The Importance of Comprehensive Estate Planning as Cognitive Challenges Become More Significant

Creating a hierarchical organization chart of family members who need to be involved in the decision-making process can help draw clear lines of responsibility when the time comes for others to step in.

Executive summary

One of the most important reasons individuals need to have plans in place for their financial lives is to be prepared if a life-altering event should occur. As the nation’s population grows older and more Americans are living longer, cognitive impairment of an individual is likely to become a challenge for more and more families. When a family member is diagnosed with conditions such as dementia or Alzheimer’s, it may already be too late to have an up-to-date estate plan in place. The ramifications can be dramatic not just today, but for generations to come.

As family members grow older, it is important to monitor whether they continue to maintain the capacity to make important financial decisions. “Capacity” refers to the ability to understand the nature of one’s acts and the ability of an individual to continue to manage his or her own financial affairs. Before individuals lose that capacity or it becomes limited, it is important to designate another individual with power of attorney over financial affairs. The critical nature of such a designation is one example of why timely planning is essential for the long-term well-being of an individual who becomes cognitively impaired.

The risk that cognitive challenges will create obstacles for estate planning later in life underlines the value of starting the process early. It is important to recognize that such impairments can become an issue without warning. Individuals need to accept that anybody is susceptible to cognitive impairment at some point in life. Then it requires that action be taken before such a life event occurs.

From an estate planning perspective, this includes working with an attorney to have a number of foundational pieces in place:

• Preparing durable power of attorney documents for health care and for financial decisions
• Documenting a Health Care Directive and creating a Living Will
• Addressing who should inherit assets upon your death through a Will and beneficiary designations on various financial accounts
• Considering the use of trusts that gives the trustee the ability to act in the event of another individual’s incapacity

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These are fundamental steps that should be considered in the context of any estate plan. It is critical that individuals take the matter seriously and initiate a process to address these issues on a timely basis. Having an estate plan in place, prior to the emergence of cognitive issues, can help ensure that specific wishes of the individual are honored and that the disposition of the estate proceeds in a smooth manner.

**Estate planning and cognition**

A well-conceived and executed estate plan is the culmination of a lifetime of hard work and diligent stewardship of wealth. Estate planning is about more than just the intentions of an individual. It involves the implementation of specific legal documents designed to help assure that an individual’s wishes are carried out as desired. The key is to assure that plans are put in place early and kept up to date as situations change, as the reality of cognitive impairment becomes an increasingly predominant issue for American families.

According to the Alzheimer’s Association, five million Americans age 65 and older have been diagnosed with Alzheimer’s in the U.S. That number is expected to rise to eight million by the year 2030. Eleven percent of Americans age 65 and older have Alzheimer’s disease. By age 85 and older, nearly one-third of Americans (32 percent) receive a diagnosis of Alzheimer’s.

The reality of cognitive-related issues makes clear the importance of planning in advance for such an event. The primary concern is when individuals reach a stage where they can be considered to have “diminished capacity.” The term “capacity” refers to the ability to understand the nature of one’s acts. A person with diminished capacity has demonstrated indications of a cognitive decline. This may involve deterioration in the ability to manage mental activities required for basic tasks, such as learning, remembering and problem solving.

The impact of a cognitive decline can be far reaching, not just for the individual who is directly affected, but also on his or her entire family. This is particularly true as it relates to estate planning.

**Cognitive issues and wealth**

For most people there is truth to the adage that with age comes wisdom. People typically benefit from added life experience and increasing knowledge of the world. However, the time comes when a peak is reached in decision-making abilities. It is at this point when a decline in cognitive abilities can occur.

According to David Laibson, professor of economics at Harvard University, individuals begin to experience a decline in their abilities related to life experience and accumulated knowledge in their 50s. The decline for most is modest but continual until ultimately, as they reach their 80s, the aging process has left the ability to make decisions, particularly on complicated matters, significantly compromised.

The deterioration can be much more rapid and steep for an individual suffering from a physical issue such as a stroke or Alzheimer’s. As the statistics cited above indicate, there is a reasonable chance that such a concern will be a consideration for many families.

As a group, older adults currently represent just 13 percent of the nation’s population, but hold 21 percent of the nation’s wealth. This means this wealth could be at risk given the likelihood of cognitive impairment as we grow older.

It is important for families to address this issue and be certain that a well thought out estate plan is in place before such issues become a reality. The sooner this need is addressed, the sooner an individual can move forward with confidence that he or she and loved ones may be well cared for under any circumstance. A priority should be placed on taking steps today to complete an estate plan early while fully competent and in a position to make appropriate decisions.
Key components of an estate plan

Once determined that an estate plan should be put in place or updated, it is important to be certain that the plan is comprehensive. Timing is critical; as a person or couple should be of sound mind and health in order to put proper documentation in place. Four foundational pieces should be considered in any estate plan:

1. **Durable Power of Attorney**
   
   **The purpose**
   
   The first step is to designate an agent under durable power of attorney to help make key decisions in two primary areas if the principal is unable to do so. One person can be named to make health care decisions while the same or a different person can be designated to make legal or financial decisions. Candidates to consider for appointment as an agent on these tasks include a trusted advisor, a relative or a friend.
   
   **The potential benefits**
   
   Using an agent under a durable power of attorney at the appropriate time increases the likelihood that the most appropriate person will be designated for the role. The principal can specify wishes in advance, including precise duties that the durable power of attorney will be allowed to execute. Responsibilities can be transferred immediately or at a time when it is determined that the principal becomes incapacitated.
   
   **The risks**
   
   Without a durable power of attorney, a court order may be required to allow family members and friends to make health care decisions while the same person may be appointed to make legal or financial decisions. Family members may be put in an uncomfortable position of having to make difficult decisions regarding treatment without knowing the intentions of the principal.

2. **Health Care Directive and Living Will**
   
   **The purpose**
   
   A Health Care Directive informs others of the individual's wishes about his or her health care and also provides the ability to name a person or “agent” who can make decisions if the principal is unable to do so. A Living Will is a specific directive to a physician that communicates an individual's wishes in advance for end-of-life medical care if that cannot be communicated at the appropriate time.
   
   **The potential benefits**
   
   With these documents in place, the administration of health care or end-of-life care will be consistent with a person's stated wishes. These documents can help address issues such as where a person would prefer to live and receive treatment (e.g., home, assisted living facility), who is trusted to make medical decisions for that person and the source of funding to pay for the care.
   
   **The risks**
   
   Family members may be put in an uncomfortable position of having to make difficult decisions regarding treatment without knowing the intentions of the principal. This can be especially difficult in an end-of-life scenario. In addition, if the principal did not intend to burden the family with significant medical bills, failure to spell that out could be very costly to them if the period of medical treatment is extensive.

3. **An up-to-date Will and beneficiary designations**
   
   **The purpose**
   
   A Will is a fundamental document that lays out specific details of who should inherit assets upon an individual's death. It can also list other critical information, such as guardianship of children or beneficiaries of business interests. Beneficiary designations are included in some financial accounts, including some brokerage and bank accounts, insurance policies and retirement plans. These designations take precedence over asset distribution spelled out in a Will.
The potential benefits
A Will is a fundamental estate planning document that can provide very detailed information about the disposition of assets. This includes not just money, but valuable possessions. It also is a way to legally pass on guardianship of a child to a person who is known and trusted and is prepared for the task. Best of all, a Will can be changed whenever circumstances warrant it. It is a good idea to review a Will and beneficiary designations regularly to make sure all individuals named remain appropriate.

The risk
The lack of a Will takes away any control the principal had in the disposition of the estate and puts it into the hands of state law and court. Depending on family circumstances, it is entirely possible that some assets may be directed to unintended beneficiaries. The lack of a Will may extend the probate process.

4. Living Trust (Revocable Trust)

The purpose
A grantor can create a trust agreement naming a person, corporation or both to administer the trust. It allows property to be managed for the grantor’s benefit in the event of incapacity. At death, the trustee will distribute assets in accordance with instructions specified in the trust.

The potential benefits
A primary advantage of a living trust is that property can be transferred without having to go through probate court. It also preserves privacy, as unlike a Will, a trust is not a matter of public record. The management of a disabled persons affairs through a Trust is very beneficial.

The risks
By not having a trust, the individual or family members may face more challenges in managing financial affairs while the grantor is cognitively impaired. There may be a need for a costly and long court proceeding to designate an individual to oversee property. It could delay the availability of assets for the needs of the grantor or family members.

Family dynamics when a person becomes cognitively challenged
When conditions such as dementia or Alzheimer’s become an issue, it can be a difficult time for family members, business associates and others who are close to the situation. Establishing clear roles can be important, particularly regarding Power of Attorney designations and Health Care Directives. While many people may seek to provide input and share their opinions, it is important that a clearly delineated decision structure be in place.

Be sure that the individuals designated for key positions are able to handle difficult decisions and have the time available to help oversee the matters they’ve been assigned. It is important to communicate regularly with them without overburdening them with discussions about potential future needs.

Additional resources to consider are support groups and professionals who can assist the individuals and those close to that person if the need for help related to memory care should be required. It will be wise to conduct frank discussions with family members (such as a spouse or children) about whether it is best to maintain care at home or if it would be more effective for the entire family to have care provided elsewhere.

Necessary documentation
Having key estate planning documents in place is an important step. Just as important is to be organized and certain that the individual’s financial life is thoroughly documented. This is particularly important once individuals reach a stage in life where they become reliant on others to oversee their affairs and are unable to communicate information to them.

In a single document (paper or electronic), be sure to capture:

• the names and contact numbers of financial and legal professionals including financial advisors, CPAs and attorneys
• a list of all financial accounts and insurance policies, including account or policy numbers and the firms associated with those accounts
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- a clear description of where legal documents are maintained (i.e., a filing cabinet, home safe or a safety deposit box)
- medications that are required

In addition, it is important to confer with a financial advisor about an investment policy statement that details information that is critical to managing an individual’s investment portfolio, including:
- a target asset allocation mix
- the individual’s views on investment risk
- the timeframe for money to be invested before it is needed
- specific investment goals
- liquidity needs
- account restrictions and preferences
- other special circumstances that might affect an investment strategy

Working closely with professionals such as a financial advisor, CPA and attorney is critical in helping to smooth the transition that will occur if a person becomes incapacitated and is no longer able to be responsible for financial matters.

Conclusion

It may seem unfortunate that the point in life when most Americans have achieved their greatest wealth — when they are older, is also the time when issues related to cognitive impairment are most likely to occur. The statistics surrounding the incidence of dementia and Alzheimer’s make it apparent that many families will be affected in some way by such conditions.

Estate planning is important for anybody, but the value of having a comprehensive plan in place before a cognitive impairment occurs is apparent. Failing to do so can put your hard-earned assets and the future financial security of your family at risk.

U.S. Bank will work with you and your personal advisors, such as tax advisors and attorneys, to provide guidance in helping you structure a comprehensive estate plan that can protect against those risks.

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1 Alzheimer’s Association, 2014 Alzheimer’s Disease Facts and Figures.
3 Source: National Institute on Aging.

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