made available educational and training programs, as needed. Guardians who cannot prove that they have adequately cared for the ward may be removed and replaced by another guardian.

### Alternatives

Because guardianship involves a profound loss of freedom and dignity, state laws require that guardianship be imposed only when less restrictive alternatives have been tried and proven to be ineffective. Less restrictive alternatives that should be considered before pursuing guardianship include:

#### Power of Attorney.

A power of attorney is the grant of legal rights and powers by a person (the principal) to another (the agent or attorney-in-fact). The attorney-in-fact, in effect, stands in the shoes of the principal and acts for him or her on financial, business or other matters. In most cases, even when the power of attorney is immediately effective, the principal does not intend for it to be used unless and until he or she becomes incapacitated.

**Representative or Protective Payee.** This is a person appointed to manage Social Security, Veterans' Administration, Railroad Retirement, welfare or other state or federal benefits or entitlement program payments on behalf of an

individual.

Conservatorship. In some states this proceeding can be voluntary, where the person needing assistance with finances petitions the probate court to appoint a specific person (the conservator) to manage his or her financial affairs. The court must determine that the conservatee is unable to manage his or her own financial affairs, but nevertheless has the capacity to make the decision to have a conservator appointed to handle his or her affairs.

Revocable trust. A revocable or "living" trust can be set up to hold an older person's assets, with a relative, friend or financial institution serving as trustee. Alternatively, the older person can be a co-trustee of the trust with another individual who will take over the duties of trustee should the older person become incapacitated.