

## Conservator under a conservatorship of the estate

Conservatorship is a court process in which a judge decides whether you can make decisions about money and property on your own. If you can't, the judge will choose a **conservator of the estate** to make decisions for you. The conservator's powers depend on how much help the judge thinks you need.

Conservatorship can often be avoided if you choose an agent and/or make a living trust while you still can. Sometimes, people with agents or living trusts still need conservators. This can happen if your agents abuse their power or if they need to do something that you didn't say they could do in your trust or durable power of attorney for finances.

## Executor in a will

A **will** is a legal form that says what you want to happen to your money and property after you die. A will names an **executor** who will carry out your wishes. You can choose anyone you want, and they must do what the will says. Executors can't make decisions about your money or property while you are alive.

## Next steps

This handout is meant to give basic information only, not legal advice. If you haven't met with a lawyer already, you should talk with one about which options are best for you. Your Care Team Navigator will discuss this with you soon.

Before then, please think about:

1. Who in my life will follow directions I leave for them?
2. Who in my life will use my money and property for things that I need, not for themselves or others?
3. Who in my life is most responsible with money?
4. Who in my life is most organized and can handle paperwork?
5. Who in my life is willing to ask questions and get help from professionals?
6. Who in my life could handle this emotionally?
7. Who in my life will protect my money and property from being misused by others or stolen?



# Who Can Make Financial Decisions for Me?

## Why think about this now?

Most of us, at some time, will not be able to make decisions about our money or property. Before then, you should think about who you want to help you. Planning will make sure you have a say, and that the right person is ready when needed.

## Who are financial decision-makers (fiduciaries)?

Fiduciaries are people who make financial decisions for others. They can do things like pay your bills, manage Social Security benefits, or sell property. You can have a few different fiduciaries or just one, depending on your needs. Some can make decisions right away and some can only make decisions once you no longer can.

## What are the types of fiduciaries?

### Spouses

Your spouse can make *some* decisions about money or property that you own together, but not all. This depends on the laws where you live. Your spouse can't make decisions about things that you own by yourself. You can make sure that your spouse can make these decisions by making him/her your **agent or trustee** (see next page). A lawyer can help you make plans to protect both of your future needs.

### **NOT other family members (children, siblings, etc.)**

Other family members usually are *not* allowed to make financial decisions for you. If you want them to make these decisions, you must appoint them as an **agent or trustee**. If you don't appoint them ahead of time, they will need to go to court for permission to make decisions for you.

Some people try to take shortcuts. For example, someone might put a family member's name on accounts or give them passwords. This can be risky for both parties. You could lose benefits or income. Your family member could be accused of wrongdoing. We recommend that you talk to a lawyer before signing forms or taking any action.

### **Agent in a durable power of attorney for finances**

A **durable power of attorney for finances** is a legal form in which you name someone else (called the *agent*) to manage your money and property. You can choose anyone you want and decide what your agent can do. Your agent can do things like pay bills, manage your property, or handle legal issues. After you sign this form, you can still make decisions while you are able. It is your choice whether your agent can make decisions right away, or only when you can't make them yourself.

#### **Benefits of a durable power of attorney for finances:**

- You don't have to go to court.
- You decide what your agent can do.

#### **Downsides of a durable power of attorney for finances:**

- Very little oversight over the agent's decisions.
- Power of agent can be easily misused.

### **Trustee in a living trust**

A **living trust** is a legal tool that says how you want your money and property to be managed. You can choose a **trustee** to make decisions about money or property that you put in the trust. The trustee doesn't have power over anything you leave out of the trust. Living trusts are different from wills. Trusts can be used while you are alive, but wills are only used after you die.

#### **Benefits of a living trust:**

- You don't have to go to court.
- You decide what your trustee can do.

#### **Downsides of a living trust:**

- Trusts can be expensive and complicated to make.
- Very little oversight over the trustee's decisions.
- Power of trustee can be easily abused.

Not everyone needs a trust. There are many trust scams where people waste money on trusts they don't need, or the trusts are set up wrong. You should talk to a lawyer about whether this is right for you. Even if you have a trust, you will need a durable power of attorney for finances for anything not included in the trust.

### **Social Security representative payee**

This is someone who can receive and manage your Social Security benefits. They have no power over your other money or property. This person must ask to be appointed once you can no longer manage your benefits yourself. Your agent, trustee, or conservator will still have to go through this process to be able to manage your benefits checks.

### **Veterans Administration fiduciary**

This is someone who can receive and manage your VA benefits. They have no power over your other money or property. This person must ask to be appointed once you can no longer manage your benefits yourself. Your agent, trustee, or conservator will still have to go through this process to be able to manage your benefits checks.