

A CAREGIVER'S FINANCIAL RESPONSIBILITIES

Key questions for you & your family to consider.

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A labor of love may come to involve money issues. Providing eldercare to a parent, grandparent or relative is one of the noblest things you can do. It is a great responsibility, and over time it may also lead you and your family to reflect on some financial responsibilities. Here are some questions to consider.

Q: How will caregiving affect your own financial picture? Try to estimate a budget, either before you begin or after a representative interval of caregiving. How much of the elder's finances will be devoted to care costs compared with your finances? If you are thinking about quitting a job to focus on eldercare, think about the resulting loss of income, the probable loss of your own health care coverage, and your prospects for reentering the workforce in the future.

Q: How much will "aging in place" cost? Growing old at home (rather than in a nursing home) has many advantages. Unfortunately, over time, the cost of care provided in the home can greatly exceed nursing home services. So you must weigh how long you can manage with home health aide services versus adult day care or nursing home care.

Q: How much do you know about your loved one's financial life? Caring for a parent, grandparent or sibling may eventually mean making financial decisions on their behalf. So you may have a learning curve ahead of you. Specifically, you may have to learn, if you don't already know:

- Where your loved one's income comes from (SSI, pensions, investments, etc.)
- Where wills, deeds and trust documents are located
- Who the beneficiaries are on various policies and accounts
- Who has advised your loved one about financial matters in the past (financial consultants, CPAs, insurance agents, etc.)
- Assorted PIN numbers for accounts and of course Social Security numbers

Q: Is it time for a power of attorney? If a loved one has been diagnosed with Alzheimer's or any form of disease which will eventually impair judgment, a power of attorney will likely be needed in the future. In fact, if you try to handle money matters for another person without a valid power of attorney, the financial institution involved could reject your efforts.¹

When a power of attorney is in effect, it authorizes an "agent" or "attorney-in-fact" to handle financial transactions for another person. A *durable power of attorney* lets you handle the financial matters of another person immediately. A *springing power of attorney* only lets you do this after a medical diagnosis confirms a person's mental incompetence. (As no doctor wants a lawsuit, such diagnoses are harder to obtain than you might think.)¹

You want to obtain a power of attorney *before* your loved one is unable to make financial decisions. Many investment firms will only permit a second party access to an account owner's invested assets if the original account owner signs a form allowing it. Copies of the durable power of attorney should be sent to any financial institution at which your parents have accounts or policies. Whoever becomes the agent should be given a certified copy of the power of attorney and be told where the original document is located.²

Q: Is it time for a conservatorship? A conservatorship gives a guardian the control to manage the assets and financial affairs of a "protected" person. If a loved one becomes incapacitated, a conservator can assume control of some or all of the protected party's income and assets if a probate court allows.³

To create a conservatorship, you must either request or petition a probate court, preferably with assistance from a family law attorney. A probate court will only grant conservatorship after interviews and background check on the proposed conservator and only after documentation is provided to the court showing financial and mental incompetence on the part of the individual to be protected.³

A conservatorship implies more vigilance than a power of attorney. With a power of attorney, there is no ongoing accountability to a court of law. (The same goes for a living trust.) There is little to prevent an attorney-in-fact from abusing or neglecting the protected person. On the other hand, a conservator must report an ongoing accounting to the probate court.⁴

Q: If a trust is created, who will serve as trustee? As some carereceivers acknowledge their physical and mental decline, they decide to transfer ownership of certain assets from themselves to a revocable or irrevocable trust. A settlor (or grantor) creates a trust, a trustee manages it and the assets go to one or more beneficiaries. (The trustee can be a relative; it can also be a bank or an attorney, for that matter.) At the settlor's death, the trustee distributes the settlor's assets according to the instructions written in the trust document. Probate of the trust assets is avoided - so long as the assets have been transferred into the trust during the settlor's lifetime.⁴

A trustee has a fiduciary responsibility to watch over the financial legacy of the settlor. Practically speaking, a trustee needs to have sufficient financial literacy to understand tax law, the managing of investments and the long-range goals noted in the trust document. Some families consider all this and opt to manage trusts themselves; others seek the services of financial professionals.

If the carereceiver has a living trust or another form of trust already, you may still need a power of attorney as percentages of his or her assets or income may not end up in the trust. (There is nothing from preventing a trustee from also being the agent in a power of attorney.) Additionally, while a living trust is essentially a will

substitute, you will still need a pour-over will to supplement it. That is because in all probability, some of the settlor's assets won't be transferred into the trust during his or her lifetime. A pour-over will is the legal mechanism that "pours" those stray assets into the trust when the settlor passes away. If 100% of the settlor's assets are transferred into the trust during the settlor's lifetime, a pour-over will becomes superfluous.⁴

Q: Finally, do you understand the potential for liability? As a caregiver, you have a physical, psychological and legal duty to the carereceiver. If you neglect that duty, you could be held liable as many states have laws demanding that caregiving meets certain standards.

These laws are basically similar: a caregiver must not abuse the carereceiver in any conceivable way, and any incidents of such abuse must be reported (there are often state and local "hotlines" set up for this). The elder must have adequate nutrition, clothing and bedding, and the environment must be clean and not pose health hazards.

If you have obtained a power of attorney for finances, then appropriate amounts of the elder's money must be spent on necessary health services and other services on behalf of his/her well-being. Failure to do so could be interpreted in court as a form of abuse or neglect.

When abuse and neglect occur, they may have roots in caregiver burnout - the caregiver is constantly cross and irritable with the carereceiver, or stress defines the experience, or an overwhelming sense of duty or anxiety prevents the caregiver from having a life of his/her own. If you ever feel you are approaching this point, it is time to call for assistance or to assign caregiving to professionals.

Useful URLs. Some good websites can help you connect to great resources: try the U.S. Administration on Aging's Eldercare Locator (eldercare.gov), the National Council on Aging's online benefits checklist service (benefitscheckup.org) and the National Association of Area Agencies on Aging (n4a.org/about-n4a/?fa=aaa-title-VI).⁵

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Citations.

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2 - www.kiplinger.com/article/retirement/T066-C000-S002-managing-your-parents-money.html [3/11]

3 - dhs.sd.gov/gdn/guardianshipfaqs.aspx [6/2/12]

4 - www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=434 [1/15/13]

5 - money.usnews.com/money/blogs/the-best-life/2011/07/18/10-tips-for-caring-for-aging-parents [7/18/11]