

Maintaining Control: Make Plans Now to Avoid Guardianship Later

Don't wait until you need help. Talk to your financial professional.

It is never too early to begin planning and setting up directives for your future, to ensure that you – and your finances – are protected later in life.

No one likes to think about aging – or possibly losing the ability to make your own decisions. However, your future mental and physical state is unpredictable, and statistics show that you are likely to encounter some form of cognitive impairment.

This is why you should make these decisions early and have directives in place. If you don't prepare for the possibility that you may become incapacitated, and appoint someone of your choosing to manage your finances, the alternative could be a guardian or conservator. Use these conversation starters to plan ahead with your family and financial professionals to protect your assets and to ensure your wishes are followed. This is a gift to your family and keeps you in charge of your care.

What is Guardianship and Why Avoid It?

A guardian for a protected individual may be publicly funded or privately appointed. A guardian has a legal obligation to act in the best interest of a protected individual. Guardians often are granted extensive access and control of a protected individual's assets. Financial abuse or exploitation by guardians could occur if the guardian improperly uses the protected individual's funds, securities, property, or other assets.

How Can I Plan for a Future Without Guardianship?

With proper advance planning, guardianship may not be necessary. Less restrictive alternatives can serve the purpose of providing necessary assistance. Consider setting up an estate plan with a legal professional:

- Obtain power of attorney if appropriate.
- Establish a trust. Your trustee can use and manage your assets in accordance with your instructions and can be held fiduciarily responsible for his or her actions.
- Consider a joint account – This can be risky because the person whose name is added to the account is generally considered a co-owner of the account and can withdraw all of the money. An alternative is the “view-only account” which gives someone you trust the ability to watch your account without the ability to access funds.
- Establish and execute an advanced directive for health care.
- Make your will and keep it updated.

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North American Securities Administrators Association

To learn more about this issue, contact your state or provincial securities regulator. Contact information is available on the NASAA website under “Contact Your Regulator” at www.nasaa.org.

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How Can I Ensure I Maintain Control While Planning?

- Consult with a qualified financial professional or attorney. These individuals also can assist in monitoring for suspicious activity.
- If you are working with an investment adviser or broker-dealer representative, check the individual's registration with your state or provincial securities regulator.
- If you are working with an attorney, check with the bar association in your jurisdiction.
- Don't sign anything you don't understand. Ask for explanations.
- Build a paper trail.
 - Limit your use of cash and instead use credit cards or checks.
 - Document your decisions for later reference by taking notes.
 - Be sure to keep all notes and documents in a secure location.
- Remember, you have the power to make changes at any time. Review your accounts regularly to determine if adjustments are needed.

What if I Have Concerns About Exploitation or Abuse?

If you suspect guardian financial abuse, contact appropriate authorities, such as police, Adult Protective Services, state or provincial securities regulators, or other government agencies with authority to stop guardian financial abuse.

IMPORTANT NOTE: This guide should not serve as a substitute for professional legal advice.

For More Information:

- NASAA Guarding the Guardians Publication
<https://www.nasaa.org/serveourseniors/investor-resources/red-flags-guardian-financial-abuse/>
- AARP/ABA Foundation Infographic
<https://www.aba.com/-/media/documents/infographics/aba-aarp-joint-account-infographic-landscape-lettersize.pdf?rev=a72c3ed3f993441e9182cdd72503d043>

For more information ...

For senior-focused resources for investors, caregivers, industry and policymakers, visit the Serve Our Seniors website at <https://www.nasaa.org/serveourseniors/>. The site includes contact information for all state and provincial securities regulators, as well as adult protective services agencies and other governmental resources.

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