



ATTORNEYS AT LAW

HOW TO HAVE “THE CONVERSATION” WITH YOUR PARENTS

So You Can Protect Your Parents From Losing Their Home, Bank Accounts, and Other Assets From Long- Term Care Costs

Most people never talk to anyone about the potential for long term care.

But even if you dread the conversation, the situation can become much worse by NOT talking about long-term care, asset protection and other important topics.

At the same time by having a conversation with your parents now, their comfort, quality of life, and a good measure of independence can often be maintained with reasonable preparation.

It's never too soon to start talking about the future with your parents, no matter what stage of life they are in right now. By establishing plans now, you will help protect your parents so they can continue to live on their own terms, as fully as possible throughout their entire life.

HOW TO START THE CONVERSATION

So how do you talk to your parents about aging, long-term care, asset protection and other uncomfortable topics? Starting the conversation is not easy, but it will be one of the most important conversations you will have. And both you and your parents will be glad you made the effort and took the time.

What should you cover in your conversation? How do you get started? What do you need to be prepared for?

Based on our experience practicing in the field, the following are essential that you should discuss in order to protect your aging parents as well as your own assets.

Things to Know Before You Get Started

Create A Good Environment For the Conversation.

- Arrange a time when you can talk in person. If you are out of town, plan time during your next family get-together. If you can't meet in person, use Skype, Google Hangouts, Facetime or other technology that will allow you to meet "face-to-face."
- Allow enough time to talk so you don't have to cut off the conversation early.
- Ask questions and listen. Be respectful of your parents' opinions and wishes even if you hear answers you don't agree with or aren't expecting.
- Keep the atmosphere light. This doesn't have to be a dreary conversation. It's okay to smile, and even laugh. Reassure your parents throughout the conversation.
- Be flexible. While it's helpful to have an outline of what you want to cover, be open to letting the conversation go in other directions. You never know what you may discover.
- Be prepared but don't overwhelm them with statistics and forms.
- Don't present a plan. The first step is to talk to your parents and find out what they have in place, what ideas they have and what their wishes are.
- Allow your parents to make their own choices. If their health or safety is at risk then you may need to make decisions for them; however even in those circumstances, if at all possible you'll want to consider their input and choices.

6 Ways to Start the Conversation

- 1) Come right out and tell your parents that you'd like to talk about their wishes surrounding their long-term care and managing their health and ask if they would be open to talking to you about it.
- 2) Ask your parents what worries them about the future. Tell them you want to help them with these issues.
- 3) Talk about someone else's situation. Think about who you, your spouse, family member or parents know who is dealing with some aspect of long term care. Start with something that is either good or bad about their situation to begin the conversation.
- 4) Give your parents an article, or send them a link to information about planning for long-term care or asset protection. Then use the article, story, or information to open the discussion.
- 5) Tell your parents about something you are planning for in the future such as setting up an IRA or preparing a will and ask them for their advice. This is a great way to transition into asking them how they planned ahead and if they feel fully prepared.
- 6) Write them a letter or email telling them what you would like to discuss and why. This is helpful if you are having trouble starting the conversation or if you live a distance from your parents and have to plan a trip to see them to have this conversation. This also allows you to think through what you want to say and edit it before you send it. Plus, it can help you get your parents to begin thinking about these issues before you sit down fact-to-face.

Topics to Cover and Questions to Ask

Lifestyle - What expectations do you have for the future? Have you identified situations that you do not want to happen? Where would you like to live if you cannot take care of yourself?

Legal - Do you have a will? A power of attorney for property? Do you have a power of attorney for health care? If so, are these documents up-to-date and do they reflect your current wishes? Do you have a long-term care plan in place? When was it last updated? Where do you keep these documents in case I'd need to access them?

Finances - Who do you want to manage your finances if you cannot manage them yourself? Do you have a list of bills you currently pay and how you pay them? Is there discretionary income that you would want to redirect if necessary? How will the person you designate to manage your finances get access to your assets? Do you know what government benefits you may need? Do you qualify for them?

Medical care - Who do you want to make your medical decisions if you cannot make them for yourself? What are your wishes for your medical care (i.e. do not resuscitate (DNR)? If you're in the emergency room what information do I need to know about your health, medications, etc? Do you have the proper permission granted to the appropriate people allowing the release of medical information?

Care options - Where would you like to receive care? At home, in a facility? What type of facility? Who would you like to provide care? When do you think its appropriate to be moved out of your home if you are not capable of communicating your wishes?

Cost of long term care - How are you planning on paying for long-term care you may need? How much do you think your long-term care will cost? Medicaid? Veterans Benefits? Savings? Long-term care insurance? Reverse mortgage?

Reasons Elder Law Attorneys Most Often Hear as to Why a Long-Term Estate and Asset Protection Plan Wasn't Put in Place

1) "I/We have it covered."

- How you might respond: "I'm glad to hear that. I've just been reading a lot about how changing laws and other factors are affecting estate plans and asset protection plans. In fact, I was just reading about some people who were in tears because they found out the plan they thought was fool-proof had become obsolete due to changes. I'd hate for you to lose everything you've worked so hard for unnecessarily. Just for my peace-of-mind, would you mind if we talked about your plans so I'll know what they are and what your wishes are?"

Tip: If you feel after your conversation that your parents plan might not be up-to-date as it needs to be or if missing a key element, you might consider suggesting a visit to an attorney that specializes in long-term estate planning and asset protection. It may even be worth it to offer to find the attorney and pay for it.

2) "I don't want to think/talk about that." Or "That scares me to talk about needing to go to a nursing home."

- How you might respond: "I know. It scares me too and I hope you never need to go into a nursing home or any other facility. But I think it would make both of us feel better if we talk about this. I want to make sure your assets such as your home, bank accounts and personal treasures aren't lost or depleted due to unforeseen health care costs."

3) "I won't ever need to go to a nursing home." Or "I probably won't need long-term care."

- How you might respond: "You know, I certainly hope you are right. And I know this is hard to talk about because you've always been so healthy, but I still think it's important to plan for the possibility of it or for some sort of care just in case. I don't want you to lose everything you've worked so hard for. For my peace-of-mind, would you mind if we visit an attorney that specializes in long-term estate planning and asset protection?"

4) **“I already have health insurance. I’m covered.”**

- How you might respond: “ I know you have health insurance, but do you have a plan for other non-medical needs associated with aging that your health insurance won’t cover? Costs associated with making home modifications should you need them or help with personal care help like getting dressed, bathing, eating, and getting in and out of bed – health insurance doesn’t cover these types of expenses.”

5) **“I figured you and the rest of the family will take care of me.”**

- How you might respond: This is a good time to reference an example of someone you know or a situation you are familiar with. Then discuss the impact of providing care. (Facts: Almost half of family caregivers spend more than \$50,000.00/year on caregiver costs. One third of caregivers spend more than 30 hours per week on caregiving.)

6) **“If I need nursing home care, I’ll pay for it from my retirement and my savings.”**

- How you might respond: Ask them how much they expect long term care might cost. Again, a story or using some simple math might help. For example, using the fact that a nursing home could cost \$80,000 per year, and in 3 years, you could spend \$240,000.00. Ask how this might impact their savings. Ask them how this would affect them if one of them was in a nursing home and the other was healthy and wanted to live at home.

INFORMATION YOU NEED TO KNOW

Power of Attorney for Property

If your parents become disabled and cannot manage their finances, and have not executed a document authorizing someone to manage their finances for them, then the court system will appoint someone to manage their finances for them (a guardian). The court may not appoint the person they would have selected. Also, the guardianship process is expensive and intrusive. A power of attorney is one device for their agent to use in managing their assets. Once selected, your parents' agent under their power of attorney for property can manage their financial and property matters. A properly drafted power of attorney for property can allow the agent to take necessary steps to protect your parents' assets from the cost of long term care even if your parents are no longer able to manage their finances.

What About Trusts?

A trust is a written document that defines how the property within the trust is used. The person who administers the property in the trust according to the terms of the trust is known as the trustee. A trustee can only manage property that is owned by the trust.

There are many kinds of trusts. The best one for your parents will depend on their circumstances. Some of the factors that should be considered are:

- Their age
- Current health status
- The amount of assets involved
- The need/desire to have the trust earn a decent return on investment

Even if your parents have a trust, they should also have a power of attorney for property. This is because a trustee has no authority to act regarding property outside of the trust. An agent under a power of attorney can act with regard to property outside the trust but not property within the trust. These documents work together.

Medicare/Medicaid

- Medicare does not help to pay for the cost of custodial care, but it can help pay for a brief time of rehabilitation in a skilled nursing home following a hospital stay.
- It is critical to plan ahead to preserve family savings, preferably at least five years before paid care is needed. Once a person spends down to the point where Medicaid covers the cost of care, he or she must have next to no countable assets (often \$2,000 or less). After that, a nursing home resident on Medicaid will only get to keep \$30 per month from his or her Social Security check and pension. If one of your parents still lives at home, he or she will be able to keep a limited amount of income and assets.
- Never get your advice about Medicaid from the state Medicaid planning office or the nursing home. They are under no obligation to tell you of the available options to best protect your parents' home, assets, and life savings. Instead talk with an elder law attorney who is familiar with Medicaid planning.
- With proper planning, you don't have to spend all of your money on a nursing home before you can qualify for Medicaid. The earlier your parents proactively plan to protect their assets, the more they will be able to save from nursing home costs.
- When we're talking about paying for nursing home care, Medicaid is not just a program for poor people. The cost of a nursing home for 5 years can wipe out a middle class family's savings.

Long-term Insurance

- Premiums go up
- It's expensive
- Use it or lose it. Once the policy-holder dies, even if there are funds unused left in the account, the funds go away and are kept by the insurance company.
- Your parents may be too old to get long term care insurance with premiums they can afford.
- The underwriting is rigorous. Depending on your parents' health, they may not qualify for long term care insurance.

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- A long term care rider may be available for existing life insurance or annuity policies.

Have “the conversation.” Make sure you understand what your parents want should you wind up with the legal power and responsibility to make decisions for them. This conversation may be uncomfortable for you and your parents, but I can’t stress how critical it is. Life is unpredictable so it’s important to start planning now...before you are in the middle of a crisis. If your parents plan now, they can protect their home and savings from the cost of long term care.



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