Take Charge of Your Money

A University of Hawai‘i Cooperative Extension Service Project

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Course Objectives

- Increase your knowledge about financial planning
- Improve your ability to make informed decisions
Elder Law – Financial Decisions
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Lesson Objectives

Learn about:

• Ways to own property
• Powers of Attorney
• Conservatorships
• Trusts
• Importance of having agents authorized to make medical decisions for people who need assistance

• Concept of “agency” and how we can appoint someone on our own through documents like advance health care directives or how the court may help out through a guardianship proceeding.
Financial, Not Personal

- Different from personal decisions, although frequently related
- Consenting to care is personal; paying for that care is financial
Different rules may impact different types of assets:

- Real property
- Stocks and securities
- Retirement funds
- Cash
• Several tools:
  • Setting up ownership
  • Agents
  • Powers of Attorney
  • Conservators
  • Trustees
Ownership of Assets

- Co-owners
- Joint owners
- Tenants by the Entirely
Co-owners

- Two or more owners with a defined percentage interest
- Not helpful because owner can administer only the portion that owner actually owns
Joint Owner

- Two or more owners who each own the property and may transact, with the survivor becoming the sole owner
- May cause inheritance issues or may be risky if joint owner is not trustworthy
Tenants by the Entirety

- For married couples
- Transactions require the action of both spouses
- Can be good for creditor protection, but may cause difficulties if one spouse loses capacity
Role of an Agent

- Person who acts on behalf of someone else, known as a “principal”
- Common legal concept used in numerous other areas of law
- We can also appoint agents to help make financial decisions
Powers of Attorney

Many types

- Durable
- Immediate or Springing
- Limited or General
New Power of Attorney Act

- Effective June of 2014
- Presumption of Durable
- Very broad
- More enforceable
- Statutory form which is modifiable
- Benefits include relative ease of creation; cost; avoid court
- Detriments include enforceability, recourse against agent; may be too broad or too narrow
Conservatorship

- Authorized under the Probate Code
- Probate Court has exclusive jurisdiction
- Appoints someone to make financial decisions for a person who needs assistance with finances
- MAY consolidate a guardianship AND conservatorship if person needs both
Being a Conservator

- Update Budget and follow that Budget
- Periodic Accounting
- Money management for protected person
- Return to court for changes in circumstances
- Final accounting at termination of conservatorship
Trusts

- Legal Agreement
- Settlor/Grantor/Trustor
- Trustee
- Beneficiary
- Involves an asset to be managed
Types of Trusts

- Revocable
- Irrevocable
- All governed by same rules
Purposes of Trusts

- Avoiding probate
- Tax planning
- Avoiding Conservatorship
- Long-term care planning
- Protecting beneficiaries
- Getting financial benefits to individuals as you desire
Creating a Trust

- Must have capacity
- Can be created privately or through court (conservatorship)
- Must be funded
- Trustee must abide by terms
- Usually pretty complicated legal document and may be good to see an attorney
Conclusion

- Plan for the management of your financial affairs
- Plan ahead of time with documents such as powers of attorney and/or trusts
- Know how your assets are owned
Take Charge of Your Money

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