
Estate Planning Options



Family Caregiver Alliance
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CANHR Services

- **Free Consumer Counseling & Advice – 800-474-1116**
 - **Planning for Long Term Care**
 - **Medi-Cal Planning, Eligibility & Recovery**
 - **Facility Admissions and Transfer or Discharge issues**
 - **Resident Rights**
- **Impact Work – Legislation; Administrative Advocacy; Litigation**
- **Lawyer Referral Service**
- **Resources for Advocates & Professionals**

CANHR Services: Free Publications

www.canhr.org



- Over 90 free factsheets and consumer guides on common long term care issues
 - Learn more about Medi-Cal eligibility, home and community based services, long term care options, residents' rights and more!
- Most common fact sheets available in 7 different languages
- Monthly e-Newsletter – CANHR News & Notes
- Advanced Health Care Directive Form

CANHR Services: Lawyer Referral Service

- Only **California State Bar Certified** lawyer referral service **specializing in elder law issues**
- Referrals to **qualified attorneys** specializing in:
 - Estate Planning
 - Resident Rights
 - Protective Services: Conservatorships and Special Needs Trusts





Preparing for End of Life Decisions



Probate Conservatorships

- There are two types of probate conservatorships that may be filed in probate court.
 - A conservatorship of the person to provide for a person's physical health, food, clothing, or shelter, except as provided for the person.
(Conservatorship of the person).
 - A conservatorship of the estate to manage a person's financial affairs.
- Conservatorships are time-consuming and costly.
- There are limited free or low-cost options for support through the conservatorship process.



Power of Attorney (POA)

A power of attorney is a legal document that allows for a person, who has legal capacity, to appoint another person to act on their behalf upon incapacity.

A power of attorney can be immediate or it can take effect once the person becomes incapacitated (Springing POA).

A durable power of attorney means that the document is effective through incapacity; however, it becomes invalid once the principal dies.



Types of POAs

Advance Health Care Directive (AHCD): a legal form defining health care instructions, end of life wishes, organ donation, burial, and appoints agent(s) to carry out your health care instructions.

CANHR'S Free AHCD Form: <https://canhr.org/advance-health-care-directive-form/>

Durable Power of Attorney for Financial Management: A legal form that designates agent(s) to manage your financial affairs (except for those in a trust), properties, and other legal matters. Authority under DPOA includes paying bills and everyday expenses; buying, selling, maintaining, paying taxes on, and mortgaging real estate and other property; collecting benefits; handling bank or other financial transactions; filing and paying taxes; and other financial matters.



Key Points for POAs

- **Principal** is the creator of the AHCD and DPOA.
- **Agent** or **Attorney In Fact** is the person appointed by the principal to act on his/her behalf upon a showing of incapacity.
- The principal must have capacity to create an AHCD or DPOA.
- The agent must have legal capacity to create the AHCD and DPOA.
(Ex. Agents cannot be minors.)
- Agents have a fiduciary duty to follow principal's instructions on the document and put interest of the principal first.
- Requires two witnesses to sign after the principal signs. The agent cannot be a witness. Or the documents can be notarized.
- **Note:** Skilled nursing facility residents must also have a signature from an ombudsman.



What if there is no POA?

If there is no conservator, no POA, and patient has capacity, then the patient can select one by verbally notifying her health care provider. See Cal Prob C § 4711.

What if patient lacks capacity and has no POA?

The patient can have a surrogate that “demonstrates special care and concern for the patient and is familiar with a patient’s values and beliefs.” See Cal Prob C § 4712 - they do not need to be a relative of the patient. Surrogacy under Cal Prob C § 4711 and § 4712.



Protecting Home Equity




What are reverse mortgages?

- Loans that allows homeowners, 62 years and older, to borrow from the equity of their home.
- Offers older homeowners cash without having to sell your home or pay additional monthly bills.
- The title of the home remains in the owner's name. The loan is repaid when the borrower no longer lives in the home or dies.



Know the risks!

- Reverse mortgages can be expensive because fees and costs are added on top of the balance of the loan.
- Some reverse mortgage funds may be counted as income for purposes of Medi-Cal eligibility, and can increase your out of pocket costs for the healthcare you need.
- Homeowners must continue to pay property taxes, insurance, and must continue to maintain the home - failure to meet these obligations will put the loan into default and the home will be subject to foreclosure.



What happens when a reverse mortgage borrower no longer lives in the property?

- The reverse mortgage will require the payment of the loan balance or for the owner to sell the property.
- If the spouse is also listed on the loan, they can stay in the home, but if they are not, the loan still needs to be paid back.
- Failure to pay the loan balance once the owner no longer lives in the home will result in foreclosure.



Every borrower should ask...


- Who is currently living with you and what will happen to them if you get a reverse mortgage?
- Have you discussed your plan to get a loan with everyone living with you?
- If you default on the loan:
 - Can you find the funds to catch up and stay current with your taxes, insurance and home maintenance?
 - If you end up in foreclosure, will you have enough money to pay for a new home, apartment or assisted living facility?

http://www.canhr.org/factsheets/abuse fs/PDFs/fs_RevMortSuitabilityWorksheet.pdf



Long Term Care Concerns

- If you move into a nursing home for an extended period, the reverse mortgage loan becomes due and your house may need to be sold in order to pay off the loan.
- When a Medi-Cal recipient dies, the State of California can seek repayment for the cost of certain services received.
- A reverse mortgage loan often interferes with the ability to transfer the home and avoid a Medi-Cal recovery claim.



What is Medi-Cal Recovery?

- If a Medi-Cal beneficiary was 55 or older, and used skilled nursing care or some Home and Community Based Services, the state may try to be reimbursed for services provided.
- Recovery does not happen during a Medi-Cal beneficiary's lifetime, only after death.
- There is no recovery if there is nothing left in the estate (name of the person) who received Medi-Cal.



What is Probate?

- Probate is a court process where a person's relative seeks appointment as an estate administrator of a deceased person's estate if the deceased died without a will, a living trust, or if there are no beneficiaries designated on accounts or deeds.

Note: If deceased person's gross assets (accounts, cars, safe deposit box, etc.) are below \$184,500, then heirs can access those assets through an affidavit process (without court order). Cal Prob. Code § 13100




When can Recovery happen?

Only if someone over age 55 used specific services covered by Medi-Cal, and only on those assets subject to probate.

- If there is a surviving spouse, registered domestic partner, or disabled child (of any age) there can be no recovery.
- No recovery if assets are protected by estate planning including living trusts, joint tenancies, pay on death accounts, life estates.

Other assets **not** subject to recovery:

- Mobile homes, retirement accounts with beneficiaries designated, life insurance with beneficiaries designated
- A homestead of modest value (Value is 50% or less than average price of a home in county where the homestead is located)



How Can You Avoid Probate? (And protect your heirs from Medi-Cal Recovery)

Probate can be avoided if assets are held in the following ways:

- Jointly with someone else, either joint tenancy with someone else, or as survivorship community property with his or her spouse or domestic partner
- Beneficiary designations in retirement accounts, brokerage accounts, life insurance.*
- Bank Payable-on-Death (POD) Accounts
- Transfer on Death Deed in real properties
- Assets are in a Revocable Living Trust

**Living Beneficiaries must be listed on the accounts; otherwise probate is required.*



Last Will and Testament

A Last Will and Testament (commonly known as a Will) is a legal document that people use to plan in advance on who leave assets and other properties to.

A Will can also achieve the following goals:

- Name a guardian to care for minor children,
- Name a trusted person to manage property left to minor children, and
- Name an executor, the person entrusted with carrying out the terms of will.

A Will **does not** avoid probate and it **does not** avoid Medi-Cal Recovery.

[California Statutory Will Form](#) is available under Cal. Prob. Code §6240



Irrevocable Living Trust

An irrevocable trust is created to reduce taxes and avoid probate. When you set up an irrevocable trust, you lose all ownership of the assets included in the trust.

- Beware of those who advise that you must use an expensive Irrevocable Trust to protect assets from Recovery
- Irrevocable means “not able to be changed, reversed, or recovered; final.”



Revocable Living Trust

A legal document create during a person's lifetime, as long as they have legal capacity. Enables people to manage their own assets while alive, and pass them down upon death without going through probate.

- Offers greater privacy: a will can be accessed by the public, while a trust document is typically private.
- Allows you to maintain control over your finances and assets while still alive.
- Helps you to set up plans in advance in case you lose capacity.
- Provides better protection from court challenges.
- Prevents Medi-Cal Recovery
- Can take time, and be expensive to both set up and maintain.



Resources

- CANHR's Fact Sheet on Preparing for Incapacity:
<https://canhr.org/incapacity-plan-for-it-now/>
- Read about how to protect your heirs from Medi-Cal Recovery
http://canhr.org/medcal/medcal_recoveryinfo.htm
- Low-income estate planning support
HERA CA <https://www.heraca.org/>
- CANHR's Lawyer Referral Service for estate planning
<http://canhr.org/LRS/GetALawyerReferral/ContactCANHRLRS.htm>
800-474-1116



Thank you for listening!

Questions?

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