

This material is provided to answer general questions about the law in New York State. The information and forms were created to assist readers with general issues and not specific situations, and, as such, does not replace the legal advice or representation of an attorney. Because of this and because of unanticipated changes in the law, the Rural Law Center of New York (RLC) makes no claim that this information will achieve the results you desire. Also, the RLC disclaims any responsibility for actions taken based on this material. If you are seeking advice about a specific legal issue, you should contact an attorney licensed to practice in New York State.

## **A Legal Checklist and Document Organizer For Seniors and Caregivers**

**Rural Law Center of New York, Inc.**

Caregivers are often stressed and overburdened trying to meet the day-to-day needs of an elderly, parent, spouse or relative. Gathering and preparing the documents that are or will become necessary is often put off. The person who is being cared for often feels a significant loss of power and control and, as a result, is often reluctant to deal with pressing legal or financial matters. As difficult as it may seem, it is best to address these matters while the relative is still able to consider their future wishes. This checklist and document organizer is provided to assist caregivers as they face a variety of challenges.

### **LEGAL PLANNING**

[ ] **Last Will and Testament**...This document, when prepared by an individual, states the individual's wish to name an executor (person who will manage the estate) and to name the beneficiaries (person(s) who will inherit the estate at the time of the individual's death). Without a Will in place, the settling of an estate becomes more complicated and could possibly result in assets being taken by the State.

**WHAT TO DO WITH THIS DOCUMENT:** When a Will is signed and witnessed, copies should be made. The Original should be put in a safe place and the Executor should know where to find it. One copy should be kept by the individual and one copy should be kept by the Executor.

[ ] **Durable Power of Attorney**...This document is prepared by an individual and grants power to a specifically named person(s) to make legal and financial decisions. A Durable Power of Attorney will remain in effect even if the individual becomes incapacitated. Under New York State law, the Power of Attorney form has been significantly revised and become more complicated. If there is a Power of Attorney that was executed before September 1, 2009, it is still valid. We recommend that anyone considering the new Durable Power of Attorney form, consults an attorney familiar with the changes.

**WHAT TO DO WITH THIS DOCUMENT:** Whenever the person named as Power of Attorney needs to conduct legal or financial business for the individual, the Power of Attorney will need to be provided. Although not every interaction will require a filed copy, many will. In order to safeguard the original, it is best to file the original with the County Clerk and then get file-

stamped copies for your use. Once a Power of Attorney is filed, you can always return to the County Clerk for additional copies.

[ ] **Trusts**...A Trust is a way for an individual to control the distribution of his or her property either during his or her lifetime or after his or her death. There are many forms of Trusts. They might be for the financial benefit of an individual during his or her lifetime, for the financial benefit of his or her survivors, or for charitable purposes.

**IF YOU ARE CONSIDERING A TRUST, WE RECOMMEND THAT YOU SEEK ASSISTANCE FROM AN ATTORNEY.**

## MEDICAL PLANNING

[ ] **Health Care Proxy**...In New York State, an individual can prepare this document in order to name a specific person who will make medical decisions when the individual is no longer able to do so. The document can clearly state the individual's wishes for treatment and end-of-life care. The document allows for very specific instructions for the individual's care.

**WHAT TO DO WITH THIS DOCUMENT:** Once this document is signed, make several copies and keep the original in a safe place. Give one copy to the person selected to make decisions and provide copies to physicians and health care or residential care facilities.

[ ] **Medical Treatment Information**...The individual should provide the caregiver information about their medical coverage and ID number and a written record of the names and contact information for physicians, health care providers, home-care services. Also, a record of all medications with their instructions for use. This information should be updated as needed.

**WHAT TO DO WITH THESE DOCUMENTS:** This information should be kept by the caregiver and be available for distribution when necessary.

[ ] **Medical History**...A complete record of the individual's medical history can be a very valuable document. It needn't be the entire medical record kept by health care providers. It can be as simple of a timeline that describes medical conditions, hospitalizations, medications, etc.

**WHAT TO DO WITH THIS DOCUMENT:** This information should be kept by the caregiver, in order for the caregiver to be sufficiently prepared to interact with the individual's medical providers.

## FINANCIAL PLANNING

[ ] **Inventory of Assets**... The individual should prepare a written record of the following:

- 1) Checking Accounts (account number and name and address of bank)
- 2) Savings Accounts (account numbers and name and address of bank)
- 3) Other Assets: Money Markets, Stocks, Bonds, CD's, etc. (account numbers and contact information)
- 4) Deeds to Property
- 5) Automobile Title and Registration
- 6) Recent Tax Returns
- 7) Safety Deposit Boxes (location, keys, someone should be co-signer)
- 8) Home Safe (location and keys)
- 9) Insurance Policies: auto, home, life, long-term care (location of policies and names of beneficiaries)
- 10) Sources of Income: Social Security, Retirement, Rental Property, etc. (direct deposit or checks?)

**WHAT TO DO WITH THESE DOCUMENTS:** This record should be kept by the caregiver, in order for the caregiver to be sufficiently prepared to deal with the individual's financial matters. Care must be taken to keep this personal identity information in a safe, but accessible place.

**[ ] Inventory of Expenses/Debts...** The individual should prepare a written record of the following:

- 1) Housing Costs (to whom and how they are paid; mortgage or rental)
- 2) Home Equity Loans
- 3) Property Taxes (to whom and how they are paid)
- 4) Credit Cards (companies, account numbers and recent statements)
- 5) Automobile Loans
- 6) Charge Accounts (account numbers and contact information)
- 7) Other expenses (telephone, cable, insurance premiums, etc.)
- 8) Other Loans (to whom, amount, payment arrangements)

**WHAT TO DO WITH THESE DOCUMENTS:** This record should be kept by the caregiver, in order for the caregiver to be sufficiently prepared to deal with the individual's financial matters. Care must be taken to keep this personal identity information in a safe, but accessible place.

## VITAL INFORMATION

The following is a list of information that a caregiver will have to gather and have available for a variety of matters as the individual is in transition. If the individual is entering a nursing home and has some assets, those assets will be used to cover the cost of care. If there are no assets, or the assets are depleted, it is likely that an application for Medicaid will need to be completed. At the same time, it is helpful if the individual provides the caregiver with their wishes at the time of death. All of this information should be gathered and kept in a safe place. Photocopies should be kept in the caregiver's files. *NOTE: Some things on this list are a duplication of items listed above.*

- [ ] Birth Certificate
- [ ] Social Security Card
- [ ] Marriage Certificate and/or Divorce Judgment
- [ ] Spouse's Death Certificate (if applicable)
- [ ] Military Discharge Papers (branch of service, dates and ID)
- [ ] Driver's License

- Spouse's Name and Occupation
- Parent's Names and Places of Birth
- Health Insurance Card and Medicare Card
- Bank Statements going back 5 years
- Statements of stocks, bonds, mutual funds, IRA's, etc. going back 5 years
- All insurance policies
- All deeds and titles to automobiles
- Name and Contact information for Clergy
- Name and contact information for Funeral Home
- Funeral and Burial Instructions
- Prepaid funeral and burial contracts

## **FINAL NOTE ABOUT MEDICAID AND NURSING HOMES**

Completing a Medicaid application for an individual entering a nursing home is a complicated and time-consuming process. One very important thing to consider is what is called the "look-back period". This is the period of time that Medicaid will look back to see what assets the individual had and how those assets were spent. This information is considered in determining whether the individual is eligible. Essentially, it is a means of preventing the depleting of assets in order to qualify for Medicaid. The actual look-back period will be calculated based on the time the application is completed. Beginning in February of 2009, the period increases incrementally from 36 months (3 years) until it reaches 60 months (5 years) in February of 2011.