

CHAPTER 4

Managing Your Property and Personal Affairs

Health problems can make it difficult for you to manage your property or care for yourself. However, with careful planning you can arrange how your affairs will be managed if you become ill. You can enlist the help of others to manage your property and personal affairs in different ways. Some methods are simple, such as having your government payments automatically deposited into your bank account. Other methods are more complex, such as appointing an agent or attorney-in-fact. This chapter will explain these methods and outline their benefits and limitations.

Topics relating to financial matters covered in this chapter are direct deposits, shared bank accounts, power of attorney, representative payee and conservatorship. Other topics regarding health care issues (and sometimes some financial matters as well) are guardianship, advance directives for health care and mental commitment.

Direct Deposit

Direct deposit is a free service that sends your checks directly into your bank account. You can use direct deposit if you receive Social Security, Supplemental Security Income (SSI), Railroad Retirement, veterans' benefits or government retirement benefits. The federal government strongly encourages people to use direct deposit. To sign up, take your next federal government check to your financial institution and fill out form 1199A. The financial institution will give you a different form for Oregon Public Employees Retirement System (PERS) checks. (See Resources at end of chapter.) Your payments should begin to go directly into your account within 60 to 90 days.

You can often arrange for similar direct deposits for payments from private sources. Contact the source of your payment to find out what information you need to set up direct deposit.

You should check your bank statement each month to make sure the deposits were received. You also should make sure that none of your creditors has taken more than it is entitled to from your account.

Direct deposit has these advantages:

1. It ends worries about lost or stolen checks or late mail;
2. It allows you to travel away from home without worrying about your checks being left in an unprotected mailbox; and
3. You begin earning interest earlier if you have an interest-bearing account.

You can change your direct deposit to a new or different account by filling out a new form. If you plan to close your old account, do not close it until payments are sent to your new account.

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Shared Bank Accounts

Most financial institutions have several options allowing more than one person to control funds in a bank account. The most common is a **joint account**. A joint account is an account that allows two or more people each to deposit and withdraw money from it. The persons named on the account do not need permission from each other to use the account. If one of the account holders dies, the funds in the account belong to the other account holders.

Chapter 5 discusses the use of shared accounts in estate planning. The primary issue is whether or not you want the money in your shared account to go to the other account holders after your death. The main advantage of shared accounts is convenience. The disadvantage is the risk of holding an account with other people. If the persons who have a joint account with you are untrustworthy, they could empty your account without your knowledge or permission. If they owe back taxes, get divorced or have judgments against them, you could lose the money in the joint account.

Power of Attorney

A **power of attorney** gives another person the legal authority to manage some or all of your financial affairs. A power of attorney is created when a person (called the **principal**) gives someone else (called the **agent** or **attorney-in-fact**) written permission to act on his or her behalf. The attorney-in-fact does **not** have to be a lawyer and may be a spouse, relative or friend. Pre-printed power-of-attorney forms are available. Remember that a power of attorney can be an extremely powerful document, however. You should not give anyone such powers without fully understanding what doing so means. You should check with a lawyer before granting a power to anyone.

A power of attorney can give the attorney-in-fact authority to manage almost all business that may require the principal's presence or signature. For example, if you are physically unable to go to the bank, you could give someone the power to deposit and withdraw money from your account. For this particular purpose, the principal could create a **limited power of attorney**. This grants permission to another person to perform only certain acts. In other situations, the principal could create a **general power of attorney**. This grants permission to another person to handle a broad range of financial affairs.

A power of attorney does **not** take away the principal's rights to make his or her own decisions about financial matters. The principal can end the power of attorney at any time by simply telling the attorney-in-fact in

writing. The principal should send copies of the notice to anyone (such as the bank) with whom the attorney-in-fact did business. A power of attorney ends automatically when the principal dies.

The principal must be mentally competent to grant a power of attorney. The power of attorney must be in writing and signed. Customarily, it is notarized, but it does not need to be witnessed. If a power of attorney is used to transfer real property, it must be notarized and must be recorded in the clerk's office in the county where the property is located. (See Chapter 6 for more information on transfer of real property.)

In Oregon, a power of attorney is **durable**. This means that it continues to be valid even if the principal becomes incapacitated. However, the principal can state in the document that the power is to end earlier. In this case, it can last only until the ending date or until the principal revokes it.

Representative Payee

Some government programs allow benefits payable to one person (beneficiary) to be paid to another person called a **representative payee**. Social Security, Railroad Retirement and the Veterans Administration programs all use representative payees. The benefits are to be used for **the person entitled to the money**.

You can appoint a representative payee if you are unable to manage the benefits you receive. You or someone on your behalf must apply to the agency paying the benefits. A power of attorney will not work to endorse or cash federal checks.

It is not necessary to be legally incapacitated or incompetent to qualify for a representative payee. Getting a representative payee does **not** require court action or a lawyer. However, if you do not want a representative payee or wish to have a different person serve, you can ask the agency to change its decision. It must review its decision to see whether you need a payee.

A representative payee must account for the funds used and saved. If a representative payee is not using funds properly, the agency should be told immediately to protect the beneficiary. If the representative payee purposely misuses funds, he or she may be prosecuted. If the agency does not stop paying the representative payee after misuse was reported and the misuse continues, the agency may have to repay the beneficiary.

To get information about representative payees, contact the paying agency. Social Security, Railroad Retirement and the Veterans Administration have pamphlets that explain the duties of a representative payee. (See Resources at end of Chapter 1.)

Conservatorship

A **conservatorship** is a legal proceeding that gives a person (called the **conservator**) power over the property and finances of a financially

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incapable person (the **protected person**). A conservatorship may be established for a person who cannot manage his or her financial resources effectively. Only a court can grant a conservatorship; it is usually the choice of last resort. A financially incapable person may ask the court to appoint a conservator. A person who does not want a conservator may object to the court if someone else wants a conservator appointed. The court will hold a hearing if an objection is filed. The person who does not want a conservator has a right to be represented by a lawyer at a hearing on the objection.

A conservator must follow these basic rules:

1. The conservator has the power to manage the protected person's money and property for the benefit of the protected person;
2. Each year, the conservator must tell the court how he or she managed the money and property; and
3. The conservator does **not** have the power to make personal decisions for the protected person.

The protected person can always ask the court to end the conservatorship. The court may end the conservatorship after finding that the protected person no longer needs it. If a conservator misused the property, the company providing the conservator's bond—which is required by the court—may be ordered by the court to pay the protected person.

The advantage of a conservatorship is that the conservator is usually bonded and is accountable for all funds and property. The disadvantages of a conservatorship are that it can be expensive, the records are public, and it can be difficult to end.

Guardianship

Guardianship can occur because a person becomes incapacitated, or unable to make decisions for his or her well-being and safety. Guardianship is the alternative of last resort after all other solutions have failed. Creating a guardianship is a court procedure. A **guardian** is appointed by the court when a person (the **protected person**) becomes so incapacitated that she or he is in danger of serious physical injury or illness without a guardian to make decisions. A person interested in the welfare of another may petition the court to set up a guardianship. The court then directs a qualified person to act as a visitor to interview the person seeking appointment, the proposed protected person and others involved. The visitor submits a report to the court. The court may also require that the proposed protected person be examined by a physician or psychologist.

The person who is the subject of the proceeding is given notice and may object. The court will hold a hearing if an objection is filed. The proposed protected person can be represented by an attorney. The person who filed the petition has to prove that there is no better way to deal with the situation. If the court finds that the proposed protected person is incapacitated, it will establish a guardianship to provide continuing care and supervision.

The law requires that the guardianship order specifically outline the duties and responsibilities of the guardian. The order must be attached to the “Letters of Guardianship,” which is the court paper showing the authority of the person named as guardian. If the court order so directs, the guardian can control where the protected person lives and can consent to any necessary medical or professional care and treatment. Furthermore, if there is no separate conservatorship, the guardian may receive money and tangible property of the protected person and use it to pay for support and care.

The guardian’s responsibility ends when the protected person dies or the court agrees that the protected person is no longer incapacitated.

Advance Directive and POLST

Oregon law allows you to name a person (called a **health care representative**) to speak for you about medical treatment if you cannot speak for yourself. This instruction is called an **advance directive**. The advance directive document allows you to give to your physician and your health care representative directions about treatment, particularly about procedures that will artificially prolong your life. An advance directive remains valid for the time you state on the form, or until you revoke it. You can revoke it at any time by telling your health care provider or your health care representative.

You can give specific instructions to your health care representative about surgery, diagnostic tests or the need for nursing home care. Even if a guardian is appointed for you, the health care representative named in your advance directive would still be the one to make the health care decisions unless the court takes that power away.

You must complete a special Oregon form to create an advance directive. You cannot use an all-purpose power of attorney or other form such as the forms you might find on the Internet. You must sign the advance directive in front of two witnesses, one of whom must be unrelated to you. The health care representative also must sign the form to show she or he agrees to assume this duty.

Although the law requires use of the form, you can make additions to the form that can make your wishes clearer about what kinds of care you do or do not want for yourself. It is best to get advice and assistance from a lawyer about the use of the form.

While an advance directive expresses your wishes about health care, those who provide treatment may not always understand your wishes or follow them despite your best intentions. So the law also provides for a **Physician’s Order for Life-Sustaining Treatment**, or **POLST**, on which your doctor can order certain care in the event of a very serious medical problem. Hospital staff must follow the doctor’s order. Your doctor’s office may have a copy of this form for you to look at. Your doctor can counsel you about the choices on the form. After your doctor signs the POLST, keep the form in a place where it is easy for anyone to find, such as on your refrigerator door.

Mental Commitment

A person can be involuntarily committed if he or she has a mental disorder and is a danger to himself or herself or to others.

One way the civil commitment process begins is when two people file a written notice to the county Mental Health Division. Within 15 days, the Mental Health Division investigates to find out if there is cause to believe that the person is mentally ill. The Mental Health Division then submits a report to the court. If a hearing is to be conducted, the court will appoint a psychiatrist or other certified mental health examiner to assess the person's mental health.

At the hearing, the alleged mentally ill person is entitled to an attorney. The court will make one of the following determinations:

1. The person is not mentally ill and will be released;
2. The person is mentally ill and willing to receive treatment;
3. The person is mentally ill and will be released to a guardian; or
4. The person is mentally ill and committed to the Mental Health Division for care, custody and treatment.

At the end of 180 days of commitment, any person whose status has not been changed to voluntary is released, unless the Mental Health Division certifies that the person is still mentally ill and needs further treatment. If the person protests, the court will hold another hearing.

Any person committed under Oregon law has the right to:

1. Communicate freely in person, by mail and by reasonable access to telephones;
2. Wear his or her own clothing;
3. Keep personal possessions;
4. Practice religious freedom;
5. Use private storage areas;
6. Have a reasonable supply of writing materials and stamps;
7. Be informed of his or her progress through a written treatment plan;
8. Be represented by an attorney;
9. Refuse to perform routine labor tasks of the facility; and
10. Be given reasonable compensation for all work performed other than personal housekeeping duties.

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Resources

See **General Resource List** for local AAA/SPD offices, legal aid offices, OSB Tel-Law service and more. Also, check the front of your telephone directory for Community Service Numbers.

Alzheimer's Association

Oregon Chapter
1311 NW 21st Avenue
Portland, OR 97209
Helpline: **800-733-0402**
Business Line: **503-413-7115**
www.alzheimers-oregon.org

"Making Health Care Decisions: A Consumer Guide"

Oregon Health Decisions
503-241-0744 or **800-422-4805**

(\$5.00 for advance directive forms and booklet explaining how to use the directive.)

www.oregonhealthdecisions.org

Oregon Public Employees Retirement System (PERS)

11410 SW 68th Parkway
PO Box 23700
Tigard, OR 97281-3700
503-598-7377 or **888-320-7377**
24-hour hotline: **503-603-7600**
TTY: **503-603-7766**
oregon.gov/PERS

Oregon State University Extension Service

"Helping Memory Impaired Elders: A Guide for Caregivers" (PNW 314)

Cost: \$2.50 per booklet

To order this booklet, or for a free catalogue of resources,
e-mail: puborders@oregonstate.edu.

For more information call **541-737-2513** or **800-561-6719**.

extension.oregonstate.edu

Glossary of Terms

Advance Directive: *A special form used to give directions to doctors and other health care providers, and used to name another person (health care representative) to make health care decisions for you when you cannot speak for yourself.*

Agent: *See Attorney-in-Fact.*

Attorney-in-Fact: *The person who is named as an agent by another person who creates a power of attorney.*

Conservator: *The person appointed by the court to manage the financial affairs of a protected person.*

Conservatorship: *A legal proceeding to give a person (the conservator) power to manage the property and finances of someone who is financially incapable.*

Direct Deposit: *A free service allowing you to have your government payments sent directly to your checking or savings account.*

Durable: *A term meaning that power of attorney continues to be valid even if the principal later becomes incapacitated.*

General Power of Attorney: *Legal authority, in writing, to handle a range of financial affairs for the person creating the power of attorney.*

Guardian: *The person appointed by the court to have the responsibility of caring for and supervising an incapacitated person in a guardianship.*

Guardianship: *A legal proceeding to give a person (the guardian) power to supervise an incapacitated person.*

Health Care Representative: *A person named in an advance directive to speak for you about treatment if you cannot speak for yourself.*

Joint Account: *An account that allows two or more people each to deposit and withdraw money from it.*

Limited Power of Attorney: *Legal authority, in writing, to perform a specific act or acts on behalf of another (e.g., the power to cash another person's check).*

Mental Commitment: *A court proceeding in which a person who is found dangerous can be placed in the custody of the Mental Health Division for treatment and care.*

Physician's Order for Life-Sustaining Treatment (POLST): *An official order from a doctor that requires medical providers to honor your wishes about the kind and extent of care you want when you are near death.*

Power of Attorney: *Legal authority, in writing, given by a person to an agent to manage some or all of that person's financial affairs.*

Principal: *The person who grants, in writing, power of attorney to another.*

Protected Person: *Someone who has been found to be financially incapable (in a conservatorship proceeding) or incapacitated (in a guardianship proceeding).*

Representative Payee: *Another person who has been given the responsibility to receive and use benefit payments solely for the person entitled to receive the benefits. This arrangement is generally used by a government agency.*

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