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Get It All on Paper Without Vital Documents, Aging and Incapacity Put Families in a Terrible Bind

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For years, Sandy Myers prodded her parents without result to plan for "when they got really, really old." With her mother losing ground to Alzheimer's and her father to Parkinson's, she pressed harder: Let's see a lawyer. Let's go over your assets with an accountant. Still they didn't budge.

"They'd kind of humor me: 'Oh, that's nice,' " Myers recalled.

In the end, it wasn't nice at all. In 1999, her father, Carl Larson, injured his head in a fall and had to move into an assisted living facility, forcing Myers to put her mother in a nursing home. The family needed to sell the couple's three-bedroom, 1950s ranch home in Springfield to pay the bills, but couldn't: Joan Larson's Alzheimer's left her legally incompetent to sign the deed, and she hadn't authorized anyone to sign for her.

Myers and her brother had to go through a long, costly and emotionally wrenching court proceeding to have their mother declared their financial ward in order to sell the house. "I sat there and watched an attorney tell her the court was stripping away all her rights -- her voting rights, her driver's license, her ability to handle money, every right she had as a citizen," Myers said. "It's something I live with every day."

Myers and her parents had stumbled into a no-man's land that has become increasingly familiar to elderly Americans and their adult children. Without legal authorization to act for an incapacitated parent or spouse, family members are powerless to manage finances and often clueless about how to make pivotal medical choices. The discomfort that stops parents from planning ahead pales compared with the emotional and financial price their families often pay when they don't, according to Myers and many others.

Yet, despite the furor over the case of Terry Schiavo, who languished for years in a coma as much of the country debated what she would have wanted, research shows that less than a quarter of Americans put in

writing what they want in end-of-life care. Not many more have taken steps to authorize someone to handle their finances.

"Our generation is encountering these crises more than any previous generation," said Myers. "It would behoove people to take the bull by the horns and get the documents they and their parents are going to need."

A will is most people's first concern, but elder-law specialists say it is equally important for older people to sign documents known as durable powers of attorney, designating agents to act for them if they become incapacitated.

"I tell people they have the choice of appointing someone or allowing a family member to get themselves appointed by a court -- and in that case, you won't have any input because you're incapacitated," said elder-law attorney Jean Galloway Ball of Fairfax. "The child you never got along with could be running your life."

The recommended practice is to sign separate powers of attorney covering finances and health care, and to couple the health-care proxy with an "advanced medical directive," a document laying out the care a person wants in various circumstances. Such a health-care directive is much broader than a living will, which covers only the end of life.

"A living will is just a piece of paper, with no legs and no voice. If you have a health-care power of attorney, you have an advocate," said Sally Hurme, an attorney in AARP's consumer protection division. "This allows you to instruct your agent about any kind of medical decision that needs to be made if you can't make it yourself -- exploratory surgery, amputation, chemotherapy, blood transfusions."

The American Bar Association's Commission on Law and Aging recommends planning ahead in five areas:

- Housing (staying in the home or moving, and where).
- Finances (including investment strategies, long-term-care insurance and Medicaid eligibility).
- Managing property (setting up a trust, appointing a power of attorney or both).
- Making medical decisions (through a health-care proxy and an advanced directive).
- Distributing assets after death (through a will).

"Many people assume that if there's a crisis, their children will take care of it," said Charles Sabatino, director of the American Bar Association's Commission on Law and Aging. "They will say, 'I trust in God and my family.' It's a big mistake."

"There have been too many occurrences of abuse where someone has said, 'I'm Mom's agent,' and they think it's their money, not Mom's," said Hurme. "Institutions really want to scrutinize the document to make sure the principal -- whom you don't see -- really wanted the agent to do what the agent is attempting to do."

William Fralin, an elder-law specialist in Arlington, said he customizes powers of attorney to meet the standards of each state in which a client owns property. If a client is considering a move to another state, he incorporates that state's standards as well.

The issues are multiplying as fast as the population is aging, and families with long-term-care concerns tend to seek attorneys who specialize in elder law to navigate the growing complexity of incapacity.

"People keep finding out they don't know what they don't know," said Douglas Moore, who heads estate and charitable planning for Citigroup Trust.

One thing few people know is that institutions have wide discretion to reject financial powers of attorney, and standards vary from one state and one institution to the next. Some federal agencies accept only their own, customized forms. In Virginia, a financial agent can't sell a home unless the power of attorney specifies the legal description of the property, down to the page number of the deed in the county record book. In some states, a mere street address suffices. States are moving to develop national standards, but the process is expected to take years.

But institutions can still balk. Jean Kessler, now widowed, tried to liquidate a brokerage account she held jointly with her husband last year after he had a stroke and went into a nursing home. Her plan was to convert their holdings to an annuity to qualify for Medicaid to pay her husband's nursing-home bills, she said. Her husband had laid out her authority in a power of attorney prepared by Fralin.

But their broker refused to honor it. "He said the signature on the power of attorney didn't match the signature on the account," said Kessler. "But how could it? My husband's handwriting was affected by his stroke. How could a power of attorney that was absolutely legal not be legal in the view of this brokerage?"

It took three months for the firm to relent, during which time Kessler said she had to pay "a lot of money" for nursing-home bills that Medicaid would have covered. She said the firm gave her the money after Fralin threatened to seek an injunction.

"Had Mrs. Kessler not had a lawyer backing up the power of attorney, she still wouldn't have her money," he said.

For people who cannot afford a private attorney, legal-services offices make referrals to lawyers who prepare wills and other documents for \$25 apiece. Bethesda elder-law attorney Morris Klein said people who don't face long-term-care issues generally do not need a specialist in elder law.

Some financial institutions have drawn up their own documents to avoid such disagreements. At Citigroup, new clients receive the company's customized durable power of attorney, which asks them to authorize an agent to act for them if they are incapacitated.

Another issue families have confronted is the importance of selecting an agent who can deal with sibling conflicts and rivalries. "Lawyers make their money on warring families," said Helen Cohn Needham, an elder-law attorney in Falls Church.

She said a parent's financial agent should be detail-oriented and scrupulously honest because he will operate without official oversight. And in choosing a health-care agent, she said, "go for the smart one who's not afraid of authority and who has a big mouth. They're going to have to get through the bureaucracy of a hospital. A meek person will never be heard."

AARP and the ABA are urging Americans not to wait until they are old to prepare wills and other planning documents. John Hemmendinger, an accountant and specialist in elder finance in Cedar Knolls, N.J., said his rule is: "The more money you have, the earlier you need to think about it."

Citigroup's Moore told of a wealthy former client who unexpectedly died in his early 30s before signing a will. Under New York law, the man's estate was divided equally among his wife and two toddlers, triggering "a huge estate tax," according to Moore, and leaving her without enough money to pay expenses. As minors, the children had to have court-appointed guardians to oversee the inheritance for 14 years, until they turned 18. At that point, the children controlled their money, which Moore said they were not prepared to handle.

"The basic reason to have a will is to have control over the way your assets are distributed," he said. "Because he died without one, his estate was divided in a way that definitely was not in the best interest of his children."

For all these reasons, estate and elder-law attorneys are seeing more clients who are far from elderly. Sandy Myers, 52, is one of them. Her mother died in 2004 -- five years after the crisis that forced Myers and her brother to take over their parents' affairs -- and her father has been in a nursing home since 2000.

Last year, Myers and her husband signed durable powers of attorney and health-care directives. "We made it very clear we want no extraordinary means if we're totally incapacitated," she said. "I tell people you need to do this so you don't put this burden on your children. You need to have these discussions -- the sooner the better."