

## Money Talks

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Demographic trends indicate that as the boomer generation ages, an increasing number of its members are becoming elderly orphans: a spouse has predeceased, children live outside of the area, and other family members live some distance away. Ideally, while an individual is still competent, that individual will have created advance directives: powers of attorney for financial matters and health concerns, revocable trust, and similar planning documents. With these documents, the person is more likely to have their wishes followed and can avoid the need for surrogates, guardians, or conservators. If the person has not completed these estate planning documents and becomes incapacitated, they are likely to end up in the court system. Generally, an individual lacking capacity with someone to make decisions on their behalf will be subject to a court appointed guardian or conservator.

About 75% of all states have some type of default health surrogate law that assists medical professionals in dealing with patients who lack capacity and have no other representation. Most of these laws have a hierarchy of people to make health care decisions for the individual, but generally the list is predominately comprised of family members. Some states have started to modify this list and this flexibility is important as many individuals lack the spouse or family member necessary.

Completing estate planning documents and advance directives means choice, but who do you choose to make medical and financial decisions? More populous states have care management agencies that employ professionals from different backgrounds, such as social work, nursing, and general accounting. With some planning, a person can choose who will provide the care that is necessary.

Many individuals need assistance in the home as they age in place. There are always concerns when caregivers are in home, but it can be a larger issue for the elderly who may not have others checking on them. A care manager or a corporate trustee may provide oversight of the caregiver. Unfortunately, some caregivers exercise undue influence over the person and the risk of exploitation is high. You can limit access to cash, checks and bank accounts.

If a person wants to create a trust but doesn't have an individual to name as trustee, they can name a corporate fiduciary. A corporate fiduciary makes certain that there will always be someone to act and have professionals skilled in money management, taxes, and conservation of trust principal. Corporate fiduciaries are corporations and are subject to state and federal regulations and are held to a high standard of care.

Most trusts define under what conditions a grantor serving as their own trustee is deemed incapacitated. Typically, the trust will have the grantor's physician makes this determination. If the person has a long-standing medical relationship with a primary care physician, this usually is not a problem. However, this determination is more difficult if the physician lacks a relationship with the

patient and is only treating an acute medical issue. The grantor should take this into consideration when creating a trust provision for determination of incapacity.

Individuals who have not planned ahead often need a conservator or guardian when they lose the ability to make their own decisions. This is a process in which the local court appoints an individual or corporate entity giving them the legal authority to make personal or financial decisions. State law places some limits on this authority and many major actions may require prior court approval.