

Q&A #003

Question: Both my parents are in the hospital. My name is not on their bank account. How can I pay their bills?

Answer: You need to get POA cards for every account from all the banks your parents deal with as well as for any bank vault. Take the cards to the hospital, and have them sign the cards - with a notary public witnessing them signing. Most hospitals have one available at no or minimal charge.

Question: My husband, 68, has had a stroke, is in a coma, and needs special nursing care. I'm told I cannot just sell our summer home. Why not? I own it with him.

Answer: Even though you jointly own the home, he must sign the sales contract and deed - unless you have Power of Attorney. No POA; no sale!

Question: My sister and I have lived together for 15 years. She is now legally blind and can't handle her finances. I have no idea what her income is, or whether or not she even has a will. And I can't pay her bills. She refuses to discuss these issues with me as well as her son. Guidance please.

Answer: All of these situations emphasize the importance of everyone, regardless of age, having a Power of Attorney document drawn up and signed. There are no guarantees in life, so everyone should choose someone else they trust to help out when needed.

If a person refuses to sign a POA, then family members have to hire a lawyer and go to court to be appointed guardian or administrator. This is a costly procedure. The judge might even appoint a complete stranger, who not only is paid a fee, but who also might make decisions contrary to what the person and/or family wants.

Everyone has the choice to protect him/herself or leave important financial living and medical care decisions to chance or strangers.

Giving another person POA does not mean you give up your rights or ability to handle your own affairs. You still can do everything for yourself. Look at a POA representative as a "helper" rather than "controller."

I had POA for my father for three years before I used it. And that was only when he, at 93, said he didn't want to be bothered any longer with paying the household bills.

Question: My father, 69, recently sold his business (a retail store) and has a modest amount of cash, plus IRA money, life insurance and \$50,000 in stock. He refuses to even discuss, much less do anything in relation to estate planning. He says it's none of our business, and he knows what he's doing. He's being bombarded by various brokers and financial planners, who advise all kinds of complicated "plans." Guidance please.

Answer: Complicated and costly-to-establish estate plans often achieve little or nothing. With all the information “out there,” it’s easy to be confused and ill-advised.

Besides wanting to keep financial information to himself, your father may not want to admit he finds these decisions - which can be tough - confusing.

I’m not a lawyer, but here are some simple guidelines for him.

- Put down on paper all assets, the value, and how it is owned (e.g. with or without your mother). Most people have no idea what they really have.
- If total assets are more than \$675,000 (2001), then some planning is warranted. If under, don’t worry about it.
- If over \$675,000 (2001), look at how assets are owned. It doesn’t make any difference when one of your parents dies. But it will when the second does.
- Split asset ownership. Don’t have everything in joint tenancy.
- Have a Will that sets up a marital trust. That way, the assets of the survivor can be minimized. Yet the survivor will have the income.
- The owner of the insurance policy and the beneficiary should be the same. This takes it out of probate and avoids estate taxes.
- Don’t set up a Revocable Living Trust expecting to avoid all taxes. They don’t work that way, even though some planners say they will.
- If various properties are owned jointly, change deeds to read tenants-in-common, rather than joint tenancy. The deceased’s share should go into the marital trust, with the survivor having life rights and the ability to sell.

By splitting asset ownership and establishing a marital trust by Will, heirs can save thousands of dollars.

- Marital trusts established by a Testamentary Will are only beneficial if a couple’s assets are not owned jointly. If all or most of the high valued assets are jointly held, then there will be no assets available to fund a marital trust when the first spouse dies.

Question: My younger brother, who lives near my parents (82 and 87), has Power of Attorney for them. I live 500 miles away. They refuse to discuss their finances with me or tell me what they have. I have a right to know.

Answer: Sorry! You have no legal right to know if your parents don't want you to. It's their money, and they can do with it what they want as long as they are mentally competent. Your brother is responsible to your parents only and doesn't have to give you any information.

At the same time, you might tell your parents you are concerned. And you would like to know, in general parameter terms, if they will be financially secure in the long term or whether you should put aside some of your money for their eventual care.

If you think large sums of money are being taken by your brother, you can go to court now or after their death and ask for an accounting by your brother

Do keep in mind that even though your brother may have POA, he may not be "exercising" it. Your parents can continue to handle their own finances and bills. My father handled all his affairs and paid household bills until six months before he died at 94. It was only then that I 'exercised' the POA.

Question: I've had to take over my father's (85) finances. Until now, I had no idea what he had. The amount is more than the \$675,000 that can be willed (left to heirs) without having to pay taxes. What should I do?

Answer: Regardless of how much over the \$675,000 mark, don't rush to "gift" or transfer money or other assets. You might make mistakes that can be more costly in the end. And do not put bank accounts or assets in joint names -- e.g. yours and your father's. You're endangering your father's money.

If the amount is a little over \$675,000, don't worry too much. Make sure your father has sufficient income from his investments to cover his care and living costs. This is the first priority. Then he might "gift" money to family members -- yourself, other children and/or grandchildren. He can gift up to \$10,000 a year to as many people as he wants to. Or he can pay for his grandchildren's college tuition. The check should be payable directly to the college, and not the grandchild.

If the amount is well over \$675,000, you should sit down with a certified elder law attorney who is also knowledgeable about tax implications. Do not use the lawyer who closed on your home purchase to develop an estate plan.

Identify several and then interview them beforehand. Make sure they are really knowledgeable. The National Academy of Elder Law Attorneys (520-881-4005) can give you names of certified attorneys in your area. Or you can write to me and I'll send you some names.

As you handle his finances, make an inventory of what he has and do keep very careful records of what you do and the bills you pay.

Question: My uncle recently passed away. My aunt (83) is extremely worried about what will happen to my cousin (48) who is disabled, if she has to go into a nursing home. She wants to make sure my cousin has enough money for his care. We need sound advice.

Answer: Sound advice will come only from an attorney who specializes in disability and Medicaid law and estate planning.

The most common vehicle, however, is to transfer some assets into a trust solely for the benefit of your cousin. Assets in this kind of trust are not included in your aunt's assets if she needs Medicaid paid-for nursing home care.

Question: My parents, finally, have signed Power of Attorney and Living Wills and want to put them in their vault for safe keeping. Their friends are telling them to keep the documents at home. What happens if there is a fire? Guidance please.

Answer: Whoever has POA should also be on the bank's vault card for easy access. I keep copies at home and the original in the vault. My eldest has POA at the bank. In the case of Testamentary Wills, if by your state law your bank freezes access to vaults after death, do keep the original with the lawyer. Or the person who has POA, if he/she lives nearby, can get the will from the vault toward the end. I keep certain important papers and files in fire proof cabinets at home.

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