

A family member is usually appointed to be a conservator, but a friend, an attorney or another person may be appointed. If you disagree with the conservatorship petition, you have the legal right to retain an attorney to challenge the petition. A limited conservatorship may be granted, allowing you to retain control over specific financial matters.

A conservator must pay the initial court filing fee, plus a yearly bonding fee. These fees may be waived at the discretion of the judge. The conservator must also provide an annual accounting to the court of how your assets are spent.

Guardian

A person appointed by the court to make decisions about your personal well-being if you are judged to be incapable of doing this for yourself. A guardian may make decisions about your medical care or where you will live. A court-appointed guardian may be necessary if you have not designated financial or health care powers of attorney prior to becoming incapacitated. An attorney must be consulted to prepare the legal paperwork and to file a petition requesting a court hearing.

A physician must certify that you are either temporarily or permanently incapable of making decisions about your personal welfare and that you require physical care or supervision.

A family member is usually appointed to be the guardian, but a friend, an attorney or another person may be appointed. You have the legal right to retain an attorney to challenge a guardianship petition. A limited guardianship may be granted, allowing you to retain control over specific personal matters.

One person may serve as both the guardian and the conservator when both are needed, or these duties may be assigned to different persons. Like the conservator, the guardian may also have to pay the fee for filing the guardianship petition plus a yearly bonding fee, however these fees may be waived at the discretion of the judge.

Payee

A person appointed by the Social Security Administration to receive and manage the monthly Social Security pension of a dependent adult or child. A physician's statement of incapacity is required for a payee to be appointed for an adult.

This brochure contains general information only. It is not meant to substitute for professional legal counsel. Please consult an attorney to discuss your specific legal situation.

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.

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

GRANTOR/TRUSTOR—the creator of the living trust.

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

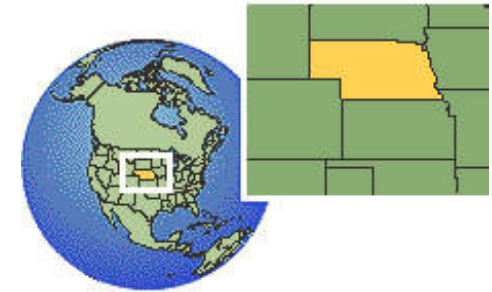
TRUSTEE—the individual or bank who manages the assets of the living trust.

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Nebraska Spousal Impoverishment

Designation of Resources



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Q: If my spouse was not able to live at home anymore, would we have to spend all of our resources to pay for long-term care?

A: No, because of the Spousal Impoverishment Protection Law.

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

Income Guidelines

Under the Spousal Impoverishment Protection Law, the spouse who remains at home retains his/her personal income. This includes Social Security, pensions, interests, dividends, etc.

The spouse in the nursing home may be required to use most of his/her income to pay for his/her care, except for a personal allowance of \$50 per month (\$90 per month for veterans).

After the income has been split, if the spouse at home gets less than \$1,823 every month, he/she may keep part of the nursing home spouse's income, giving the spouse at home at least a monthly income of \$1,823.

If the spouse at home has to pay high rent, mortgage or utilities, he/she may be able to keep more of the spouse's income.

Medicaid

Medicaid is a government insurance program that helps people with limited incomes and resources. To qualify for Medicaid help in paying for long-term care, the assets of an individual must be at \$4,000 or less. Medicaid is administered by the Nebraska Department of Health and Human Services. There is an office in most counties.

Example: Jane and William

Jane is unable to take care of William at home anymore, and has him admitted to a local nursing home. Due to the Spousal Impoverishment Protection act, Jane would not have to spend all their money before the state would help pay for William's care.

Jane will keep all of her income. If her income is less than \$1,823 each month, she could keep part of William's income.

Checks made out in William's name would be considered his and would go to the nursing home to pay for his care, unless a portion is needed for Jane. William may have \$50 from his income each month as his allowance for personal needs

William will also continue to pay his Medicare supplement insurance premium with his income.

Always check with the Nebraska Department of Health and Human Services Medicaid Program to determine eligibility. This information is provided for your guidance only.

Resource Limits

Most assets (such as bank accounts, stocks, bonds, etc) are considered as joint assets between husband and wife under the Spousal Impoverishment Protection Law (1989). **It doesn't matter in whose name they are placed.**

The spouse at home is entitled to keep at least half of all countable assets, within the following guidelines:

MAXIMUM – up to \$109,560 in 2009

MINIMUM – at least \$21,912 in the year 2009

CAUTION: *Persons who give away or transfer assets in order to get Medicaid help may end up waiting longer before Medicaid will help them.*

Assessment of Resources

The Department of Health and Human Services will complete an assessment form to find out the total value of the couple's combined finances during the month of admission to the nursing home.

This assessment will help decide the amount of assets the spouse at home may keep. One must be able to show proof of assets owned.

The spouse at home should contact his/her local Health and Human Services office to fill out the assessment form.

For more information, please contact Jerry Skovgaard at (402) 595-3356 or Paula Markuson at (402) 595-3358. For general information call (402) 595-3400.

You may also contact the Nebraska Senior Health Insurance Information Program (SHIIP) at 1.800.234.7119 or if TTY at 1.800.833.7352.

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Understanding Legal Documents

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

Power of Attorney

A written document in which you give another person or persons the authority to act on your behalf in the areas of finances and/or health care. This document allows you to grant very specific or very broad powers to the person(s) and is signed by you voluntarily without the involvement of the court. A simple power of attorney document becomes invalid once it is revoked by you, or upon your death or incompetency.

Durable Power of Attorney for Health Care

A power of attorney document that includes language which activates the power of attorney (or permits it to continue in effect) upon your incapacity. It is best to have a lawyer draw up your durable power of attorney document so as to comply with state law; however no court hearing is required to activate it. The durable power of attorney may be activated when one or more physicians document your inability to make informed decisions for yourself.

Living Will

A document which instructs your doctor, family and health care power of attorney of your wishes concerning the use of artificial means to save or prolong your life (i.e. CPR or a respirator), or the withholding or withdrawal of nutrition and fluids administered through a vein or through a tube inserted into the stomach or through the nose.

This document would apply in the event that you become terminally ill or are in a persistent coma. A living will may be a part of, or separate from, a durable power of attorney document and is used when you become incapable of making your wishes known to others. Artificial nutrition and fluids cannot be withheld unless so directed by your living will or power of attorney documents.

Conservator

A person appointed by the court to manage your financial affairs if you are judged to be incapable of doing this for yourself. A court-appointed conservator may be necessary if you have not executed a durable power of attorney for finances prior to becoming incapacitated. An attorney must be consulted to prepare the legal paperwork and to file the petition requesting a court hearing.

A physician must certify that you are temporarily or permanently incapable of managing your financial affairs and evidence must be produced that you have property or assets that would be wasted unless properly managed by someone else.

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