

Key Legal Issues for Seniors

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Introduction

- Common issues we encounter at Legal Aid
 - Planning for incapacity
 - Transferring property after death
 - Dealing with reduced income
- Seniors need
 - someone to take care of our affairs if we are unable to do it ourselves, and
 - An orderly way to pass on our property when we die.
 - Often, debt counseling.

Introduction, cont'd

- Planning for incapacity and death
 - Power of attorney
 - Advance Directive
 - Guardianship
 - Way to transfer property
 - Will
 - Trust
 - Transfer on Death Deed

Power of Attorney

- Authorizes someone to act in your place. Deal with insurance, banks, landlords, etc.
- Must have capacity, i.e., understand what you're signing.
 - Pick someone you trust to serve as attorney-in-fact.
 - You specify how broad you want it to be. One task or everything.
 - “Durable power of attorney” stays in effect if you lose capacity.

Power of Attorney, cont'd

- Does not have any effect after you die
- Does not give ownership of your property
- Can be “springing,” but that presents problems
- Document signed and notarized. Witnessed by two non-related witnesses.

Power of Attorney, cont'd

- Give to your attorney-in-fact
- Can be revoked with another writing, notarized
- No reporting required, unless you specify.
- Cheaper and easier than a guardianship.
- Forms: contact Legal Aid

Advance Directive

- Advance directive
 - A/k/a “Living will”
 - Governed by statute. Includes several different provisions
 - Allows you to specify if you want to be kept alive by artificial means if you go into an irreversible coma, etc.
 - Names health care proxy
 - Organ donations

Advance Directive, cont'd

- Forms widely available
 - Hospital
 - Online
 - OKDHS.org
 - OUMedicine.com
 - OKLaw.org
 - Just search at each site for advance directive
 - Call Legal Aid 855-488-6814
 - Email OKSPLASH@laok.org

Advance Directive, cont'd

- To execute
 - Must have capacity. Know what you're signing.
 - Pick someone to make medical decisions, plus an alternate
 - Sign in front of two witnesses. Notary not required.
 - Give to your health care proxy
 - Give to hospital, doctor
 - Can change by drafting a new one

Guardianship

- Guardianship: Court order appointing someone to make decisions and act in your best interests with regard to financial and/or personal matters.
- The ward must lack capacity
- If there is no durable power of attorney and/or advance directive, and the ward no longer has capacity, need to get a guardianship.

Guardianship, cont'd

- Requires court proceedings and annual reports.
- Deals with finances, personal care, or both.
 - Conservatorship available for financial issues.
 - Can also be named “representative payee” with Social Security.

Guardianship, cont'd

- Procedure
 - File in county where ward or guardian lives
 - Serve ward
 - Present evidence of incapacity. Letter from doctor.
 - Cost: \$235 filing and service fees. Attorney fees extra.
 - Plan
 - Reports
 - Forms: Hire attorney, Neighbor for Neighbor

Guardianship, cont'd

- Revocation
 - Example: medical situation resolved, guardianship no longer necessary
 - Requires court order
 - If contested, must show guardianship no longer necessary
 - Sometimes court is asked to substitute guardians
- Guardianship more complicated than power of attorney, but not unduly difficult.

Wills, trusts, transfer on death deeds

- Goal: orderly transfer of property upon death.
- Most things can be handled with beneficiaries. They pay out to those persons upon your death.
 - Insurance, bank accounts, CD's, mutual funds, IRA's, etc.

Wills, trusts, transfer on death deeds, cont'd

- House is most common asset that requires planning.
 - Joint tenancy
 - Passes to spouse upon death
 - Potential problems if you put other heirs on the title
 - What happens if you die without a will
 - Intestate succession
 - Probate

Wills, trusts, transfer on death deeds, cont'd

– Will

- Less expensive to draft than trust
- Requires probate
- Not helpful for minor assets
- Even if you have beneficiaries on everything, may be good to have will in case you miss anything

Wills, trusts, transfer on death deeds, cont'd

– Trust

- Passes to heirs without probate
- Pay attorney to draft
- Requires updating

Wills, trusts, transfer on death deeds, cont'd

– Transfer on death deed

- New procedure in Oklahoma
- Names beneficiaries for house
- Recorded before death. When you die, beneficiaries record death certificate.
- Inexpensive. Probate not required.

Dealing with debt

- As incomes decline, many seniors have difficulty paying debts as they come due.
- Debt counseling can help establish priorities, put minds at ease.
- Social security exempt
- House, car, furniture, clothes, exempt.
- Where to get help
 - Legal Aid
 - Credit Counseling Centers of Oklahoma

How To Reach Us

- Legal Aid Services of Oklahoma
- SPLASH Line: 855-488-6814
- www.oklaw.org

