

CONVERSATIONS FOR CAREGIVERS

Essential Legal Documents Every Caregiver Should Have in Place

January 21, 2026
12pm - 1pm



SESSION NOTES

Below is a summary of the topics and items discussed in the Conversations for Caregivers session on **Essential Legal Documents Every Caregiver Should Have in Place**.

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SESSION TOPICS

Will Fundamentals | Power of Attorney | Advanced Directives
Probate Overview | Trust Planning | Document Storage

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THE THREE ESSENTIAL DOCUMENTS

- Every adult, whether 18 or 88, should have three key documents: a will, a power of attorney, and an advanced medical directive
- These documents are often more important than having a will alone because they address situations while you're still living
- The critical challenge: once you need these documents due to mental decline, it may be too late to create them
- Planning must happen while everyone is mentally competent and in good health

WILLS & WRITTEN INSTRUCTIONS

- A will provides written instructions on who receives your assets after death
- Name a first choice and second choice executor to ensure your estate is managed by someone you selected
- In Virginia, a "separate written list" allows you to make specific bequests of tangible personal property without rewriting your entire will
- Proper execution is critical: there are many ways to sign a Virginia will incorrectly and only one way to do it right
- Improperly executed wills require court intervention, costing significant time and money

POWER OF ATTORNEY

- **Immediate POA:** Effective the moment it's signed and notarized
- **Springing POA:** Only becomes effective upon mental decline, requiring a physician's letter confirming incapacity
- Critical point: A power of attorney dies with the grantor - never use a deceased person's POA
- Without a POA, the only alternative is court-ordered guardianship, which is time-consuming and expensive
- Strongly recommended: Name agents in sequence (first choice, then second choice), not simultaneously

ADVANCED MEDICAL DIRECTIVE

- In Virginia, this single document combines three functions: healthcare proxy designation, HIPAA authorization, and living will instructions
- Two basic versions exist: "presumption for continued life" (try everything) or "death with dignity" (comfort care only)
- The document only becomes effective when you lose the ability to communicate with doctors
- Having written instructions relieves family members from making difficult decisions and prevents disagreements
- Can be revoked at any time simply by verbal instruction while mentally competent

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PROBATE & NON-PROBATE TRANSFERS

- Probate is the public process of supervising estate administration through the courthouse
- Beneficiary designations (POD/TOD) allow assets to transfer directly without probate
- Joint ownership with rights of survivorship passes assets automatically to surviving owners
- Warning: Being added as joint owner on accounts creates potential gift tax reporting obligations if you later distribute funds to siblings
- You don't have to probate a will if beneficiary designations already direct assets to the intended recipients

TRUST CONSIDERATIONS

- In Virginia, most people don't need a trust - three main exceptions exist:
 1. Estates exceeding \$15 million (federal estate tax exemption threshold for 2026)
 2. Blended families where each spouse wants assets to return to their respective children
 3. Special needs beneficiaries receiving government benefits who would lose eligibility if inheriting more than \$2,000
- Trusts can be undone - assets can be distributed back out of trust if circumstances change
- Caution: Trust salesmen may oversell; you don't need a trust simply to avoid probate in Virginia

KEY TAKEAWAYS

1. Get these three documents in place while mentally competent - waiting until crisis occurs eliminates options
2. Name agents and executors in sequence, not simultaneously, to prevent deadlock when one says yes and one says no
3. Proper document execution requires professional assistance - DIY attempts frequently create expensive problems
4. Beneficiary designations override wills - keep them updated to ensure assets go where intended
5. Store original documents securely but accessibly - someone besides you must be able to retrieve them
6. Documents should match the state where the person resides, not where the caregiver lives

Q&A HIGHLIGHTS

Q1. Can you have more than one executor or agent on these documents?

A: Yes, but it's strongly recommended to name them in sequence rather than simultaneously. In Virginia, if two agents are named to act at the same time, they both must be present for any action. Worse, if one says yes and one says no, no wins. The better approach is naming a first choice, then a second choice who only acts if the first cannot or will not serve. This avoids deadlock situations that can paralyze decision-making during critical moments.

Q2. Does a will override the beneficiaries of a life insurance policy?

A: No - beneficiary designations override the will. Whatever instructions you've left with the bank, insurance company, or investment house regarding beneficiaries will control where those assets go, regardless of what your will says. This is why keeping beneficiary designations updated is so important. Your will only controls assets that don't have beneficiary designations or joint ownership arrangements already in place.

Q3: What happens if someone who has drifted away mentally doesn't have a power of attorney or advanced medical directive?

A: The only option is to go to court and have a guardianship hearing. A judge must agree to name someone as the substitute for the person having made their own choice while mentally competent. This process typically requires multiple court appearances, takes considerable time, costs significant money, and leaves no one satisfied. This is precisely why creating these documents while mentally competent is so critical - it's the only way to avoid this difficult and expensive process.

Q4: If there is a will, what happens to debt?

A: Individuals do not inherit their parents' debts, but debts don't disappear at death either. Most wills direct that debts be paid from estate resources before distribution. However, "pay my debts" typically doesn't include mortgages - real estate passes to heirs with any mortgage attached. For credit card debt, writing to inform the creditor that the borrower has died (without asking about the balance) often results in never hearing from them again, unless they can offset against accounts at the same institution. Mortgage lenders must accept payments from anyone and cannot accelerate the loan solely because the borrower died.

Q5: My brother changed the will during the time my mother had dementia. What can I do?

A: The remedy would be going to court with an action to set aside the will based on it being altered or counterfeited. The specific approach depends on understanding how the change was made - whether a page was removed and replaced, whether a new will was executed when she lacked capacity, or some other mechanism. One protective measure some attorneys use is printing wills on watermarked bond paper, making it obvious if pages have been substituted. Anyone suspecting will tampering should consult with an estate attorney to evaluate the specific circumstances and available legal remedies.

ABOUT OUR SPEAKER:

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David Johnson is a Virginia-licensed attorney and Marine Corps veteran who found his calling in estate planning after using his Vietnam-era GI Bill for law school. As a founding member of Virginia Beach Law Group, he has practiced statewide across Virginia, appearing in more courthouses than not. His practice focuses on estate planning and administration, where he emphasizes problem prevention over problem resolution. Known for his practical, straightforward approach, he regularly conducts educational seminars helping families understand the importance of proper legal documentation before crisis situations occur.

DISCLAIMER: This summary highlights key webinar points and questions. For comprehensive details, view the full seminar at [LRSeminars.com](https://www.LRSeminars.com).

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