

Protect What's Yours (While You're Alive)

Part 1 of our 3-Part Estate Planning Series

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Whether due to disability, dementia, or simply enjoying an exotic vacation, there are many ways you can end up unavailable to make critical financial or health care choices for yourself or your loved ones.

If you've not documented your desires in advance, it can add extra stress for everyone, plus the outcomes may not be what anyone had in mind!

One source of confusion over when and how to protect what's yours is understanding which legal logistics apply during your lifetime, and which don't come into play until after you pass. In this guide, we'll cover a trio of tools for protecting your interests *while you are alive:*

- A financial power of attorney
- Trusted contact person(s)
- Healthcare advance directive



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Part 1
A Financial Power of Attorney

The Basics. A financial power of attorney (POA) is a legal document authorizing someone (your **"agent"**) to make financial decisions on your behalf. No matter how much authority you grant an agent, they still owe you a fiduciary level of care, which means any decisions they make for you must be based on what they believe to be in your best financial interests.

When It Applies. A POA applies while you are alive, but unavailable to act for yourself. You can structure it to:



- Begin immediately ***or*** upon a triggering event (such as a debilitating accident or illness)
- Remain in force during a finite time period ***or*** be ongoing
- Apply to all your financial matters, ***or*** only to specific transactions

Common Scenarios. A financial POA can be helpful to address:

- **Capacity:** If you become incapacitated due to illness, injury or dementia.
- **Availability:** If you're unable to be present for a financial transaction, such as if you're traveling abroad or you're otherwise preoccupied.
- **Convenience:** If you'd simply like to make it convenient for someone else to be able to make financial decisions for you-

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– such as your spouse or a trusted sibling (in general), your parents (if you're heading off to college), or your adult children (if you're aging).

Additional Tips.

- Again, anyone to whom you grant a POA is only your legal agent ***while you are alive;*** their authority ends the moment you pass away. Your estate's trustees should take it from there.

- Your agent(s) should have access to the documents that describe the POA you've granted them. If they can't prove what their role is, they may not be able to act on it when needed.

- Some banks and account custodians have their own POA forms they would prefer you use; also, they may be wary of POA paperwork that is several years old. Check with the financial institutions you frequent about their policies, and consider annually reestablishing any durable POAs, to ensure they remain relevant.



- You cannot grant a POA if you are deemed to be of unsound mind. This makes sense, since you may inadvertently name a "bad" player … or others may be able to contest the POA you've established.

Don't wait until it's too late.

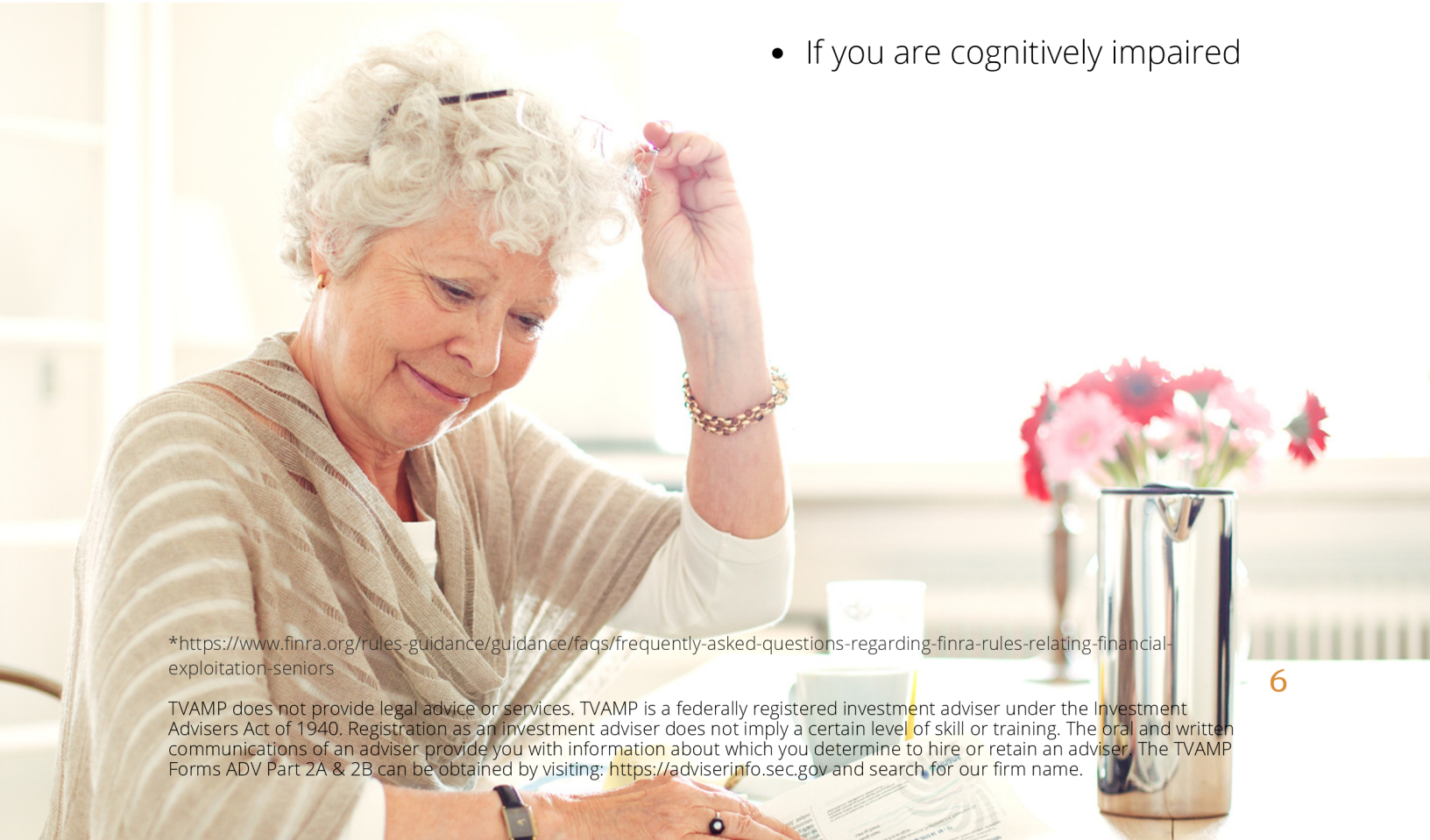
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Part 2
Trusted Contact

The Basics. In 2017, the SEC approved the role of trusted contact person as part of a FINRA Rule 4512 amendment. The amendment requires your account custodians (brokers) to encourage you to name a trusted contact as an extra line of defense for your investment accounts. If the custodian feels you are being financially exploited, they then have a back-up person they can talk to about some of their concerns. The additional input may enable them to delay disbursing funds from your account **"where there is a reasonable belief of financial exploitation."***

When It Applies. While the primary aim of the FINRA amendment is to prevent financial elder abuse, there are at least two scenarios when a trusted contact can be useful:

- If you are unavailable, and the custodian believes your account may have been compromised
- If you are cognitively impaired



*https://www.finra.org/rules-guidance/guidance/faqs/frequently-asked-questions-regarding-finra-rules-relating-financial-exploitation-seniors

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Common Scenarios. Imagine you're on a mid-Atlantic cruise, and your broker receives a suspicious trade order from "you." They try, but cannot reach you to verify it's really you. If there is no trusted contact to reach out to, they may have little choice but to execute the trade and disburse the funds as ordered. If a trusted contact can instead provide evidence that the order is likely fraudulent, your broker may be able to place a temporary hold before disbursing the funds.

Similarly, if a loved one is exhibiting signs of dementia, a trusted contact can help prevent them from falling prey to financial exploitation.

What if your aging parent tries to empty out their own bank account to help a "friend" in need? If your parents have named you as a trusted contact, an account custodian who suspects foul play can reach out to you, explain the circumstances, and receive your "second opinion."

Additional Tips. If you've named someone as a trusted contact, your broker or account custodian can discuss some of your relevant circumstances with them, and gather pertinent information from them. But a trusted contact cannot make any financial decisions on your behalf, nor can they view your account. Unless you grant it to them separately, a trusted contact does not have a financial power of attorney, as described in Part I.



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Part 3
Healthcare Advance Directive

The Basics. Your healthcare advance directive can offer two types of protection:

- Your **living will** provides your life-sustaining and end-of-life medical care instructions, and related healthcare preferences, in case a time comes when you cannot state them for yourself.

- Your healthcare directive can also name **healthcare representative(s),** or agent(s) and grant them healthcare power of attorney. If you cannot make your own healthcare decisions, your agent can decide on your behalf, guided by your living will. Medical professionals can also more freely discuss your condition with your agent, without violating **HIPAA privacy rules.***



When It Applies. Your healthcare advance directive only comes into play if you are alive, but unable to direct your own medical care.

Common Scenarios. Accidents and illnesses can rob you of your mental capacity – temporarily or permanently. If you do not have an advance directive in place, healthcare professionals and/or key family members may have to make medical decisions for you, without knowing what you would have preferred. Also, the individual(s) you would most want to have making decisions on your behalf may not be able to do so if you haven't named them as your representative(s) in your advance directive. This can be stressful if not heartbreaking for everyone involved.

*https://www.hhs.gov/hipaa/for-individuals/index.html

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Additional Tips.

- Not only should almost everyone have an advance directive, it should be easy to get ahold of it when needed. Distribute copies to your primary physician and any of your other healthcare providers to keep on file. Give it to key family members.

- **IMPORTANT:** Do you have children who recently turned 18? ***As soon as your child is an adult, healthcare providers may not be able to even discuss your child's case with you unless you have a healthcare power of attorney.***



Also, if your child is attending school in another state, it's worth establishing a healthcare power of attorney in their state and yours.

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How Can We Help?

We hope this handy guide has helped clarify the role these critical protections can play in safeguarding what's yours during what we hope will be a long and prosperous lifetime. That said, professional legal counsel is usually warranted as you sort through the details. Let us know if we can put you in touch with select professionals to assist – or if we ourselves can help you sort through the logistics involved.

That's what we're here for!

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