



# Financial, Estate, and Health Care Planning Documents for Montanans Concerned About Memory Loss

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All Montanans should plan for the future. For those who are concerned about memory loss, completing financial, estate and health care documents is even more important. Anyone could develop some form of dementia or experience a debilitating brain injury from a stroke or accident. These events have the potential to affect one's ability to remember, to reason, and to make decisions about finances, legacies, and health care treatments.

**THE MONTANA LEGISLATURE HAS PASSED LAWS** allowing for the creation of appropriate legal documents, which will assist a person who develops some form of dementia or experiences a brain injury. What specific financial, estate, and health care documents should be implemented and under what circumstances depends upon the situation.

The purpose of this MontGuide is to explore the situations of three Montana couples who face memory loss. The content examines financial, estate/legacy and health care documents recommended to each couple by legal professionals.

## Married Couple Situations

- **Situation 1** describes a husband and wife who have a parent and grandparent on both sides of their families who were "senile." This was the term used in the 1950s, 1960s and 1970s. Today a person with a similar condition would likely be diagnosed with a form of dementia such as Alzheimer's disease. The couple wants to prepare financial, estate, and legal documents while they both have the legal capacity to sign them. The wife is in an early stage of Alzheimer's.
- **Situation 2** describes a married couple in which the husband suffers from vascular dementia caused by impaired blood flow to his brain. He has difficulty with reasoning, planning, decision-making, and remembering. The wife has legal capacity to make financial decisions and sign legal documents, but the husband does not.

- **Situation 3** describes the many complications that arise when neither spouse has legal capacity to make financial decisions and sign legal documents. Their children have to step in to make decisions for them about living arrangements, health care, and finances.

## Legal Capacity

One concern about the validity of legal documents, such as a will or power of attorney is, "What was the individual's legal capacity when he/she signed the document?" In general, a person must have sufficient legal capacity to understand the benefits and risks of signing a document concerning the management or administration of his/her affairs. For instance, in Montana the law requires a person to possess a "sound mind" to make a will. In addressing the "sound mind" requirement, courts have recognized most of us have "good" and "bad" days.

An individual who shows early signs of Alzheimer's disease, such as repeating questions regularly, getting lost when driving, and/or having difficulty with everyday tasks, could possess enough legal mental capacity during the mornings to sign a will. However, the person may lack that mental capacity in the afternoon or during evenings. Whether the person's mental state is at the level of sufficient legal mental capacity is measured at the point in time in which he/she signs a will or a power of attorney.

### Situation 1:

**What legal, financial, and health documents should a couple consider and implement while both spouses have legal capacity?**

Sara and Budd are in their early 60s. Because of memory issues experienced by Sara, they made an appointment with their physician. The doctor confirmed what the couple feared. Sara was diagnosed with an early stage of Alzheimer's disease.

Soon after the diagnosis, they made an appointment with an attorney. He recommended they consider several legal documents:

- a financial power of attorney;
- a health care power of attorney;
- a will for each spouse containing a reference to a separate list of tangible personal property;
- a revocable living trust;
- a transfer on death deed;
- a consent form to release their electronically-stored information; and,
- a financial plan to cover the anticipated costs of long-term health care for Sara.

## Financial Power of Attorney (POA)

A **financial POA** is a document in which one person gives another person the power to conduct certain financial actions on his/her behalf, such as signing checks, cashing a certificate of deposit, paying bills, or selling a house. The person who gives the power is the **principal**. The person authorized to make decisions on behalf of the principal is the **agent**.

**Statutory Form.** The Montana Uniform Power of Attorney Act regulates the creation and use of a financial POA. Most financial institutions and title companies use the form provided in the Act. The *Financial Power of Attorney Statutory Form* and *Agent Statutory Form* can be downloaded at [www.montana.edu/estateplanning/documents/powerofattorneycertificationforms.pdf](http://www.montana.edu/estateplanning/documents/powerofattorneycertificationforms.pdf).

One of the primary goals of signing a financial POA while the principal has legal mental capacity is to AVOID the need for the appointment of a conservator by a court to manage the principal's financial affairs. A **conservator** has the duty to manage the financial affairs of someone whom the district court has determined is incapacitated. The conservator pays the bills and makes investment decisions for the incapacitated person.

If a financial POA naming an agent has not been executed, a judge will make the appointment of a conservator after a hearing. Montana law requires the district judge to make the appointment according to the principal's nomination unless good cause (or disqualification) exists to not appoint the nominee. In addition, the nomination of a conservator in a financial POA can be an important provision to deter a contentious family member from bringing a court proceeding to request an appointment of him/herself.

**Example A:** Sara and Budd have two sons, Gary and Joe, and one daughter, Debbie. Sara named her husband as agent in her financial POA. She appointed Gary as her **successor agent** because he is very competent and

she trusts him. Gary as a successor agent would step in if the agent, his dad, is unable to perform his/her duty on behalf of Sara.

Sara has serious misgivings about her second son, Joe. She is concerned Joe could petition the district court for appointment as her conservator. She has nominated her agent (and successor agent) as conservator on the financial POA form. Sara has potentially discouraged Joe from bringing a court action to have himself appointed. Even if Joe would be successful in establishing his mother's incapacity in court, Budd and Gary would have priority for appointment as conservator by the district judge. Why, because Sara made her wishes clear in her financial POA.

**Decision and Action:** Before Sara and Budd each signed a financial POA, they read the MSU Extension MontGuide, *Power of Attorney (Financial)* (MT199001HR). They also reviewed the legislative form available at the MSU Extension Estate Planning website under Power of Attorney (financial) at [www.montana.edu/estateplanning](http://www.montana.edu/estateplanning). By reviewing these materials before their appointment with their attorney, their conversations were more efficient and effective.

## Health Care Power of Attorney (HCPOA)

Montana provides a formal, legal way to make health care and end-of-life wishes known to family members and to health care providers. Montana provides a formal, legal way to make health care and end-of-life wishes known to family members and to health care providers. The primary documents are a **Health Care Power of Attorney (HCPOA)** and a **Living Will**. These documents and instructions for their use are explained in an MSU Extension publication, *Health Care Power of Attorney and Related Documents for Montanans* (EB0231). The publication includes three forms and one worksheet. The worksheet is designed to assist the principal with making end-of-life-decisions.

- The **worksheet** is designed to assist the principal with making end-of-life-decisions.
- **Form A**, a Health Care Power of Attorney, authorizes the appointment of a trusted person (**agent**) to make health and end-of-life care decisions for the **principal**.
- Optional **Form B**, a living will (declaration), expresses the principal's wishes for end-of-life care and grants authority under the Montana Rights of the Terminally Ill Act for the principal to name a **designee** to make decisions about the withdrawal of life-sustaining treatment. An individual can communicate his/her decisions about life-sustaining treatment in a living will.

- Optional **Form C** allows the principal to express a preferred location of death, funeral or memorial services, and the disposition of remains.

**Decision and Action:** Sara and Budd read the MSU Extension publication *Health Care Power of Attorney and Related Documents for Montanans* (EB0231). After they filled out the worksheet, they completed and signed all three forms: (A, B, C). Sara and Budd made copies of all forms for their children. They wanted all three children to be informed about their health care wishes. They also made copies for their health care providers. Lastly, they stored these forms on *Montana's End of Life Registry* so any new healthcare providers could easily access to these documents. See <https://dojmt.gov/consumer/end-of-life-registry>.

As with her financial power of attorney, Sara named Budd as her HCPOA agent and their son Gary, as her successor HCPOA agent. Budd named Gary as his HCPOA agent and their daughter Debbie, as his successor agent. Should either Sara or Budd become unable to make decisions about health care, their named agents can step in and act on their behalf.

## Written Will

A **will** is a written document describing how its maker (called **testator** in Montana) wants property distributed after death. By making a will, Sara and Budd can decide which beneficiaries they want to receive their property. They can decide how much each beneficiary receives and specify the age when each beneficiary receives the property. Sara and Budd can also nominate a person to administer their estates (called **personal representative** in Montana). For additional information, read MSU Extension MontGuides *Wills* (MT198906HR) and *Personal Representative Responsibilities* (MT199008HR).

**When is a will effective?** A will has no effect during a person's lifetime. It only becomes effective after death of the **testator**. If probate is necessary, the will along with an application to open probate, is filed by the nominated personal representative. The application is filed with the clerk of the district court in the county where the deceased was a resident. After receiving a letter of appointment from the clerk of the district court, the personal representative can begin administering the estate. For more information, read MSU Extension MontGuide *Probate in Montana* (MT199006HR).

The Montana Uniform Probate Code contains a provision allowing a person to refer in a will to a **separate list** providing for the distribution of **tangible personal property**. Examples of tangible personal property include jewelry, wedding photographs, a school bell, a baseball glove, or a yellow pie plate. These non-titled properties may or may not have financial value. Nevertheless, they may have

a sentimental, historical, or emotional value for the giver and receiver. Additional information is available in MSU Extension MontGuides, *Wills* (MT198906HR) and *Who Gets Grandma's Yellow Pie Plate? Transferring Non-titled Property* (MT199701HR).

**Decision and Action:** Sara and Budd's attorney prepared their wills and asked them to carefully review each page. The attorney asked questions to assure both Sara and Budd understood all provisions. Then he had the wills "self-proven" by having Sara and Budd sign their respective wills in front of a notary public and two witnesses. With a "self-proven" will, witnesses are not called upon to testify during probate.

Sara decided to giveaway some of her heirlooms to her adult children and grandchildren. Because Sara is in an early stage of Alzheimer's disease, she still remembers stories about the heirlooms she inherited from her parents. She wants to share those memories with her adult children and grandchildren while she still can remember them. Later, Sara and Budd each made a separate list of tangible personal property. They signed and dated the lists and attached each list to their respective wills.

## Revocable Living Trust

A revocable living trust is a legal arrangement by which an individual shifts ownership of property from personal ownership into the legal ownership of the **trustee** of the trust. The person who creates a trust in Montana is the **settlor**. A revocable living trust is just what the name implies – a trust that can be changed or revoked by the settlor during his/her lifetime. The revocable living trust document includes provisions for the distribution of assets during the settlor's lifetime and, like a will, describes how assets are to be distributed after the settlor's death. In Montana, unless a trust is **irrevocable** by specific wording in the document establishing it, the trust is **revocable**.

The attorney explained to Sara and Budd that the following assets could be placed in a revocable living trust: their home; a piece of property located in another state; their bank and credit union accounts (checking, savings, certificates of deposit); stocks; bonds and mutual funds.

**Decision and Action:** Sara and Budd read the MSU Extension MontGuide *Revocable Living Trusts* (MT199612HR) and asked additional questions of their attorney. They decided not to establish a revocable living trust at the present time because they did not want to go through the process and cost of renaming all their assets in the name of the trust.

## Transfer on Death Deed (TODD)

The 2019 Montana Legislature replaced beneficiary deeds with **transfer on death deeds (TODD)**. As under prior law, TODDs allows owners of real property located in

Montana to transfer their real property at death to one or more beneficiaries without probate. A TODD is recorded with the clerk and recorder in the county where the land is located prior to the owner's death. Real property is land, including whatever is built, growing on or affixed to it, such as homes, garages, or other out-buildings, fences, water systems (unless removable), minerals and standing uncut timber.

A **designated beneficiary** is a person or an entity who receives an interest in the Montana real property described in the TODD. Sara and Budd's designated beneficiaries could be: individuals; corporations; business trusts; estates; trusts; partnerships; limited liability companies; associations; joint ventures; public corporations; government agencies; or any other legal or commercial entity. The attorney informed Budd and Sara they could designate more than one beneficiary in the TODD for their Montana real property.

**Decision and Action:** Sara and Budd decided to read the MSU Extension MontGuide *Transfer On Death Deeds in Montana* before deciding on a TODD. Knowing that a TODD would transfer their Montana home to their children without the cost of probate is enticing. However, they also own a piece of property located in another state and they do not know whether that state permits a transfer on death deed. For now, Sara and Budd believe their respective wills would accomplish their estate planning goals.

## Authorization and Consent for Release of Electronically-stored Information

Nearly everyone today has digital assets, such as documents, photographs, email, and social media accounts. The Montana Revised Uniform Fiduciary Access to Digital Assets Act allows residents to give trusted individuals consent to access those assets, including emails and other electronic communications.

Consent provisions can be included in a will, a trust, or a financial power of attorney. Consent provisions can also be in a separate document. A consent provision allows personal representatives, trustees, agents, guardians, and conservators to have access needed to manage electronically-stored assets for the principal while alive and after his/her death.

**Decision and Action:** Sara and Budd's attorney included electronic consent provisions in their financial powers of attorney and their wills. The consent provision in each document permits the agent or personal representative to have access to all digital assets, including emails and other electronic communications.

Additionally, Sara and Budd each completed a separate document consenting to access by any guardian or conservator who may be appointed for them in the future. They made an extensive list of all their electronically-stored assets, including user names and passwords. Should the need arise, they want their named agent, Gary, to be able

to access them more efficiently. They placed the list in their safe deposit box. Their goal is to update the list quarterly as their passwords often change.

## Develop a Financial Plan for Long-Term Health Care Costs

Sara and Budd decided they did not need an attorney to help them develop a plan for Sara's anticipated long-term health care costs. They wanted to investigate these costs on their own. Both were shocked to learn the average annual cost of long-term care during 2019 in Montana was approximately \$7,150 per month, or over \$86,000 per year.

Budd found these sobering facts from the National Care Planning Council:

- Average stay in a nursing home is 835 days (2.8 years).
- On average, women need some form of long-term care for 3.7 years while men need such care for only 2.2 years.
- While about 33 percent of today's 65-year-olds may never need long-term care, 20 percent will need it for longer than five years.

Budd mistakenly assumed Medicare would pay for all, or at least part, of Sara's long-term care expenses. He went to the [Medicare.gov](https://www.medicare.gov) website to confirm this assumption. Budd discovered **Medicare does not cover any type of long-term care**, whether in a nursing home, assisted living facility, or their home. Medicare covers only medical services in those settings.

Medicare does provide coverage for short-term stays in skilled nursing facilities. Further information is available at: <https://www.medicare.gov/coverage/skilled-nursing-facility-snf-care>.

Budd discovered on the internet that veterans are eligible for some healthcare benefits. See <https://www.va.gov/health>. While Budd is a veteran, Sara is not.

Next, Budd checked into the cost of purchasing a long-term care insurance policy. He discovered an annual premium in 2019 was \$4,164 for just one person at his age. He now wished he considered long-term care insurance when he was younger and policies were cheaper. He found the Montana Commissioner of Securities and Insurance updates a yearly booklet, which includes a comparison of policy provisions: [https://csimt.gov/wp-content/uploads/2019\\_LTCRateGde.pdf](https://csimt.gov/wp-content/uploads/2019_LTCRateGde.pdf). The Montana Senior and Long-Term Care Division also has several informative publications about long-term care alternatives at [www.dphhs.mt.gov/sltc/index.shtml](http://www.dphhs.mt.gov/sltc/index.shtml) or call 1-(406) 444-4077.

Unfortunately, Budd and Sara found they were not eligible to purchase long-term care insurance because of pre-existing health conditions. With Sara's diagnosis of Alzheimer's disease and Budd's Type II diabetes, they were ineligible. Health insurance companies often reject coverage

for persons with pre-existing health conditions such as diabetes, COPD, recent cancer, dementia, heart disease, or sleep apnea.

Another alternative Budd considered was a Montana long-term care partnership insurance policy. The partnership program allows Montanans to keep some or all of what they have accumulated for their children and still qualify for Medicaid. The Montana Commissioner of Securities and Insurance provides a list of 18 companies offering partnership policies, <https://csimt.gov/your-insurance/long-term-care/>. Call or call 1-(800) 332-6148. Local insurance agents can also provide the list. Because of Sara and Budd's pre-existing conditions, neither was eligible to purchase a long-term care partnership policy.

Next, Sara and Budd considered self-insurance. They totaled their present income, savings, investments, and value of their home. From this amount they subtracted the total of their outstanding debts. They considered the assets they could sell to pay for long-term care. What a disappointment! They discovered their net assets would cover only two years of long-term care for Sara.

Relatives and friends at the local cafe suggested Sara and Budd give away their assets to qualify for Medicaid. The MSU Extension MontGuide *Medicaid and Long-Term Care Costs* (MT199511HR) explains why Sara and Budd would not qualify for Medicaid for five years because of the "look-back period" and corresponding penalty that applies to such gifts. The publication also describes exempt assets such as a home, as long as a spouse or disabled child is living there.

**Decision and Action:** At this point, Sara and Budd decided they would count on their accumulated assets for their long-term care. Sara wants to remain in their home as long as possible. Only as a last resort, after their resources are low enough to qualify Sara for Medicaid, would Budd apply. Although Sara and Budd were disappointed about the costs of long-term care, they were relieved the appropriate financial, estate and health care documents are now in place.

## Situation 2:

**What legal, financial, and health documents should a couple consider if one spouse is in a later stage of dementia?**

Martha and Gene are in their late 70s. They have not undertaken any financial, estate/legacy or health care planning. Neither one has a will, a trust, or a financial or health care power of attorney. After his stroke, Gene started experiencing memory loss. He got disoriented while driving home from the grocery store. He could not remember how to put his truck in gear. He asked to visit his Mom who passed away 20 years ago. The physician determined Gene had vascular dementia resulting from the stroke.

Gene's diagnosis was a call to action for Martha. She realized she needed to accomplish "double" planning, for herself and for Gene as well. She had seen firsthand the decline of Gene's memory and his difficulty making decisions. Martha had several alarming thoughts: "What if I become incapacitated or die before Gene? Who would take care of him? Who would handle his finances?"

**Alternatives for Martha and Gene:** Martha made an appointment with an attorney whose practice focused on estate planning to explore alternatives for their legal, estate, and health care planning. The attorney recommended Martha first contemplate legal documents for herself. As it turned out, those documents were the almost the same ones recommended to Sara and Budd in Situation 1:

- a financial power of attorney;
- a health care power of attorney;
- a will;
- a transfer on death deed;
- a consent for release of electronically electronically-stored information;
- a revocable living trust; and
- a testamentary trust.

Martha and Gene's situation, however, was far different than Sara and Budd's. Because of the stroke, Gene lacked the legal mental capacity to sign a will, a power of attorney (financial or health), a transfer on death deed, or a consent for release of electronically electronically-stored information. The attorney explained to Martha that Gene does not have the same choices as she does. For this reason, Martha and her attorney first focused on her estate and the necessary financial and health care documents. Next, they examined alternatives for the care of Gene.

Martha was concerned about the management of their assets after her death. She was most worried about potential financial exploitation of Gene because of his condition. Her attorney recommended Martha have a **testamentary trust**.

**What is a testamentary trust?** A **testamentary trust** is a trust created in a written will. Martha's testamentary trust would provide money for Gene's care if he survives Martha. The trust does not go into effect until the death of the **testator** (person who makes a will). The trust could be managed and administered under the protection of a trustee of Martha's choice. While the trust provisions would become irrevocable at her death, Martha could change the terms of her will and the testamentary trust at any time before she dies, so long as she retains sufficient legal mental capacity to do so.

**What assets can be included in a testamentary trust?** The attorney explained to Martha all their assets could be included in the testamentary trust: securities (stocks, bonds, and mutual funds), their home and other real

property, their bank and credit union accounts (checking and savings accounts, certificates of deposit, money market certificates), life insurance proceeds, and proceeds from the sale of their home.

The attorney also explained that any assets having Gene as a beneficiary—such as life insurance policies, brokerage accounts and CDs—should be updated to name the testamentary trust as the beneficiary. This action ensures assets will be administered according to the trust’s terms, instead of being distributed to Gene outright.

**Does the way assets are titled make a difference about which ones can be placed in a testamentary trust?** Yes. Martha’s attorney explained that assets titled in the name of one person can fund a testamentary trust. If Martha dies before Gene, the assets titled solely in her name could fund the testamentary trust for Gene’s care.

However, if Martha continues to hold all assets in **joint tenancy with right of survivorship** with Gene, those assets belong solely to Gene upon Martha’s death. The joint tenancy contract takes priority over Martha’s will. The trust would not receive the assets because Gene receives them from Martha as the surviving joint tenant.

The attorney, therefore, recommended Martha change titles on their **personal property** assets from joint tenancy with right of survivorship to sole ownership in Martha’s name. This was not a problem for their stocks, mutual funds, checking and savings accounts and certificates of deposit. The contract on these assets allows either joint tenant to add money to the account, take money out of the account, or to close the account. For additional information about joint tenancy and tenants in common, see the MSU Extension MontGuide *Property Ownership: Estate Planning* (MT198907HR).

On the other hand, to change title of **real property**, such as their house held in joint tenancy with right of survivorship, Martha needs to be appointed as Gene’s conservator. As Gene’s spouse, Martha has priority under Montana law to serve in this capacity. Martha asked her attorney to draft a petition for her to be appointed guardian and conservator for Gene. She also requested the attorney to represent her during the hearing before the district judge.

**Decision and Action:** After the hearing in district court, Martha was appointed guardian and conservator for Gene. With the court’s approval, she changed the title of their real property from a joint tenancy to her name only. Martha decided to name their only child, Bob, to serve as trustee of her testamentary trust. Bob has successfully managed his own assets. Bob and his family had continually expressed affection and concern for Gene. Martha also decided to name her niece, Brenda, to serve as successor trustee in the event Bob cannot serve, or ceases to serve as trustee. Brenda is not only a good asset manager, but she had also demonstrated genuine affection for her Uncle Gene.

Martha realizes the journey with Gene and his vascular dementia will be a long one. Like Sara and Budd, Martha is relieved to have in place her financial, estate/legacy, and health care planning documents that will benefit her and Gene.

### **Situation 3:**

#### ***What legal, financial, and health documents should be considered if both parents are incapacitated?***

Helen and Earl are in their early 80s and live in Great Falls. Their two sons live out-of-state. Their two daughters, Mary and Fay, live in Miles City and Missoula, respectively. Caring neighbors contacted the daughters, asking them to ‘do something’ about their parents’ situation. The neighbors had become concerned about Helen and Earl’s safety.

Both daughters drove to Great Falls to determine why the neighbors were so upset. Because their brothers could not get away from work, they told Mary and Fay to do whatever is necessary for their parents’ safety. The daughters had not been home for several months, so they were shocked at the changes in Helen and Earl. Both were very frail and had obvious memory issues.

The file drawer Mary and Fay thought held their parents’ legal papers was filled with newspapers and magazines, not legal documents. Neither Helen nor Earl remembered where they placed their important papers. The daughters were not able to find a will. Neither parent remembers writing one. The daughters could not find a financial or health care power of attorney. During a visit with their parents’ physician, the daughters learned that neither parent was competent to sign legal documents.

**Where will Helen and Earl live?** Mary and Fay agreed their parents were no longer safe living in their own home. Neither parent was capable of cleaning or providing meals for themselves. Long-term care was an immediate need. Mary wanted her parents to move from their home in Great Falls into a facility in Miles City. Fay wanted to move her parents into a Missoula facility. Neither daughter was willing to compromise.

Because the daughters could not reach an agreement, each sought appointment as guardian for their parents. The guardian decides where the parents live and makes decisions about health care. Mary and Fay each filed a separate petition for guardianship in the clerk of court’s office in Cascade County where Helen and Earl live. The district court scheduled a hearing. As adult children, both Mary and Fay had the same priority for appointment as guardian. Neither brother wanted to take on the responsibility of caring for their parents.

The district court judge was faced with determining whether either daughter was better qualified and capable to serve as guardian. If neither was qualified, the judge could appoint someone else, including the Department of Health and Human Services (DPHHS). The DPHHS guardian would then make the decision where Helen and Earl would reside.

**Who will manage Helen and Earl's finances?** During the same hearing, Mary and Fay each also sought appointment as conservator of their parents' estates. As adult children, both Mary and Fay had the same priority for appointment. The district court judge was faced with determining which one of them was better qualified to serve as a conservator and be in charge of the parents' finances. The judge could have passed over Mary and Fay and their brothers and appointed the county's public administrator to serve as conservator. Instead the judge decided to name Mary as guardian and Fay as conservator. Mary then moved her parents from Great Falls to a facility in Miles City.

**What happens after Helen and/or Earl die?** Earl and Helen died within a month of one another. Mary, as the oldest daughter, thought she should be named **personal representative** of her parents' estates because she was the guardian. Fay, however believed she should be the one designated as personal representative as she had previously worked for an attorney. They agreed only on two matters. They did not want to serve together as co-personal representatives. Mary and Fay also did not want their brothers involved since they had "done nothing" to help their parents.

Both petitioned the district court for appointment. A hearing was held because each sister objected to one another's appointment. The district judge was faced with deciding whether it was best to appoint one of the daughters, one of the sons, or appoint another person or entity as personal representative.

The district judge appointed the Seventh Trust Company (the "Trust Company") of Great Falls to act as personal representative for Helen and Earl's estates. Their estates consisted of four assets: a savings account with a balance of \$40,000, mineral interests in Eastern Montana, and two homes, known by the family as "the town house" and "the lake cabin." The savings account was easy to split. Each child received \$10,000. The mineral interests were also easy to divide. Each of the four children received 25 percent.

The Trust Company hired a qualified appraiser to value the town house and lake cabin. According to the appraiser, both properties were equal in value. All four siblings wanted the lake cabin. None was willing to share the ownership of the lake cabin with one another as tenants in common.

**What was the result?** The Trust Company petitioned the district court to approve a proposed distribution of the two

properties to all four children as tenants in common. After a hearing, the district judge rejected the plan and decided the town and lake homes would be sold with the proceeds distributed equally to the four children.

Because Helen and Earl did not plan and execute documents while they were competent, others were faced with making critical decisions for them. Those decisions may or may not, have been consistent with what the couple would have wanted. Without appropriate legal documents, a family may spend additional financial resources, especially if there is discord. If a financial and health care power of attorney and other estate planning documents had been signed, some or all of those additional expenses could have been avoided.

## Summary of Situations

There are definite drawbacks if you do not establish financial, estate/legacy, and health care documents while you are alive and competent. If you sign a health care power of attorney, you can designate someone who can make decisions about your health care if you cannot. If you sign a financial power of attorney, you can choose who will manage your assets if you should become incapacitated. You can eliminate the financial and emotional costs associated with a guardianship and/or conservatorship proceeding in the district court. If you complete a revocable living trust and transfer all assets to it or provide for a testamentary trust in your will, you will be able to name your estate administrator (personal representative) or your trust administrator (trustee) and distribute of your assets as you desire.

Any Montanan could develop some form of dementia or experience a debilitating brain injury from a stroke or accident. By having the appropriate financial, estate, and health care planning documents, you can spare your family needless hours of anguish and arguments about what you would want.

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## Disclaimer

This publication is not a substitute for legal advice. Rather, it creates an awareness of the financial, estate, and health care documents essential for any person concerned about memory loss. Future changes in Montana laws are unpredictable. Statements in this MontGuide rely upon those laws in force on the date of publication.



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(ESTATE PLANNING)**

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