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Power of attorney can prevent disaster when mental fitness ebbs

By Janet Kidd Stewart

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Like young parents who put off writing a will because they can't decide on a suitable guardian for the kids, many retirees loathe making arrangements for handling their finances if their mental capacity diminishes.

Regulators and advisers are raising the issue, however, as they contemplate the massive wave of Baby Boom retirees, increased longevity and prevalence of Alzheimer's and other diseases.

In a notice last fall, the Financial Industry Regulatory Authority urged financial firms to review their procedures for dealing with elderly clients who they suspect might be losing their ability to make good financial decisions and to spot signs of suspected financial abuse by family members or outsiders.

"These sensitive issues were raised repeatedly by the firms we surveyed," the securities industry regulator said in the notice. Though not binding, the notice recommended firms consider designating a point person to handle elderly client issues, provide staff with written guidance on senior-related topics such as how to spot abuse or diminished capacity, and ensure clients are asked if they have executed durable powers of attorney that designate an alternate who can make financial decisions on their behalf.

Clients are almost uniformly reluctant to admit the possibility that cognitive decline could happen to them, advisers say, and very often they haven't named someone to take over in that event. And that can leave them, and the money they've struggled to save, vulnerable.

A financial loss is often the first sign family members have that an elderly relative is suffering, said Dr. William Thies, vice president for medical and scientific relations for the Alzheimer's Association in Chicago.

"All of a sudden someone won't have the money for something that triggers a discussion, and then the family realizes it's too late," Thies said. Giving away large sums or buying multiple big-ticket items is common, he said.

Thies said people suffering from Alzheimer's also lose their ability to perform multiple complex

tasks, like balancing a checkbook or minding a portfolio, fairly early in the disease process.

So what can you do to protect yourself and your nest egg?

Start with a good power-of-attorney document, which names someone to act on your behalf if you become unable to manage your financial life.

Consider naming two or three people to this position, requiring agreement by at least two of them when it is time to take over your affairs, suggests Joseph Peiffer, a partner with New Orleans law firm Correro Fishman Haygood Phelps Walmsley & Casteix. Requiring a consensus can alleviate the fear that one person will jump the gun, Peiffer said.

This and some estate-planning attorneys suggested asking your primary-care physician to be on the team as an outside professional who you trust to let you know when the time has come for executing the document.

If you still are nervous about turning over your entire nest egg, consider limiting the power of attorney to specific actions they can or cannot undertake on your behalf, said Frank Congemi, a Deerfield Beach, Fla., financial planner who specializes in issues relating to elderly clients.

You also can build in some other safety nets by adding a trusted friend or adult child's name and number to your information on file with insurance companies, for example, experts said. If premiums are late, these alternates can be notified before the policy lapses.

Some planners say they are including adult children in planning discussions, with clients' permission, long before diminished capacity becomes an issue. These strong relationships and advanced planning can help you work around early cognitive decline, but it's not a panacea, said Bonnie Hughes, a financial planner with A&H Financial Planning and Education in Kennesaw, Ga.

"I was a little concerned about a client recently because she sounded confused on the phone, but when I called the daughter she told me her mother was just a little groggy at that time of day, so I adjusted," she said.

But having seen true dementia take hold in families, Hughes stressed the importance of turning over the financial reins entirely once it happens so your financial adviser has clear instructions on how to manage your money.

"If it's true dementia, there's nothing I can do to overcome that," she said.

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