

Connecticut Care Planning Council



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Featured Board Member: **Henry C Weatherby**

CT Care Planning Council Advisory Board Members:



Weatherby & Associates, PC
Counselors at Law
Helping Families Preserve and Protect Assets and Values

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[If you answer "yes" to any of these questions, Weatherby & Associates, PC can help.](#)

The [Connecticut Care Planning Council](#) (CTCPC) lists companies and individual providers on our website who help families deal with the crisis and burden of long term care.

One purpose of the CTCPC is to educate the public on the need for care planning *before* a crisis occurs. A second purpose is to provide, in one place, all of the available government and private services for eldercare.

Finally, our ultimate mission is to offer a trusted listing service that



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the public will recognize and turn to for expert help in dealing with the challenges of long term care.

Call us at 860-769-6938

or click [here](#) to send an e-mail



Weatherby & Associates, PC
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Dying With Debt

At some point in our lives we may ask ourselves: "If I die and have debt, who or what will be responsible for paying back those I owe?"

The laws regarding debt after death are defined by each state so there isn't a single answer to the question above for everyone. On most occasions, the only time a family member would be responsible for your debt is if they cosigned a loan with you. People generally do not inherit another person's debt.

When we die, a new entity emerges, called our estate. An "Estate" represents your assets and your liabilities. Upon death, a legal process called "Probate" (which is the first step of administering the estate of a deceased person), will resolve your debts and distribute your

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remaining assets to your heir(s).

Creditors may legally seize assets within your estate (money or property) in order to cure a debt owed to them. If you have no assets, your creditors may have to take a loss on your debts. Depending on the state you live in, a creditor has a fixed amount of time to make a claim against your estate for payment.

There is a legal pecking order as to who is allowed first claim to retrieve money from your estate. The higher priority goes to funeral expenses, administrative expenses, and federal taxes. The estate may then pay off expenses from the last illness and state taxes. At the bottom of the barrel are unsecured creditors, like credit card companies.

Generally, all debts must first be paid by the estate before any remaining assets are distributed to an heir. An outstanding credit card balance, for example, must be paid before any money or gifts can be distributed to an heir. If there are not enough assets to pay the debts, then all assets and property will be sold to pay down as much of the debt as possible and the heir will inherit nothing.

In the case of secured debts (e.g. home mortgage or auto loans), property (which is collateral) may be distributed with its debt. For example, you own a car worth \$15,000 and the loan on the car is \$7,500. If you die and leave that car to someone, it will become that person's obligation to pay off the loan.

Except for certain situations (which include joint property or joint debt), creditors are unlikely to go after surviving family members when a debt cannot be paid by your estate money. The majority of married couples have joint accounts

and joint debt. In these situations, a surviving spouse will be held legally responsible for the debt of their deceased spouse even if they did not generate the debt themselves. This is something that will often cause problems for surviving spouses who financially cannot pay off old debt and meet their everyday needs.

If a creditor contacts a surviving family member about a debt of a relative who has died, the family member should give the creditor the contact information of the decedent's representative. The representative is responsible for paying any outstanding debts from the estate. If a will exists, the representative is known as the executor; if there is no will, the representative is known as the administrator.

In community property states (where married couples are considered to own their property, assets, and income jointly) credit accounts opened during marriage are automatically considered to be joint accounts. This could affect what your spouse will have to pay, depending on the debt that you incurred. The following states are community property states:

- Arizona
- California
- Idaho
- Louisiana
- Nevada
- New Mexico
- Texas
- Washington
- Wisconsin

To conclude, when you pass away, your estate is responsible for paying off any balances owed by you, not your family. If your estate goes through probate, your administrator (or executor) will look at your debts and assets and, guided by the

laws of your state, determine in what order your bills should be paid. The remaining assets will be distributed to your heirs according to your will or state law.

Getting Your Affairs In Order

If we had a crystal ball and could see into the future, we would not need to prepare ahead for end of life decisions.

James was 62 years old when a stroke made it impossible for him to communicate with his family. Neither his wife nor children knew anything about his financial or medical information. James had always taken care of things himself and left no written directives in his behalf. Besides having to locate important documents, the family was left to make their own decisions about James long term care.

The [National Institute on Aging](#) gives three simple, but important steps to putting your affairs in order:

- “Put your important papers and copies of legal documents in one place. You could set up a file, put everything in a desk or dresser drawer, or just list the information and location of papers in a notebook. If your papers are in a bank safe deposit box, keep copies in a file at home. Check each year to see if there's

anything new to add.

- Tell a trusted family member or friend where you put all your important papers. You don't need to tell this friend or family member about your personal affairs, but someone should know where you keep your papers in case of emergency. If you don't have a relative or friend you trust, ask a lawyer to help.
- Give consent in advance for your doctor or lawyer to talk with your caregiver as needed. There may be questions about your care, a bill, or a health insurance claim. Without your consent, your caregiver may not be able to get needed information. You can give your okay in advance to Medicare, a credit card company, your bank, or your doctor. You may need to sign and return a form." [National Institute on Aging](#)

Preparing Advance Directives or Living Will

Advance directives are legal documents that state the kind of medical care or end of life decisions you want made in your behalf. It is a way for you to communicate your wishes to family or health care professionals. Emergency response medical personnel cannot honor Advance directives or living wills. They are required to save and stabilize a person for transfer to a hospital or emergency facility. Once at the [facility](#) a physician will honor the directives.

The Living Will as part of your directives gives your consent or refusal for

sustained medical treatment when you are not able to give it yourself. If this document is not in place then a family member or physician will decide such things as:

- Resuscitation if breathing or heartbeat stops
- Use of breathing machines
- Use of feeding tubes
- Medications or medical procedures

Advance Directives and Living Wills are legal throughout the United States; however, some states may not honor other states' directive documents. Be sure to check with the state you live in for their requirements.

Review your directives periodically. They do not expire, but your wishes may change.

A new or revised Advanced Directive invalidates the old one. Be sure your family member or healthcare proxy has a current copy.

Choosing a Power of Attorney

General Power of Attorney - authorizes someone to handle your financial, banking and possibly real estate and government affairs as long as you remain competent.

Special Power of Attorney - authorizes someone you designate to handle certain things you cannot do yourself for a period

of time.

"Durable" Power of Attorney -The general, special and health care powers of attorney can all be made "durable" by adding certain text to the document. This means that the document will remain in effect or take effect if you become mentally incompetent.

Many people do not know the difference between a general and a durable power of attorney. A general power of attorney is a document by which you appoint a person to act as your agent.

Agents are authorized to make decisions for you, sign legal documents, etc. Many people are unaware that a General Power of Attorney is revoked when the person granting that power becomes incompetent or incapacitated.

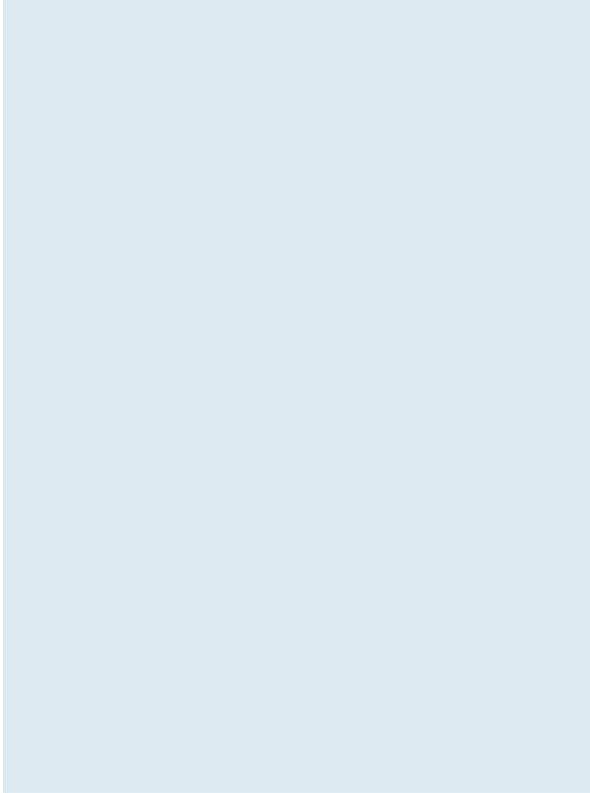
It is the "Durable" Power of Attorney that allows for an agent to continue making decisions on your behalf no matter what happens to you. A responsible adult child of an aging parent would be given a "durable power of attorney" to act on behalf of the parent. This provides broader authority than just adding the child's name to bank accounts and documents.

You may choose to produce notarized power of attorney documents on your own. If your estate is large and real estate or business is included it is

advised to secure a [reliable attorney](#).

If you answer "yes" to any of these questions, Weatherby & Associates, PC can help

- Has the elder been diagnosed with a mentally or physically debilitating disorder such as Alzheimer's, Parkinson's, ALS, stroke or a decline in functional capacity?
- Is the elder isolated due to the recent death of a spouse, or have family that either lives too far away or is too busy to provide adequate care?
- Is the elder to be discharged into a care facility or currently receiving in-home care?
- Does the elder have a variety of healthcare providers and need coordination and advocacy for quality care?
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- Does the elder have a spouse whose financial needs must be considered in light of the elder's medical condition?

Wisdom from the Web

**"You are as young as your faith,
as old as your doubt; as young
as your self-confidence, as old
as your fear; as young as your
hope, as old as your despair."
~Douglas MacArthur**