this person's like: are we going to run out of money? If expenses start to exceed projections, the conservator is tasked with telling the Court that this is occurring. It can occur because suddenly, a person's care needs increase significantly. All conservator reports are done on forms required by the Supreme Court and the change in the probate rules at the beginning of the year has simplified this process somewhat, in that most people can use something called form 9 which is the simplified accounting. We used to have to use a different form which was much more complicated so that was a good change for most people.

Now, the accounting again is considered by the court at a hearing, typically or historically it's been a non-appearance hearing and just have to see how that plays out. As I mentioned earlier, this is a very complicated and overwhelming process for non-professional conservators and that's particularly true in counties where you have a court accountant who's very on top of things because they will kick that accounting back if there's a mistake in it and it must be corrected. So, you can imagine that that can go on and on.

How do people get paid for services rendered in association with guardianships and conservatorships? The Supreme Court several years back adopted fee guidelines that apply to guardians, conservators and any attorney whose involved in the case and among other things, we are tasked with notifying the court, through filing of a notice of compensation that we intend to be compensated from the Incapacitated Adults funds (if there are any) and how much that compensation will be on an hourly basis.

If compensation changes, you must give notice to the Court and ultimately there's a finding by the judge typically as part of the annual accounting process that fees paid to the guardian, conservator and attorneys involved are reasonable and necessary. You'll see the reference here is no block billing that really applies to the attorneys in that you have to itemize what you're doing and how much time it takes you to do it (you can't just say I spent four hours doing x,y and z- you've got to break it down), you also don't get to charge for secretarial or clerical work and for guardians and conservators, there are time guidelines about how long it should take you to do certain things. By the way, this came out of abuses in these cases by fiduciaries and attorneys so it's sort of a sad state of affairs-but this is better- it's much more transparent this way.

As you can tell, the guardianship and conservatorship process are quite involved, it's not ideal. It puts what is really a private issue in a public arena so from a practitioners' perspective, I think that avoiding guardianship/conservatorship is far preferable to being in the middle of a guardianship and conservatorship. But, it entails planning and if someone is incapacitated already then none of this is going to work, none of what I'm going to talk to you about now is going to work. So, this type of planning ahead must be

done when someone still has capacity. I refer to this as estate planning, as part of the estate planning process so estate planning is not just drafting a will or a trust, it's also planning for incapacity. So, the first thing that we use to deal with potential incapacity is something called a healthcare power of attorney, so this is the document where you get to designate one or more individuals to make healthcare decisions for you; if you become unable to communicate those healthcare decisions yourself. There is a statutory form available and it must be witnessed or notarized. The Arizona Attorney General has a website that contains something called a Life Care Planning packet, but it contains forms for health care Power of Attorney, a mental Power of Attorney and a living will- so that is a great open and free resource for most people. It has good instructions and I think that it is a great place to start.

Things that I like to see in a healthcare power of attorney which may or may not be in the statutory form, are that it should contain a HIPPA release. So, HIPAA is that lovely federal law that everyone's been dealing with for probably fifteen years now which has restricted the accessibility of protected healthcare information. So, unless you release that information by way of a HIPAA compliant release then people can't get to it-so you want to make sure that the power of attorney has a very specific release that refers to HIPAA so that your designated agent when the time comes can get all your medical records to talk to any and all of your providers-so as to make the best decisions for you. You will probably want to be specific about granting authority to your decision-maker to plan for hospice or some sort of assisted living facility it's implied that they would have that authority, but I think it's good to be specific about it.

Similarly, you can also give them the authority to make advanced funeral arrangements, but you must be specific about that or they can't do it. The other power of attorney that's quite helpful here is a mental healthcare power of attorney. Again, this is a designation of an individual or individuals to make and communicate mental health care decisions for you if you are not capable. I find it particularly helpful for individuals who have a history of mental illness because what it can do for them is avoid the need for a guardianship with that impatient authority or and in the worst-case scenario, something called a Title 36 proceeding. A Title 36 proceeding is an involuntary commitment proceeding, which is even uglier than a guardianship. So, if you're someone who suffers from mental illness that requires hospitalization from time to time and you have a trusted decision maker, then you can execute a mental healthcare power of attorney given that individual the authority to make mental health care decisions for you. The most important part of that document is authorizing the individual to place you in the level 1 psychiatric facility. You can also, in that document limit your ability to revoke it if you cannot give informed consent.

Powers of attorney are typically accompanied by something called a living will. A living will is a medical directive, it's where you get to specify to your decision-maker how do

you feel about certain types of healthcare treatment, typically those that would be administered towards the end of your life. It's very often just the directive that says please do not keep me alive artificially or unnecessarily if I'm going to die anyway. There is also a statutory form there which you'll find in that life care planning packet on the Attorney General's website and that document too must be witnessed or notarized. I also recommend, in addition to those forms that as necessary, you execute HIPAA releases with your medical providers just as a fail-safe so that whoever your trusted decision-makers are, can get access to the information they need and if you are smart and thinking ahead, you can investigate and put in place long term care arrangements ahead of time before you even lose capacity (at least know where you want to go and if you can afford it), that will help your family significantly.

There are also several ways to avoid a conservatorship but first is what we refer to as a durable financial power of attorney. So, again it's a document where you get to specify the individuals who will make and manage your financial decisions and financial affairs and the document can be become effective as soon as you sign it or only upon a finding of your incapacity. There are certain statutory requirements regarding this document and it must be witnessed and notarized and that's just because people have abused powers of attorney over the years.

A revocable trust is also a great way to avoid conservatorship. So, a revocable trust is an entity that you create as part of your estate plan. It's very often an alternative to a simple will and your revocable trust is funded with all or most of your assets and a trust is only as good as what it owns (that's an important point to remember) but within the trust, you get to nominate what we call a successor trustee and that's the person who would take over management of the trust in the event you cannot do so for yourself any longer. So, if you resign or you become incapacitated and that allows that person to kind of just step into your shoes and continue to manage your assets in your trust for your benefit without the need for a conservatorship.

I often also see what I refer to here is the informal approach and that is where a parent for example will add a child as a cosigner or a co-owner of assets like bank accounts or brokerage accounts and it can work and it does work but I think that individuals have to be fully informed about the perhaps unintended consequences of doing so, for example, if you're someone who has three children and you only add one of the bank account when you die only one kid gets the money unless that person chooses to share it with his or her siblings. So, it's the co-owner of the account who ends up owning the assets at the end of the day sometimes it works out well and everyone shares and gets along nicely and sometimes it doesn't work out well and you end up with a child who's kept all the money and that's not what mom thought was going to happen here.

So, in conclusion investigate your choices-in other words meet with an attorney or your financial planner to talk about planning for incapacity and death and maybe actually both

your attorney and your financial planner. When you're executing powers of attorney, choose reliable agents. What I mean by the agent is a decision maker choose someone who you know is going to make choices that are best for you, who knows you well and who's not going to run away with your money. Communicate with your family and friends about what you want-that is particularly true in the end of life context also talk to your healthcare provider so that everyone's quite well-informed about what you want and most importantly do not wait until the last minute.

I probably get two or three calls a week in my office from someone's child who says "Oh Mom's incapacitated I need some powers of attorney", and of course mom can't sign powers of attorney of moms incapacitated so it's too late by that point then we're really stuck with okay we're going to court we need a guardianship or conservatorship and it's not to say that that can't work out well but it is timely, time-consuming, not cost effective and it puts your family in a public arena that you might not otherwise like to be in.