

Help clients avoid disaster when naming financial surrogates

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There is a growing problem with how aging clients are appointing people to assist them with financial matters. Fortunately, it's a problem that advisers can play a vital role in helping to fix.

Often clients appoint surrogates for when, at some indeterminate date in the future, the client becomes incapable of making their own financial decisions.

There can be one, two, three or even more people appointed as surrogates.

For example, what if a client names one child as agent under a durable power of attorney, another child as lapse designee on her long-term care policy, a sibling as a representative payee for Social Security and a neighbor for yet another financial matter? Just the difference in names used in different contexts is enough to completely confuse most clients: agent, representative payee, lapse designate, surrogate, co-owner, etc.



(Bloomberg News)

The end result of these various appointments and designations, made without the benefit of guidance and coordination with their advisers, could be a potential disaster for the client.

What happens in terms of managing an incapacitated client's financial affairs? What becomes of the potential conflicts of authority? Who will make which decision?

Given how dysfunctional many families are in the face of crisis, a lack of coordination could be, for many, a time bomb of financial confusion, and even conflict.

Because of this potential for disaster, planners should be sure to consider each of the following with their clients, and help them coordinate with all the players:

- **Social Security Representative Payee**: The Social Security's Administration has a representative payee program that provides financial management for an incapacitated recipient of Social Security and SSI payments. The SSA website states that "...we look for family or friends to serve as representative payees." A representative payee, who must be 18 or older, can complete the Representative Payee Accounting Report online.

- **Long-Term-Care Insurance**: Long-term care lapse rates are surprisingly high, and a major cause is incapacity of the policyholder. The industry has responded by permitting the insured to designate someone as an alternate payee. Long-term-care insurance companies now permit policyholders to name a person, called a lapse designee, who can receive notice if the premium has not been paid.

- **Agent for Funeral Decisions**: Some state laws permit the appointment of an agent to manage the disposing of a person's remains. The agent can give special directions, such as that the person will be cremated or that their body will be buried in a particular grave at a specified cemetery, or that a specific funeral home will handle the arrangements. Historically, such instructions have been specified in a will. But because so many people fail to craft a will, and due to the cost and formality of amending a will to include missing instructions, there is a movement toward permitting such a designation in any document.

- **Power of Attorney**: A power of attorney is a document in which a client designates an agent to handle legal, tax and financial matters. Sometimes these powers are drafted to become effective only when the client becomes disabled. However, because of the problems of defining exactly when someone becomes "disabled," more powers are being drafted to become effective when signed. This avoids the complications of having to prove a client's disability, but it also creates more potential conflict with the other appointments noted in this article. This is because the agent who can act immediately may act earlier to control the client's finances thereby "running into" the alternate payee or representative payee who may be acting to assist an aging or infirm client who still has mental capacity.

· **Bank Accounts**: When a client opens a bank account, clerks often encourage joint accounts, pay-on-death or other variations, to help avoid probate. Too frequently, clients open accounts at financial institutions that are convenient to them, but without consulting with their professional advisers. The consequences of this are commonly a half-dozen or more accounts at various institutions. These multiply as clients move over the years to different homes, buy vacation homes, and so forth. With disparate institutions involved the likelihood of disjointed account titles (e.g., some in joint name with a child, others in joint name with a different child, and still others established as POD accounts, etc.) grows. As account proliferate often so does the potential for conflicting agents or co-owners.

The practical advice is for planners to proactively address everything on this checklist and to help guide clients to coordinate all of these appointments. In the end, this should help make things easier – particularly in a time of crisis – for both their clients and their clients’ families.