

Frequently Asked Questions: Life Planning to Support the Needs of Older Adults and Their Families

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This FAQ is a follow up to NCLER's training, *Life Planning to Support the Needs of Older Adults and Their Families*. The webinar [recording](#) has more information.

National Consumer Law Center

The National Consumer Law Center uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults and people of color. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

Glossary of Commonly Used Terms

Assets

Assets include homes, land, vehicles, bank or credit union accounts, retirement and other financial accounts, stocks, bonds, and other kinds of property.

Heirs' Property

Home and land that is passed down to multiple family members through inheritance, usually without the benefit of a will.

Joint Tenants with a Right of Survivorship

Assets owned by two or more persons. The use of joint tenancies avoids probate since the surviving joint tenant automatically owns the assets at the death of the other tenant. Joint tenancies are governed by state law.

Living Trust

A Living Trust is an agreement between a Settlor or Trustor and an individual or entity (the Trustee) that determines how assets placed in the trust will be managed and distributed after death. Trusts can be revocable or irrevocable.

Probate

Probate is the process that governs the administration of a deceased person's will or estate if the person died without a will. Certain types of assets will be distributed outside the probate process, including assets in trusts, joint tenancies, bank and other accounts that are payable upon death (to the designated beneficiary), property transferred by Transfer on Death Deeds, and life insurance.

Transfer on Death Deed (TODD)

Also known as a beneficiary deed. This type of deed allows an owner of real property to designate a beneficiary to receive the home or land automatically upon death. A TODD can be revoked or modified until the grantor's death.

Lady Bird Deed

Also known as an enhanced life estate deed. This is similar to a TODD but exists in common law rather than being authorized by statute.

Will

A will is a legal document that specifies how assets are to be distributed after death. Property disposed of by will usually has to go through court-supervised probate.

Living Will

A living will or other advance directive gives instructions regarding the type of care the person wishes to receive in the event of a terminal illness or condition that requires life support. A Do Not Resuscitate (DNR) order tells medical providers whether to place the person on life support.

Power of Attorney

A power of attorney is a legal document that allows a person to act on behalf of another person. A durable financial power of attorney names a person responsible for managing the asset and finances of another person if they are unable to do so themselves. A durable power of attorney for health care allows the designation of a surrogate to make health care decisions if one is unable to do so.

What is life planning?

Life planning refers to the process of putting plans in place to address the treatment of property and other assets in the event of changes in decisional capability, disability, or death. Life planning is also a way for an older adult to designate a decision-maker to carry out their wishes with respect to medical care, end-of-life care and disposition of bodily remains. While life planning encompasses a wide range of activities, this FAQ addresses common questions regarding life planning strategies for preserving homes and other assets.

Why should older adults engage in life planning?

Life planning can help older adults during their lifetime to preserve autonomy and avoid court-ordered guardianship. Strategies include designating a third party to manage health care and finances, and establishing a plan for management of property. A health care proxy or durable health care power of attorney, for example, designates a person responsible for medical decisions if the older adult is unable to make such decisions for themselves. Such plans reduce the likelihood that courts will intervene if older adults are unable to care for themselves. After death, resources will be preserved for heirs and family members and distributed according to the elder's wishes. If a person dies without a will or other estate plan, the older adult's assets will be distributed according to state laws of intestate succession to surviving spouses, legal heirs and next of kin.

What tools are available to preserve housing wealth?

Life planning tools include wills, trusts, health care proxies, living wills, transfer on death deeds and other will-substitutes. Nearly 80% of older adults own a home, often their largest asset. Ownership of real estate can be transferred via a will, according to the terms of a trust or other legal document, or automatically through joint tenancy, or as designated by state intestacy laws. A newer tool, called a Transfer on Death Deed (TODD) simplifies the process. TODDs transfer ownership of the home to a specified beneficiary when the owner dies without the need for a will or probate filing which can be a lengthy and expensive process. Currently, 29 states and the District of Columbia have enacted statutes authorizing TODDs. Enhanced Life Estate Deeds allow the owner of the property to designate a beneficiary who will inherit the property when the owner dies. Enhanced Life Estate Deeds function much like TODDs and allow owners/grantors to maintain control over their property during their life so they can lease, mortgage, sell or otherwise manage the property and have it pass smoothly to successors at death.

What is heirs' property and how can life planning help?

TODDs and enhanced Life Estate Deeds are especially useful for avoiding the establishment of heirs' property. This is a form of property ownership that arises when multiple heirs inherit the home but have not completed the probate process to clear title. Heirs' property leads to fractional ownership of the home over successive generations of cloudy title, and housing insecurity as heirs are limited in their ability to manage the property or benefit from property tax or disaster relief programs and other publicly subsidized homeownership assistance programs.

What are other ways older adults can protect or transfer assets?

Older adults can transfer their assets using a variety of tools, including by simply designating beneficiaries on financial accounts. Many banks and other financial institutions, for example, have pay on death or transfer on death designations on accounts. The older adult maintains control over this asset during their lifetime. Everyone should designate a beneficiary if they have that option on an account.

Where can my clients get assistance to put a comprehensive life plan in place?

Older adults need to consult an attorney to explore all the tools and options available in their state for life planning. Low-income older adults can seek out assistance from legal services organizations or pro bono attorneys. Law school clinics or those focused on veterans can also provide assistance in putting a life plan in place if the elder qualifies for assistance.

Conclusion

Life planning can help older adults during their lifetime to preserve housing, enhance economic security, and avoid unnecessary guardianship and conservatorship. After death, a life plan preserves assets, helps to lessen or avoid probate, and transfers wealth according to the stated intentions of the older adult.

Additional Resources

- To obtain legal assistance:
 - » [Legal Services Corporation](#)
 - » [Older Americans Act Title III-B Legal Assistance](#)
 - » [Volunteer/Pro Bono Legal Help](#)
 - » [Private attorneys – National Association of Elder Law Attorneys \(NAELA\)](#)
- National Consumer Law Center [Guide to Surviving Debt \(15th ed. 2024\)](#)
- NCLER [Heirs Property: Legal Strategies to Keep Older Adults in the Family Home](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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