

Planning For the Day When Your Parent Won't Have the Answers

When a parent begins to show signs of mental incapacity, there are potential disasters to avoid:

- No estate plan, resulting in your parent dying intestate. The government takes over.
- Inadequate estate plan—just a will, without any of the management tools, as we call them. One is a revocable living trust with a contingent trustee, such as an adult child.
- No power of attorney
- An improperly executed estate plan which fails to avoid probate and minimize estate taxes—assets not transferred into trust.

Each of these scenarios is avoidable, though some are impossible to resolve once they have occurred. It is important to be aware of your parent's mental capacity while aging, and to be thoroughly updated on your parent's estate planning. The combination, however difficult to discuss, will keep you ready for countless unexpected (and costly) occurrences.

Before grappling the legal issues, it is imperative to establish a thorough understanding of the risks an aging parent may encounter. Organizations such as AARP and the National Institute on Mental Health are great resources for researching terminology, government agencies, legislation, organizations, and programs related to aging and mental health (visit <http://www.aarp.org/> and www.nimh.nih.org).

The answers below to some common concerns about aging compose the steps you should consider to prepare for your parents' future.

Who determines mental incapacity?

Ultimately, one or more physicians. However, obtaining that declaration can be very difficult without adequate planning. If your parent does not assign a power of attorney to someone who can care for her in the event of mental incapacitation, a guardian will be appointed through a court hearing, which can be a very time-consuming, expensive, public process. **The Ideal Scenario:** If the proper steps have been taken ahead of time to assign a power of attorney, a physician will simply declare mental incapacity and the responsibility passes at that point. If you have put the management tools in place—the proper estate plan—you can avoid a court proceeding and begin acting as financial fiduciary right away.

What abilities does a power of attorney allow?

It authorizes you to act on your parent's behalf in health decisions and financial matters such as opening, closing or transferring accounts. You will also be able to spend your parent's money on items, such as long term care and allocate their resources in the way you feel is most appropriate. However, it does not give the user power to make health decisions, a doctor will achieve that goal.

Is it possible to obtain a power of attorney too early?

To prevent a power of attorney from exercising his powers before mental incapacitation has been declared, you can assign what is called a springing power of

attorney. This requires a doctor's declaration before the powers become effective, and an elderly person can maintain control as long as the doctor sees fit. **The Ideal Scenario:** A springing power of attorney fulfills all needs; it establishes the power of attorney, while ensuring that power will not become effective until a medical professional has determined it is necessary. It is the most prepared position for the unexpected.

What steps should someone take after assigning a power of attorney?

Make sure those who have been assigned powers of attorney are aware of the authority they will have in the event of your inability to make your own decisions. You also need to ensure everyone involved knows the location of your estate documents and financial records. : An Attorney-in-fact should completely be capable of the anticipated responsibilities. Ensure this candidate is suitable for the task and aware of the impending responsibility.

What is the ideal relationship I should have with my parent's doctor?

Establish contact with your parent's doctor as soon as possible. Keep in mind that some medications may cause a patient to act differently, so ask questions about the possible side effects of any drugs prescribed. Approach the patient-doctor relationship as a team effort to prepare you to understand the appropriate steps should your parent's health take a turn for the worse. **The Ideal Scenario:** Keep abreast of your parent's health issues and establish a relationship with your parent's doctor, discuss any changes you've noticed.

Is it considered a breach of confidentiality to consult my parent's advisors (financial, tax, etc.)?

As long as your parent has given your advisors permission to discuss matters with you, it is perfectly acceptable to consult them.

What financial factors should I consider in choosing alternative living arrangements?

- **Affordability:** Is there a possibility that you will outlive your assets? How long have prior generations lived, are you likely to live as long or longer than they did? We suggest you be conservative in your estimates and assume you will live a long time. Remember even with Medicaid, *assisted living residents and their families pay the majority of assisted living services.*
- **Appropriate levels of care:** At each stage of your parent's illness, be sure you are only paying for those services that are necessary.

How do I talk to my parents about incapacity?

Communication is the most important factor determining the success of a plan for the possibility of incapacitation. Many people avoid the topic of death and aging because it is the inevitability they fear most. But the only way to conquer that fear is to discuss it between generations so everyone involved understands the issues and concerns of the parent. To answer the question "How do I bring it up," only you know the individual idiosyncrasies of the situation, but the rule of thumb is to be gentle and honest. **The Ideal Scenario:** Be gentle and honest. Your loved one needs to be reassured you care about him or her and will support them, that is crucial.

Is there a benefit to talking with my parent about our plans for incapacity ahead of time?

Absolutely! As mentioned before, a possibility like incapacitation can be taken care of in advance if you have the discipline to create a plan. **The Ideal Scenario:** By planning ahead you will also benefit from the ability to be more objective, rather than waiting until a time of crisis that requires quick decisions at the same time you are grieving your parent's illness.

What challenges should I expect when confronting my parent about his/her incapacity?

Nobody enjoys bringing up the subject, and the obvious emotionality of the topic will definitely color each person's reaction to the conversation. There are two negative reactions that are common:

- Denial: This mentality will have to be worked out over time with the appropriate people, including the family and doctor.
- Suspicion: A parent may become suspicious that an adult child is trying to get his hands on a parent's assets. This possibility will be determined by the underlying relationship with the parent.

The Ideal Scenario: If your relationship is based upon a record of consistency and trust, your parent should be able to handle a conversation on the topic.

What are the steps involved in securing alternative living arrangements?

First, your parent needs to conclude it is time to begin a search for some type of assisted living. Then, you will find that certain options become most favorable once you consider the following issues:

- Location – where does your parent want to live?
- Type of care needed – what level of care is necessary?
- Cost – what can the family afford?
- Appropriateness – what is going to make your parent feel most at home?