

Planning for diminished capacity and illness



“Diminished financial capacity” is a term used to describe a decline in a person’s ability to manage money and financial assets to serve his or her best interests, including the inability to understand the consequences of investment decisions.

While the inability to manage one’s money is clearly a problem in itself, when people of any age lose the capability to manage their finances, they may also become more vulnerable to investment fraud and other forms of financial abuse.

Preparing for your own financial future: Hope for the best, but plan for the worst

Losing the ability to manage your finances may be something you’d rather not think about. We often think about our financial capabilities, like our ability to drive, as an important measure of our independence. But planning ahead may help you

stay in control of your finances, even if diminished financial capacity becomes a serious problem. Taking the steps listed below now may help avoid or minimize problems for you and your family.

Organize your important documents

Organize and store important documents in a safe, easily accessible location. That way, they are readily available in an emergency. Give copies to trusted loved ones or let them know where to find the documents. Typically, the following documents will be most relevant to your finances:

- **Bank and brokerage statements and account information.** Make a list of your accounts with account numbers. *Keep a separate list of online bank and brokerage passwords and PINs and keep the lists in a safe place.* In addition, make a list of the locations of your safe-deposit boxes, including where the keys to the safe-deposit boxes are located. Also, keep your recent bank and brokerage statements available, as well as information about how to get those statements online if you access them electronically.
- **Mortgage and credit information.** Make a list of your debts and regular payments, with account numbers and names of the financial institutions that issued the loans or credit cards.

The SEC’s Office of Investor Education and Advocacy and the CFPB’s Office for Older Americans are issuing this bulletin to help investors and consumers understand the potential impact of diminished capacity on their ability to make financial decisions and to encourage investors and consumers to plan for possible diminished financial capacity well before it happens.

- **Insurance policies**
- **Pension and other retirement benefit summaries**
- **Social Security payment information**
- **Contact information for financial and medical professionals**, such as doctors, lawyers, accountants, and securities professionals.

Provide your financial professionals with trusted emergency contacts.

If you have a financial professional, such as a broker or investment adviser, provide that person with emergency or alternate contact information in case he or she cannot contact you or suspects something is wrong. You may wish to discuss with your financial professional what you would consider to be an “emergency,” and specify when he or she may contact someone on your behalf.

Discuss what information can be shared with your emergency contact. For example, you might provide your financial professional with a simple written instruction, such as: *“Please call my son Mark at (222) 555-5555 if: (i) you are unable to reach me and there appears to be unusual activity regarding my account; (ii) you are unable to reach me for two weeks irrespective of any unusual account activity; or (iii) if you think I am confused or acting strangely.”* Providing an emergency contact generally will not enable the person to make investment decisions on your behalf—so be sure to take other steps if you want someone else to manage your accounts if you cannot.

Consider creating a durable financial power of attorney.

A financial power of attorney gives someone the legal authority to make financial decisions for you if you cannot. That person is called your agent. The

document is called “durable” because it remains in effect even if you become incapacitated. You retain the ability to change it or cancel it as long as you are still able to make decisions. A financial power of attorney differs from a health care power of attorney, which only covers health care decisions. You may want to consult with a lawyer to determine whether a durable financial power of attorney is right for you.

After signing a durable financial power of attorney, you can still manage your money and property as long as you have the ability to make decisions. Also, it is important to remember that you always have the option to change who you choose to act as your appointed representative and the individuals you allow to access your financial information. *As you are essentially giving financial decision-making authority to your agent, it is critical that he or she be someone you can trust.*

Think about involving a trusted relative, friend, or professional.

Besides listing them as emergency contacts, you may wish to give a trusted relative, friend, or professional an overview of your finances (even if you don’t want to share all the details). For example, you might ask your broker or bank to send duplicate statements to your daughter or accountant. You might also consider asking a trusted friend or relative to join you on periodic visits to your financial professional. This would give someone you trust a sense of your financial situation and with whom you’ve been doing business. *If you choose to involve a relative or friend, it is very important it is someone you are sure you can trust. Consider discussing the selection of the person with a number of other trusted friends or relatives.*

Keep things up to date.

Be sure that if something changes (for example, you open a new account) you keep your information as current as possible. Also, your trusted contact may change over time. Keep your financial professionals informed of changes regarding who has authority to review your account or whom they should contact in case of an emergency.

Speak up if something goes wrong.

If you ever think someone is taking advantage of you, or that you've been the victim of a fraud, *speaking up*. Sadly, sometimes even financial professionals and people we know commit financial crimes. There's no shame in being a victim, and the sooner you let someone know about it, the better chance there is of putting an end to it. Contact information for reporting abuse appears at the end of this document.

Helping others who may have diminished financial capacity

You may have a parent or other loved one with diminished financial capacity, or who you worry may face that issue in the future. If so, consider the following steps to help.

Have an open conversation about investments and other financial matters sooner rather than later.

Even if it feels awkward, it is important to have an honest conversation about finances. Ask your loved one to consider taking the steps outlined above. Even if he or she does not want to take these steps, ask your relative or friend to consider how he or she wants to maintain control of his or her finances in the future. Explain that advance planning is a way to make sure that a trusted person makes decisions if he or she no longer can.

Help your relative or friend with managing finances.

You may also offer to take a more active role in helping your loved one manage his or her financial accounts. Be alert both to mistakes that your loved one may make in managing finances and to any signs of elder financial abuse.

It can be hard to tell whether actions are the result of confusion or of financial exploitation. For example, if you find that a loved one has paid the same bill twice by mistake, you should help him or her fix the error. But beware that multiple or unusual payments could also be a sign of financial exploitation, so don't rule out that possibility without looking into it. Be on guard for any sudden changes in investments that seem out of keeping with the loved one's longstanding goals, values and investment style. These changes may have come about because of confusion or may be a sign of financial exploitation.

If your family member or friend has named you to manage money or property, understand your responsibilities and how you can protect your loved one from financial exploitation. For example, your loved one may have named you as an agent under a power of attorney or a trustee under a revocable living trust. Read the Consumer Financial Protection Bureau's *Managing Someone Else's Money* guides (consumerfinance.gov/blog/managing-someone-elses-money). They walk you through your duties, tell you how to watch out for financial exploitation and scams, and tell you where you can go for help.

If you've been asked by a loved one or friend to help out with his or her finances, here are some things you can do to help:

Help with ongoing financial responsibilities.

You may need to take on immediate tasks, such as helping to pay bills, arranging for benefit claims, preparing tax returns, or helping with investment decisions.

Review their investment portfolio.

This might be a good time to help reevaluate the person's portfolio in light of his or her financial and medical situation. Does the person expect a big increase in health care, personal care or other costs as a result of his or her illness or disability? If so, will he or she have enough cash or liquid assets on hand to cover those costs? (Liquid investments are assets that the owner can sell readily and without paying a hefty fee to get money when it is needed.) These can be complex questions and you may wish to discuss them with a financial professional. Keep in mind that buying and selling investments on behalf of a loved one requires legal authority, through a power of attorney, a trust or similar arrangement.

Assess the riskiness of their investment portfolio.

All investments involve some level of risk. But do the investments present the right level of risk at this stage of the person's life? If not, you may wish to consider contacting a registered investment adviser representative or registered broker-dealer representative for help.

Contact their investment professional.

If your loved one has a financial professional and has authorized that person to speak with you, make the professional aware of your loved one's condition. This is critical so that the financial professional can make recommendations appropriate to the client's financial needs and can watch for signs of declining financial skills or potential abuse.

Your financial professional, or that of your loved one, may raise topics discussed in this bulletin. Financial services firms are paying increasing attention to improving communications on this subject. If a financial professional does not raise these topics, however, you should feel free to raise them yourself.

Additional Resources

Financial Protection for Older Americans webpage of the Consumer Financial Protection Bureau (CFPB), available at consumerfinance.gov/older-americans

The U.S. Department of Justice's Elder Justice Initiative website at justice.gov/elderjustice/ (including the page on victim and family support)

The SEC Investor.gov web page for Seniors, available at investor.gov/seniors

To Report Suspected Elder Abuse

To report suspected elder abuse in general, locate the appropriate adult protective services agency by calling the Eldercare Locator at (800) 677-1116, or eldercare.gov.

Elder financial abuse often violates one or more criminal laws. To report it, contact your local police or sheriff.

To report suspected elder financial abuse involving brokers or investment advisers, contact:

- The SEC at (800) 732-0330 or sec.gov/complaint/select.shtml
- The Financial Industry Regulatory Authority (FINRA) Securities Helpline for Seniors at (844) 574-3577 or www.finra.org/investors/investor-complaint-center, or
- Your state securities regulator. For a contact list of state securities regulators, visit nasaa.org/about-us/contact-us/contact-your-regulator.

To Submit a Complaint with the CFPB

If you have an issue with a consumer financial product (such as a mortgage or credit card), you can submit a complaint to CFPB. CFPB will forward your complaint to the company and work to get a response from them. Visit consumerfinance.gov/complaint or call (855) 411-2372.

The SEC's Office of Investor Education and Advocacy and the CFPB's Office of Older Americans have provided this information as a service to investors and consumers. It is neither a legal interpretation nor a statement of SEC or CFPB policy. If you have questions concerning the meaning or application of a particular law or rule, please consult with an attorney who specializes in securities or consumer finance law.