

# Eight Planning Considerations for Clients Aging Alone

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## ***Who will help make critical financial and health decisions?***

The aging population of baby boomers have been forced to confront a myriad of medical and financial issues in planning for the last decades of their lives. One of the most striking obstacles is the issue of aging alone. These individuals are referred to by various names: “elder orphan,” “senior orphan” or “solo ager.” Regardless of the moniker, these terms all describe someone without a spouse or life partner (widow or widower) or children (none living) on whom they can depend. Helping senior orphan clients with their critical planning opens opportunities for your business; it also helps ensure they’re taken care of when they’re unable to make decisions for themselves. Here are eight considerations when planning for this demographic.

*\*This article is an abbreviated summary of [“Help Your Senior Orphan Client Ride Out the Solo Tsunami,”](#) which appears in the July/August 2022 issue of Trusts & Estates.*

# **1. Planning Documents**

Ideally, while an individual is still competent, that individual will create advance directives, financial powers of attorney and/or revocable trusts. With those important planning documents in place, the elder orphan is much more likely to have their health and financial wishes followed and can avoid the need for surrogates, guardians or conservators. However, if an individual becomes incapacitated and hasn't completed any of these estate-planning documents, they're likely to end up in the court system. Although the name of the court process may differ state to state, generally an individual lacking capacity with no one to make decisions on their behalf will be the subject of a court guardianship or conservator case wherein the court will appoint someone to make decisions on their behalf.

# **2. Health Surrogate Laws**

About three quarters of all jurisdictions have some type of default health surrogate laws that assist medical professionals in dealing with patients who lack capacity and have no other representation. Most of these statutes have a hierarchy of people who can make health decisions on that individual's behalf, but in most states, the list is predominantly comprised of family members. States have started to modify their statutes to provide more choices and flexibility by amending their laws to allow "close friends" or some variation of "interested adult." As indicated by the growing numbers of elder orphans, this flexibility in choice is particularly important as many individuals lack the spouse or family member necessary for the outdated health surrogate laws.

# **3. Care Management Agencies**

Taking the initiative to complete advanced directives to effectuate your own wishes and avoid court intervention denotes choice. But who does the elder orphan, who has no spouse or family, choose as their agent to make these medical and financial decisions? One possible solution is to work with a care management agency. There's a growing industry of these agencies that will act as agents for a fee. Although the availability of care management agencies varies from region to region, these agencies generally employ professionals from varied backgrounds including social work, nursing and general accounting.

## **4. Trusts Define Incapacity**

The majority of trusts dictate under what circumstances a grantor serving as trustee of a revocable living trust is deemed incapacitated. Typically, the trust will indicate that the grantor's physician makes the determination of incapacity. Although Health Insurance Portability and Accountability Act laws can present a challenge, often if an individual has a primary care physician who they routinely visit, obtaining a letter of incompetency is fairly straightforward. When the grantor lacks a primary care physician, however, obtaining a letter of incapacity from an ER doctor or hospital attending physician is more difficult, in large part because they lack a relationship with the patient, and making a determination of ongoing incompetency can be difficult when only treating the acute medical issue that brought the patient into the hospital. The grantor should take this into consideration, particularly if they are considering a trust provision requiring two letters of incompetency.

## **5. Corporate or Professional Fiduciaries**

If someone wants to create a trust but doesn't have an individual to name, they can name a corporate or professional fiduciary. Naming a corporate fiduciary makes certain that there will always be someone to act while ensuring that professionals who are skilled in money management, taxes and conservation of trust principal will administer the trust. Corporate fiduciaries are corporations, which means they are required to be licensed, bonded and insured. A corporate fiduciary is also subject to state and federal regulations and will be held to a very high standard of care.

*(Peter Kote note: Professional Fiduciaries in California are licensed and bondable and are held to the same standard as the corporation. They will likely be less expensive than a corporate. Recommend you meet with both to be sure you are comfortable with the individual or the corporation.)*

## **6. Home Health Care Workers**

Many individuals need assistance in the home as they age in place. There are always concerns when caregivers are in the home, but it can be more of an issue for elder orphans who may not have others checking on them. A care manager or corporate trustee can provide oversight of the caregiver.

## **7. Undue Influence**

Unfortunately, some caregivers exercise undue influence over the grantor, and risk for financial exploitation is high. Whenever possible, limit access to cash, checks and bank accounts. There are ways to provide funds to household employees for things like groceries,

transportation and outings without giving them cash. Many trust companies use the company True Link Financial to provide funds in a more secure manner.

*(Peter Kote note: Undue influence is the fastest rising crime in Orange County and is usually committed by family members; In addition, attorneys, professional fiduciaries, financial advisors & accountants ALL need to be checked out on their respective association organizations before they are hired. Most caregivers are giving, honest and kind hearted – it is low pay for an immense amount of work when you caring for another person.)*

## **8. Guardian/Conservator**

Individuals who've done no planning often need a conservatorship or guardianship when they lose the ability to make their own decisions. The terminology of guardian or conservator varies from state to state but is a process in which the court appoints an individual or corporate entity and, through that appointment, gives them the legal authority to make the personal and financial decisions for the person lacking capacity. State law establishes limits on the court-appointed guardian's authority, and many actions such as buying/selling a home or changing an individual's placement may require prior court approval.