



OLD NORTH STATE TRUST, LLC

'Elder Law' Documents Are Important—and Not Just for the Elderly

May was National Elder Law Month, which got us thinking about a short list of legal documents that everybody should know about—and that anybody who expects to get old should take steps to prepare for themselves. They can help anyone to live a safe, healthy, comfortable life during their retirement years.

These documents are important to anybody, but become increasingly essential as we age:

* *Durable Power of Attorney*- Durable Power of Attorney assigns to a responsible person of your choice the power to take care of your financial affairs. In this sense, “attorney” means a person empowered to act on your behalf, not necessarily a lawyer (“attorney at law”). When drafting this document, be sure to remember to include language that gives the “attorney in fact” the ability to make gifts and to create trusts and similar arrangements. That important detail is often overlooked.

* *Healthcare Power of Attorney*- Healthcare Power of Attorney empowers someone to make decisions about your medical care if you can't do so yourself. This has obvious benefits for people who may develop dementia or suffer other chronic conditions. It can also be vital in such unexpected situations as an accident or a sudden serious illness such as heart attack or stroke.

* *Living Will*- A Living Will is a statement of your wishes about what should happen during your final illness. It can be invaluable in guiding the person who has your Healthcare Power of Attorney, and reduces the chances that medical professionals may disregard your intentions.

* *HIPAA release, named for the federal health-care privacy law*- HIPAA grants your healthcare agent the right to get information needed to make decisions for you.

* *Will*- This essential document specifies your wishes for how your estate will be handled after your death. Your will is NOT the place to give instructions for funeral, burial, etc. The Will normally isn't even opened until just after those arrangements have been concluded.

* *Trust*-A Trust is a financial entity created to achieve specific goals. Those can include avoiding the probate process after death, possibly avoiding taxes, providing for loved ones, etc.

We can't emphasize enough how important it is to have “The Talk” with your loved ones. That conversation, about planning for the inevitable issues of aging, should come sooner rather than later. Ideally, a married couple should first have that talk, so the spouse “who always handled the finances” doesn't leave behind a partner who is uninformed and helpless. It's equally important for aging parents to talk with their children—all of their children—about their wishes and their current financial situation.

A difficult situation that one of our advisors had to handle recently shows what's at stake. A client, who had multiple children, had been in one of those marriages where her husband had

managed the money, which left her feeling overwhelmed after his death. Added to that, she was developing dementia, which led one of her daughters to move in with her to help out. The daughter had been named as Power of Attorney here in North Carolina. Meanwhile, her sons, who lived in Pennsylvania, began to suspect that their sister was misappropriating their mother's funds.

During a visit, the sons kept their mother with them and had a Power of Attorney drawn up under Pennsylvania law. Both parties were trying to direct our advisor, as their mother's trustee, to give them money from her trust. Both had the authority to do so! That was because each POA is state-specific, and remains in force until it's specifically revoked.

To solve this major problem, our advisor called a family meeting to tell both of the feuding groups of siblings—without revealing to either what our advisor knew about each of them—that nothing was going to happen until everyone reached an agreement.

In fairness, everyone involved was trying to protect their mother and do what they thought was in her best interest. But they each had different ideas about what that best interest was! Our advisor had to play the role of their deceased father and make them come to an agreement. The good news is that all were able to overcome their bad feelings about each other and worked out a plan for their mother.

Another situation illustrates how unexpectedly a competent person can find herself in a situation where she has to have help. A client contracted a common type of infection that can seriously affect mental functions in the elderly. This woman, who lived in a group care facility, began behaving in inappropriate ways, which included spreading her confidential financial documents around in the common areas. No doubt, had she been aware of how she was behaving, she would have been mortified.

The facility's management called us, as the client's trustee, to go collect her records and bring them back to our office for safekeeping. When the client's illness passed and she was back to normal, we returned the documents, telling her that she had been sick and that we had safeguarded her papers during her recovery. She was very grateful.

It's not just the elderly who need such services. We have a client in his twenties who suffered a severe brain injury in a car accident. We worked with the attorney and set up a special needs trust to ensure the man's Medicaid benefits were not at risk. We assist his mother, who is his primary caregiver, with payment for his medical care and other needs. We even bought a car for his use.

The final point we want to stress is that serving clients, in whatever ways they may need, requires flexibility. We're happy to say that Old North State Trust has the range of expertise to assist our clients in all the areas discussed, and many others. We are always happy to answer questions about the range of services we offer.

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