

## Understanding Legal Documents

Commonly used documents in legal planning for individuals with Alzheimer's disease (AD) include:

### Power of Attorney

A power of attorney document gives a person with AD (the principal) an opportunity to authorize an agent (usually a trusted family member or friend) to legally make decisions when he is no longer competent. Most powers of attorney are "durable", meaning that they are valid even after the principal is no longer competent. A power of attorney can be changed or withdrawn at any time and does not give the agent authority to override the decision-making of the principal.

### Durable Power of Attorney for Health Care

A durable power of attorney for health care document appoints an agent to make all decisions regarding health care including choices regarding health care providers, medical treatment and facilities. For persons in the later stages of AD, the health care agent will choose care services and make end of life decisions such as to administer artificial nutrition, or whether a "do not resuscitate" directive should be issued.

### Living Will

In a living will, the person with AD expresses his decision on the use of artificial life support systems. It is useful only in situations where a physician has determined that the person is irreversibly ill or critically injured and near death.

### Living Trusts

Trusts created by an individual with legal capacity during his lifetime are known as "living" trusts. A living trust is another way to ensure the management of property. The person with AD, the grantor, also known as the trustor, creates the trust and appoints himself or someone else as trustee. Trustees, usually an individual or a bank, have the responsibility to carefully invest and manage trust assets. The living trust provides that once the grantor—who is also acting as the trustee—is no longer able to manage finances because of cognitive impairment, another person is appointed as trustee.

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## Will

A will is a document created by an individual that names an executor—the person who will manage the estate—and the beneficiaries—the person or persons who will receive the estate—at the time of death. Wills are effective only when the individual who created and executed the will dies.

## Guardianship/Conservatorship

A caregiver of an individual who no longer has legal capacity to execute powers of attorney or trust may have to become that individual's guardian or conservator.

## GLOSSARY OF LEGAL TERMS

**AGENT**—the individual authorized to make legal decisions for the principal—usually a trusted family member or friend.

**BENEFICIARIES**—the individuals named in a will who receive the estate upon the death of the will maker.

**CONSERVATOR**—the individual who manages another individual's assets and financial matters.

**EXECUTOR**—the individual named in a will who manages the estate of a deceased individual.

**GRANTOR/TRUSTOR**—the creator of the living trust.

**GUARDIAN**—an individual, appointed by the courts, authorized to make legal and health care decisions for another individual.

**PRINCIPAL**—the individual signing the power of attorney to authorize another individual to legally make decisions for him.

**TRUSTEE**—the individual or bank who manages the assets of the living trust.

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Iowa Spousal  
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**Spousal Impoverishment Protection Law (1989)**

This federal law protects spouses of nursing home residents from losing all of their income and assets to pay for the spouse's nursing home care.

A couple's assets and income will be divided according to the Spousal Impoverishment Protection Law.

**Have you ever wondered** what will happen if your spouse is not able to live at home because of poor health or confusion?

Will you have to spend all of your resources to pay for your spouse's nursing home care before Medicaid will help?

**The answer is, "NO"!** You have protection from losing all income and assets to pay for your spouse's care in the nursing home when your spouse qualifies for Medicaid.



**What Happens to Income?**

Personal Income	Jointly Owned Income
* Income received in your name remains your own (Social Security, Pension, etc.)	* Income from jointly-owned assets is counted by Medicaid as jointly-owned income. Jointly-owned income is divided in half with each spouse getting one half.
* Income received from assets in your name remains your own.	
* The spouse at home may keep all of his/her personal income.	

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**Spouse At Home May Keep More**

The spouse at home can keep all of his/her income. If the spouse at home gets less than \$2,739 per month in 2009, he/she may also keep part of the nursing home spouse's income. The spouse at home can keep an amount that will bring his/her income up to a maximum of \$2,739 per month. (The amount changes each January.)

**Example:** (Case of Barney & Betty)

Barney is no longer able to care for Betty at home and is admitting her to a nursing home. Barney's monthly income is \$1,500 and Betty's is \$1,350.

When Betty qualifies for Medicaid, Barney keeps all of his income. Since Barney's income is lower than \$2,739 a month, he can keep some of Betty's income. The difference between the limit of \$2,739 and Barney's income of \$1,500 is \$1,239. Barney will keep \$1,239 of Betty's income.

Betty will keep \$50 of her income for a personal needs allowance. The remaining \$61 of her income may be used to pay the nursing home.

**What Happens to Assets?**

Medicaid considers most assets (such as bank accounts, stocks, bonds, etc.) joint assets of a husband and wife. **It doesn't matter in whose name the assets are placed.** Dollar amounts change each January 1<sup>st</sup>.

The spouse at home can keep some of the couple's assets.

- Minimum – at least \$24,000
- Maximum – half of all countable assets, up to a total of \$109,560 in 2009 (A person may appeal to keep more assets.)

**CAUTION! Transferring of Assets:**

Those who transfer or give away assets to get Medicaid help may have to wait before Medicaid will help pay for nursing home costs. Other penalties may also apply.

**What amount of the couple's assets is the spouse at home able to keep?**

**MAXIMUM** – half of all countable assets, up to a total of \$109,560 in the year 2009.

**MINIMUM** – at least \$24,000 in the year 2009.

**What about the Couple's Home?**

The home is not counted as an asset when the applicant, spouse or dependent children live there. Special rules apply when siblings or adult children live in the home. (The home is always counted if no one lives there or intends to return.)

**What Assets Are "Countable"?**

Some examples of assets that are "countable": checking accounts, savings accounts, stocks, bonds, CDs, mutual funds, revocable trusts, cash value of life insurance policies, IRAs and real estate other than the home.

**Example: Barney and Betty**

Barney and Betty own \$100,000 of countable assets. One-half is \$50,000, which is less than the maximum allowed amount under this law. Barney is able to keep his entire half. An appeal may allow him to keep more.



They will need to spend Betty's share down to \$2,000 before Medicaid will begin to help pay nursing home costs.

If you have questions, the Senior Health Insurance Information Program or **SHIIP** can help.

Website: [www.TheRightCallowa.gov](http://www.TheRightCallowa.gov)

E-mail: [ship@iid.iowa.gov](mailto:ship@iid.iowa.gov)

Toll-free: 1.800.351.4664

TTY 1.800.735.2942.

For more information you may also call the Department of Human Services at 515.281.6177.

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