



Family Wealth Institute

Planning for Elderly Parents – Preparing for Disability and Death

Douglas K. Freeman, J.D., LL.M.,
First Foundation Advisors

Jeff G. Carchidi, J.D.
Carchidi Law Offices

One day it may happen to you. On a visit to your elderly parent, you observe your parent in an awkward and extended moment of lost memory, confusion, or immobility. You realize that this has become a pattern, increasing in frequency and degree. The reality of the aging parent will become very personal to you, your siblings, and your children. What do you do now? How do you begin to talk about so many important matters that will affect the entire family at a time when your parent is losing the ability, if not the willingness, to deal with these issues?

Caring for elderly parents may never have been as challenging as it is today. The combination of individuals living longer, the rising cost of health care and the collapse of the economy and financial system have put extraordinary pressures on the family. The demands are made even more difficult as boomers deal with their own children, who are often struggling to get started in their adult lives, at the same time the boomers are looking towards their own pending or active retirement.

If you have siblings or cousins, are they prepared to deal with these problems or are they also in a state of denial? Will decisions that must be made bring your family closer or create tension, disagreement, and even open battles?

Inter-family disputes involving an elderly parent are not only time consuming and extraordinarily expensive but, most importantly, they can destroy loving and healthy family relationships. Unfortunately, these types of disputes are all too often the product of many decades of unresolved issues between or among siblings. While the parent is alive, competent and “in control” of the family, these issues remain hidden for many reasons, including a fear of upsetting the parent. However, after the death of the parent or after the parent no longer has capacity to make his or her own financial and health care decisions, the resentment which has built up for so many years finally comes to the surface. Unfortunately, it is at those times when the family needs to come together more than ever in order to make good decisions regarding the parent’s important financial and health care matters. By addressing these issues with the elderly parent *before incapacity*, the family is able to take most of the guesswork out of the equation – and minimize the risk that family members will allow their own personal issues to impair their ability to “do what is right” for their elderly parent.



A 2007 USA Today/ABC News/Gallup Poll of 500 baby boomers reported that 31% of those with a living parent are providing financial and/or personal care. The caregivers report that nearly half of them have suffered stress as a result of their responsibilities. The stress can reach levels of serious depression and adversely affect the health of the caregiver. It's estimated that more than 50 million family members provide more than \$300 billion a year in uncompensated care to family members.

What are the questions you need to think about? What should you be discussing with your parent? When should you start this process? What if your parent has reached the stage when these conversations are impossible to have? We'll identify some of the most important questions. In the space we have available, it will be impossible to thoroughly answer each.

Here are some general recommendations to keep in mind.

- Start this conversation earlier, rather than later. Sometimes it's easier to have the discussion with a parent if you have just gone through the process in your own life, for the benefit of your kids. Then, you can speak from experience and make it less intimidating.
- If you have siblings or if there is another parent who will also be affected, be sure you get everyone talking together. Conflicts occur largely because of the lack of communication. Differences in opinion and agendas must be reconciled earlier, rather than later.
- Coordinate with all the professional advisors, including health care, legal, and accounting professionals. All the relevant documents must be up to date and must be applicable to where the elderly parent may be residing. Some documents written in one state or county may not be accepted in another state or county.
- Remember that infirmity can progress gradually or can occur in a moment of time. Prepare for both, including the different levels of disability.
- Maintain the parent's sense of control and independence. From the parent's perspective, talking about what will happen after the parent dies or no longer has capacity can be uncomfortable. These discussions may lead the parent to think that you are anticipating their decline and demise. Therefore, it is important that you, as children, be sensitive to what may be viewed as a threat to the parent's independence. In having these discussions, emphasize that these difficult topics need to be discussed in advance so that the family members know what to do if the parent becomes unable to express his or her own desires regarding their care and management of their financial matters.

Planning before infirmity or death

- Estate planning. Talking about money and what may be planned for you and your siblings or children may not have been comfortable in earlier years. It may feel like you're over-reaching



or even overly interested in your inheritance. But if you can't talk about it now, when can you? How can you ensure that siblings and other family members will not feel shortchanged or ignored? How can you avoid potential legal and emotional attacks from those in the family who have expectations of inheritance? Communicate. Be transparent. Ensure independent counsel. Get written authority from your parent to talk to the professional estate planning advisors. Remind your reluctant parent that the planning was done to minimize the costs, time, and aggravation that occur on disability or death. Being prepared by understanding the plan, meeting the advisors, and locating all the documentation is essential to accomplish these goals.

- **Titling and ownership.** Is everything in the proper name? Are assets titled in the revocable trust? Name of the parent? Joint tenancy? This requires careful review and advice by legal counsel. But the cost – financial and emotional – in improper titling cannot be overemphasized. Be thorough. Do you have access to the safe deposit box? Do you know where the key is?
- **Long term care insurance.** You can self insure or you can shift the risk to others. Talk to an insurance professional on the costs today and overtime. Will the insurance carrier still be there to cover the obligation that you have purchased? Will you be there? Engage a professional. Involve the family.
- **Home remodel.** Is the home equipped to handle a disabled or invalid senior? Is there an elevator? Can the master bedroom and bathroom be reached by an individual unable to walk stairs? Can the care giver reach the elder parent easily and quickly? Start early. Involve your parent. Do not let indifference or denial govern the decisions or actions.
- **Emergency funds.** There may be extraordinary health care and life care costs. Are there funds available and secure for this purpose? Will others in the family resent the expenses? Will they be expected to supplement the funds needed? Be prepared. The costs will come.
- **Retirement and insurance beneficiary designations.** Who is the primary beneficiary? Secondary and contingent beneficiary? Is the beneficiary capable of handling a distribution of funds should that occur? Should the recipient be a trustee? Always ask “what if”. Think about the possibility if tomorrow is the day or five years from tomorrow. Be prepared.
- **Health care decisions.** Does your parent have a current and valid advance health care directive? Is it clear to the agent responsible for making health care decisions what the intent of the principal may be? Is the agent willing and able to implement those decisions? Has your parent made it clear whether the agent is to withhold food and water, as well as remove life support equipment, if there is little likelihood of living a quality life? This is one area in which you don't want to guess, fight, or just wonder. It's your parent's life. He or she has the right to decide. Talk now.



- Living arrangements. Has your parent considered moving out of the house and into a retirement facility? Skilled nursing home? In-home care? Home for Alzheimer victims and other dementia patients? Are other members of the family prepared to accept this decision? Who has the power to make this decision and where will the funds come from to pay the costs? Be realistic. Platitudes don't pay the bill. If your parent can't afford to stay in the home, then look to other arrangements that will make the years leading to end of life pleasurable and stimulating. Ask your parent where he or she would want to live, and consider facilities that are conveniently located in order to facilitate regular visits by family members. Then, take the time to thoroughly research various options. It is a good idea to visit different facilities with your parent, take a tour, and interview the staff. It is very stressful for the family to select a care facility for an incapacitated parent. The key here is that your parent becomes actively involved in this decision process prior to incapacity.
- Care giving. Who has the power to select, monitor and remove a professional care giver? How will that person ensure the protection of the parent? Thievery is common. Disregard of medical restrictions could be fatal. Who will be accountable and how can abuse be prevented? Elder abuse by care givers is common, but not inevitable. Be sure that someone in the family has the power and responsibility, when the time comes, to make decisions without second guessing by others.
- Dealing with financial matters. Someone needs to have the time, skill, and authority to help. Does your parent have a current and valid durable power of attorney for management of property and other financial matters? Is it the same person who holds the health care power? What if they disagree on how money is to be spent in the health care area? If your parent also has a will or a living trust, it is often a good idea that the named executor/successor trustee be the same person as, or be able to work with, the agent under the power of attorney. In this regard, it is helpful if your parent's testamentary estate planning documents are coordinated with the documents designed to take effect upon incapacity prior to death.
 - Credit cards. Make sure you or someone is authorized by your parent to deal with the credit card company. You'll want access to and copies of statements.
 - Banking. Get authority to access the accounts and deal with the bankers. Use on-line banking where possible, to make it easier to handle transactions. This includes safe deposit boxes, savings and checking accounts, and all investment accounts. Access to one account does not give you access to all accounts. Get your parent's Internet passwords.
 - Government Benefits. Your parent should authorize someone to act on your parent's behalf with respect to Social Security, Medicaid, veteran's benefits and other government programs in the event he or she is unable to do so. It is very difficult to



get any of this type of information after the recipient of benefits no longer has capacity. The power of attorney should be specific in these areas. Review the Medicare coverage and get advice from a specialist on the various plans and alternatives. If you don't have prescription drug coverage, you may want to enroll during the open enrollment period. Understand the local benefits available to the elderly, which might be different from those in your location. For example, some states will pay for phones for hearing, or home improvements for visually or mobility limited seniors.

- Investment accounts. You need access to the information and the power to speak to the advisors and managers. Need we say more?
- Business Operations. Does your parent own a business? Who will run the business if your parent becomes incapacitated or dies? Is there a current buy-sell agreement in place? Are there family members who are currently involved in the business? Are there family members who do not want to participate in the business operations? Are there non-family business partners? Will they be able to work with the spouse and children of the incapacitated or deceased person?
- Service providers and vendors. Access, information, power to change. Each vendor, including power, telephone, and other utility vendors, each have their own rules and procedures. Get this authority long before it becomes needed.
- Safe deposit boxes. Have selected members of the family named as deputy on the safe deposit account, so they can access the box, upon the incapacity or death of the parent. Banks can be sticklers for protocol.
- Automobiles. Be sure that the name of the owner is correct. Some states permit transfer to a named beneficiary without a formal court (probate) procedure. Others do not. Be careful about your elderly parent driving when you know it's unsafe. The risk of someone being hurt because of the negligence of the elderly parent and the potential liability is substantial.

Responsibilities during period of infirmity

- Power to make gifts after incapacity. If your parent has established a regular pattern of making gifts to certain individuals or charities (such as annual exclusion gifts), he or she may want to continue this practice through an agent after becoming incapacitated. Properly accomplishing these objectives in a manner that minimizes the risk of financial abuse requires careful estate and incapacity planning that should be completed only through the assistance of legal counsel.



- Health care decisions. Include family members in discussions regarding specific decisions, particularly those involving end-of-life decisions. Keeping as many family members as possible informed and involved is the best way to minimize the potential for family conflict.
- Living arrangements. If your parent has moved into a facility, keep a close eye on him or her. It's important to schedule regular visits. This period of adjustment is hard on an elderly person and may cause him or her to become depressed. Therefore, it is important to maintain familiarity by visiting regularly. Also, furnish your parent's room with family pictures and other familiar items. Try to make the new living situation look as close to home as possible.
- Care giving. Be sure to hire through a reputable agency and confirm that background checks have been done. Have a good care giving agreement prepared. Describe the duties and responsibilities, clarify the tax and withholding obligations, and identify who in the family has authority to give instructions to the care giver. Some care givers have the training to provide prescribed medication and others do not. Know the difference.
- Financial management. You may need to hire a bookkeeper to handle the financial affairs. Take the stress of you or other family members, if you can. It will also add to the transparency of the service. Communicate with the family. This is where the trouble often arises.
- Elder abuse. Watch out for the boy friend or girl friend that shows up one day. Gifts of cash or valuables will likely follow. New wills or trusts may suddenly appear. If you spot a parasite, you may need to get legal counsel or law enforcement to remove the new best friend. Elder abuse is rampant. Don't let it happen to your parent.

Responsibilities at death

- Payment of debts and final expenses. Someone should be designated to receive the decedent's mail after death so that any outstanding debts can be timely paid. Also, notify Social Security, Medicaid, and any other government programs providing benefits to the decedent of the decedent's death. Benefits may be payable to a surviving spouse or to the estate.
- Funeral. How will funeral and burial costs be paid? Have they been pre-paid? Are there any specific desires or preferences regarding burial or cremation? What about a memorial service? Many people want it small, simple, and attended only by close family members. Some people do not want any type of memorial service at all. Others wish for their remains to be cremated; some wish to be interred and, others, scattered out to sea. Have this discussion.



- Collection of life insurance death benefits. Claims to collect life insurance death benefits generally are required to be submitted within a specified period of time. Know whether the decedent had any policy of insurance on his or her life, the name and contact information for each issuer, and policy numbers. Promptly prepare and file claims to collect any death benefit that may be payable.
- Distribution of personal effects. Does the will or living trust direct how items such as jewelry, coin and art collections, household furniture and furnishings and other tangible personal property are to be distributed after death? If so, are these directions specific enough to provide meaningful guidance? Consider organizing a family meeting with your parent. Doing so will give family members an opportunity to tell your parent about any desires they have to receive a particular item.
- Protection of property. Ensure that all real property and any automobiles and other items of valuable personal property are adequately insured. All credit cards should be destroyed, and safe deposit boxes should be opened and the contents inventoried. The tangible personal property located in any residence should also be inventoried and any collectibles and other valuable items should be kept in a safe deposit box.
- Communication to beneficiaries. Talk early and often with your siblings and any other beneficiaries, and keep them fully informed regarding the administration of the estate or trust. If you are the executor or trustee, consult with an attorney to assist you in the administration. Give regular “status reports” to the beneficiaries and, where possible, provide anticipated timetables for the distribution of the estate or trust assets.
- Payment of taxes. Final federal and state income tax returns (for the period ending on the date of death) will need to be filed. Fiduciary income tax returns for the estate or trust may also need to be filed. Other possible required tax filings include gift tax returns and a federal estate tax return (depending on the value of the assets owned at death). You should consult with an attorney or accountant regarding the timely preparation and filing of these tax returns and related tax payments.

Final Thoughts

Properly planning for a parent’s disability and death can only be accomplished through open communications on topics which are very difficult for a family to discuss, but on which family members have very strong feelings. These conversations must occur early and, in any event, prior to incapacity. Active participation by all family members, particular the elderly parent, is essential to accomplish the parent’s desires and to minimize the potential for family conflict.



+++++

At First Foundation, we are concerned not just with the tax and economic consequences of wealth planning, but with the impact of that planning on the lives of those for whom the wealth was intended to benefit. Our planners, investment advisors, bankers, and trust officers see the results of both effective and ineffective planning. We are pleased to offer you our insight, experience, and perspective.

To contact Douglas Freeman, please call the toll free number at 866-833-1112.

To contact Jeff Carchidi, please call 949-706-1721

The Family Wealth Institute is a project of the family of First Foundation companies, a comprehensive wealth management firm. We provide banking, trust services, financial planning, family strategic planning and skill training, foundation planning and full back-office services. First Foundation Advisors is a wholly owned subsidiary of First Foundation, Inc. Jeff Carchidi is a practicing estate planning attorney located in Newport Beach, California.