Revocable Living Trusts

How to structure a living trust for someone with a neurologic condition.

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Ider financial abuse is a growing and increasingly recognized problem in the United States. This can take the simple form of someone taking grandpa for a walk every day and stopping with him at a different ATM, or it can be more sophisticated, such as manipulating an elderly individual into naming the thief as a beneficiary in the individual's will.

But it's not merely the elderly that are subject to financial abuse. Neurologic conditions such as dementia due to Alzheimer's or other diseases, stroke, traumatic brain injury, epilepsy, or even chronic migraines can make a person vulnerable to fraud, undue influence, or manipulation as well.

One of the most powerful tools for protecting oneself against financial abuse is the revocable living trust. (See box, "Key Terms.") A revocable trust is a contract between you and the person or institution (such as a bank) you name to serve as trustee. The contract sets the parameters for what the trustees can do with the money and other assets you put in the trust. When you name someone to serve as a trustee, the objective is that the trustee protects, invests, and spends your money on healthcare and other important items or services you authorize them to purchase. If your health permits, you could be the sole trustee (acting alone) or a co-trustee (serving with another). A key benefit is that if you become too ill to manage your financial and related affairs, an entire structure is in place to protect you.

Unlike a will, which establishes how assets are distributed after death, a revocable living trust enables you to manage your estate while you are alive—and provides for flexibility and modification as your circumstances and condition change, such as:

While you are alive and well. At this stage, assets transferred to a revocable living trust can be managed by you as a trustee in pretty much the same way as if those assets had remained in your own name. You might change the title of a bank or brokerage account from your name to that of the trust but still manage the account as a trustee. However, safeguards can be built in, even at this stage. For example, you can name a co-trustee to monitor

trust payments. Requiring a co-trustee's decision to make a major investment might keep you from becoming the victim of fraud.

While you are alive but temporarily disabled. Let's say you suffer an exacerbation or attack and for a period of days, weeks, or longer are unable

> to handle your financial and other affairs. During that time, a co-trustee can manage trust affairs for you. This could be a result of the cognitive or physical impact of a flare-up of a neurologic condition or the result of temporary hospitalization. But whatever the cause, in all likelihood you expect to resume that responsibility in the not too distant future.

> While you are alive but permanently disabled. If your disease progresses to the point that it is impractical for you to serve as a trustee or co-trustee of your own trust, you will have to rely on others to fulfill those roles. Naming the best people and creating a structure to make it easier for them to fulfill that responsibility while simultaneously safeguarding your inter-

ests are the key goals here. For example, you might name a trusted person or bank as co-trustee and expressly authorize in the trust agreement that either trustee alone may pay bills and take routine administrative actions.

Following death. At this stage, your revocable living trust functions similarly to a will.

HOW TO TAILOR YOUR LIVING TRUST PLAN TO BETTER PROTECT YOU

A host of modifications can be made to a revocable living trust to provide you safeguards at each phase discussed above. Which safeguards should be used, and how they are crafted, will vary depending on the health challenges the person faces.

Trustee Selection: Who should be the trustee of your revocable living trust? Most name the person setting up the trust (the grantor) as the sole trustee. However, depending on your personal circumstances and health condition, this may not be the best option. For many people with health



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challenges, even if they can serve as their own sole trustee, it's prudent to name a co-trustee. This way, in the event you are ill for a period of time, the co-trustee can manage matters related

to the trust, which might encompass most of your financial activity.

Let's say you become disoriented after a seizure. Your named co-trustee could handle all financial matters until you recover or simply assist you to the extent necessary. To make this approach effective, your trust could provide that either co-trustee can take administrative action, such as paying bills, without the requirement for the joint action of the other trustee. So, if you are hospitalized, your named co-trustee could pay bills without any legal prerequisites that might cause a delay.

If your condition worsens, it might be advisable for you to step down as trustee. At that point, you could have one or two successor trustees. While many people name a single successor trustee, having more than one successor trustee might create checks and balances to provide greater protection against fraud. Naming more than one successor trustee also permits sharing the burdens and responsibilities of managing your assets.

Trust Assets: Many revocable living trusts are created with nominal or no initial assets. The idea is that the trust would be created now, and on your death, everything you own outside the trust would be paid over to the trust. However, this defeats the protection that the revocable living trust can provide as your health condition worsens or in case of exacerbation or hospitalization. For that kind of protection, all appropriate assets should be transferred into the trust so that they are subject to management by the trustee(s).

Most assets other than retirement plan

assets (such as IRAs or 401ks) or ownership interest in a professional practice can be transferred to your revocable living trust. The means to accomplish this depends on the asset involved:

real estate has to be deeded, brokerage and bank accounts need to be re-titled to the name of your trust, and personal property (such as furniture or art) is transferred by a legal document called a bill of sale.

Distribution and Related Provisions: Because revocable living trusts can be amended or terminated, they often are

prepared with scant attention to distribution provisions, which determine who can get money from the trust. However, if your neurologic condition may result in periods of time when it will be difficult for you to manage your assets and financial affairs, distributions to or for your benefit during that period are critical to your protection.

If your condition is progressive, there may come a time that you will want to begin ceding control to a successor trustee. The revocable living trust might include directions for your successor trustee as to how your money should be spent, what type of lifestyle and care you want, and how you want to provide for loved ones.

KEY TERMS

- ➤ **TRUST**: A legal agreement (contract) between you who are setting up the trust and transferring assets to it (the grantor) and the person who manages the trust (the trustee) for your benefit (the beneficiary).
- ► **TRUSTEE**: The person charged with managing the assets of the trust for the beneficiary.
- ▶ **BENEFICIARY**: This is the person who is to benefit from the trust. For a revocable living trust, you are the primary beneficiary. If you have young children or a spouse or partner, they can also be named as beneficiaries. The beneficiaries may change: While you are alive you may be the only beneficiary; when you die, your children may be the beneficiaries.
- ► **CO-TRUSTEE**: A second person or institution who serves with another so that both are acting simultaneously as trustees.
- ► **SUCCESSOR TRUSTEE**: If someone cannot serve as trustee, then the successor assumes responsibility to manage the trust.
- LIVING TRUST: A trust established while the person is alive. This contrasts with a testamentary trust, which is created upon death.
- ▶ **REVOCABLE TRUST**: A trust that can be changed or terminated at any time. If the person is disabled, such as due to progression of a neurologic condition, he or she may lose the ability to change the trust. As a result, it is important to carefully review all these provisions in the document. Also, a revocable trust is not intended to provide estate tax benefit.
- ▶ DISABILITY: Most trusts will remove a trustee if that person becomes disabled. Read the definitions carefully and be certain they are modified to address the specific challenges of your or your loved one's neurologic condition; standard language often will not.



Your Questions Answered

Do you want to remain in your home? Should funds be expended to make it accessible? Do you want to authorize charitable gifts, for example to organizations helping those with the same neurologic condition you face?

Consider permitting—or, if your condition worsens, even mandating—that an independent care manager be retained to create a healthcare plan for you, and that the expenditures reflected in that plan be incorporated into the budget your successor trustees use. A care manager is often a social worker, registered nurse, or other professional who has additional training and credentials to qualify them to help you manage your overall care. Using a care manager who is not involved in your regular medical or personal care can be a useful safeguard. If something is amiss, that person can report it to your family.

Disability: Most revocable living trusts are created with the idea that you are well when you sign and that disability, if it occurs, will be once and for all. While this might be true for some conditions, it is far too simplistic for many others, especially those that are chronic, progressive, or wax and wane in intensity.

Importantly, the simple definitions used for disability in most legal documents would likely categorize you as disabled and remove you from being your own trustee if you were even temporarily hospitalized. Be sure to read these provisions carefully and make sure that they are tailored to protect you and reflect the nuances of your condition.

A variant on the usual definition that might be useful to someone with a neurologic condition is to provide that you will not be deemed disabled unless you are unable to manage your affairs for at least 30 consecutive days due to disability. This length of time (maybe longer depending on your condition) could avoid your being removed as a trustee for a temporary flare-up or hospitalization.

Monitor: Another modification that can be made to a revocable living trust is to create a "monitor" relationship. For example, an independent accountant or person can be designated to receive and review monthly brokerage and bank statements for your trust. This can provide an important check and balance on the trustees—even you. Setting up a monitor relationship can assure that someone periodically reviews financial data for improprieties. If a successor trustee is serving in the future when you are not able to serve as a co-trustee, then the monitor may identify any improprieties and thus help assure your resources are used for your needs and care.

FIBROMYALGIA

Can fibromyalgia symptoms be managed effectively without drugs?



CHARLES
E. ARGOFF
RESPONDS:

Fibromyalgia syndrome (FMS) is a common condition that involves long-term, body-wide pain and tenderness in the joints, muscles, tendons, and other soft tissues. FMS has also been linked to fatigue, sleep problems, headaches, depression, and anxiety. While no one can say with absolute certainty what causes FMS, we are learning more about the role of central nervous system excitability in connection with FMS.

Because it is a condition that affects people very differently, FMS should be treated by addressing the specific symptoms that are most bothersome to the individual who has it. The most effective approach almost always requires a combination of drug and non-drug therapies.

Evidence shows that people with FMS are often helped simply by learning that they have a condition that can be treated.

A non-drug approach with strong evidence for people with FMS is aerobic exercise. Moderate-intensity aerobic exercise, strength training, and swimming pool-based programs are associated with more consistent benefits than flexibility training and stretching. It is important for the person with FMS to adhere to a consistent exercise regimen in order to see improvement.

Cognitive behavioral therapy (CBT) is also a potentially helpful non-drug treatment for FMS. The basis of CBT is that changing maladaptive thinking leads to changes in mood and in behavior, allowing a person to function more effectively. CBT generally requires working with a specially trained professional, such as a psychotherapist. At least one study has found that patients treated with CBT in addition to drug therapy obtain more benefit than those treated with standard drug therapy alone.

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