

## ESTATE PLANNING

# What to Discuss With Your Aging Parents as They Get Older

The time will come when you need to have a conversation with your parents about their plans as they age. Here are some of the things you should talk about.



(Image credit: Getty Images)

Today, many people are living longer, but that means the “sandwich generation” (i.e., the generation of people responsible for taking care of both their children and their aging parents) is growing. Many children of aging parents struggle with the idea of when to approach their parents about a plan for their senior years. Oftentimes, aging parents themselves are uncomfortable with the role reversal and hesitate to initiate conversations.

Many parents have already determined, through an estate plan, how their assets will be dealt with in the event of their death. The issue to consider next is how to ensure things are taken care of if your parents have health problems. It is important to have this conversation because advanced planning can alleviate stress, and circumstances can change quickly as your parents age.

The following are things to discuss with your parents in their golden years.

### Updating legal documents

Your parents should each have a durable power of attorney and a healthcare proxy. In fact, everyone over age 18 should have these documents. Should one or both of your parents need care either at home or in a nursing home, these documents will ensure that the care that is provided is in line with their wishes.

A durable power of attorney allows an agent to make financial decisions on a person's behalf, while a healthcare proxy allows someone to make medical decisions on a person's behalf.

In most cases, if your parents are married, they will have designated each other as agents. In the case of a parent who's in ill health, it is advised that you have a conversation with the other parent about different scenarios that would require him or her to make medical decisions and pay medical expenses.

It is possible, however, that there will be a scenario in which both parents are in ill health. If this is the case, a backup agent (such as one of their children) should be chosen for the power of attorney and healthcare proxy.

In other situations, spouses acknowledge that their spouse may no longer be best suited for the role and name a child as the primary designee.

### **Protecting their assets**

Most seniors don't want to lose control of their assets, and a conversation about protecting assets through the transfer of assets is a difficult conversation to have. The best way to address this concern is to have an open and honest conversation about your parents' financial situation and the assets they would need in their control to feel financially secure.

Any assets remaining in their control could be at risk if they experience a medical event that requires long-term care in a nursing home or extensive home care. Medicaid, a government program that helps eligible individuals with medical costs, can be used to pay for nursing home care, but typically an individual is required to use all of their own assets to pay for their medical care before they are eligible to use Medicaid benefits.

To protect their assets if a medical emergency occurs, parents should consider the transfer of assets. This process works best when planned in advance:

- **Transferring assets.** If your parents are married, assets can be easily transferred from the ill parent to the healthy parent at any time. If you have a single parent, the transfer of assets is more complicated. A plan must be put into place five or more years in advance of any medical emergency. Your parents' assets should be transferred to a trusted individual, usually a beneficiary of their will, five years before they anticipate the need for long-term medical care. If your parent's health deteriorates before Medicaid's five-year look-back window, assets will need to be given back to them and used to pay for their care.
- **Irrevocable trusts.** An irrevocable trust transfers assets from the grantor's control and moves them to a trust to be held for the beneficiary or beneficiaries. Irrevocable trusts cannot be modified or terminated without the permission of the grantor's beneficiary or by the order of a court. If your parent creates an irrevocable trust and transfers their money into the trust, they will not have a legal right to that money. While the parent is alive, the trustee may have the right to transfer any amount of money back to the parent or any of the beneficiaries of the trust. Following the death of the parent, the assets would be transferred pursuant to the parent's estate plan.

## Additional considerations

Most parents want the majority of their assets to be passed on to their children, and they want to avoid paying estate taxes on their assets. However, before gifting assets, which may avoid estate tax, consider that it may create an income tax liability in the future for the children. Prior to gifting, thought should be given to the potential income tax consequences of gifting low-basis assets and the income tax benefits of a step-up in basis.

As a rule of thumb, it is recommended that you start having these conversations with your parents when they reach their 70s, or if you start to notice memory loss or other health conditions. Of course, you are the best gauge of your parents' physical and mental health, and only you can determine the appropriate time to initiate this conversation.

It might be uncomfortable at first, but you'll appreciate having these things worked out ahead of time as your parents age.

**NYSUT NOTE: Many adult children struggle with having conversations with their aging parents about their plans for their senior years. But NYSUT members have help, through the [NYSUT Member Benefits Trust-endorsed Legal Service Plan](#). Provided by Feldman, Kramer & Monaco, P.C., this network of attorneys can help both children and their aging parents set up crucial estate planning documents — like a will, power of attorney and more. Ensure your loved ones are protected in their golden years by enlisting the help of professionals through the [Legal Service Plan](#) today.**

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