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# Planning for Clients without Perfect Successor Trustee Children

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***Topic Description.*** *Clients' estate and long-term care plans are often based on having one or more ideal successor trustee children to carry out the clients' wishes. This session addresses steps to improve planning for clients' long-term care and later estate administration when their plans depend upon corporate fiduciaries, other unrelated parties, or less-than-perfect successor trustee children.*

## I. Clients = Us: Start by Analyzing Ourselves and Our Plans.

Many of us are at the age (i.e., over 35) where we should be analyzing our own long term care plans. Indeed, many of us are over 60 or are approaching 60, with some of us well over 60. It is thus rather odd that we should consistently refer to "what clients should do" when we are in the same position. This article—while directed towards helping clients make choices—focuses on what we have learned and how to employ it in our own lives, given our own circumstances. By clarifying how we ourselves should be planning, we will be able to provide more relevant planning options to our clients.[2] The term "client" is sometimes used interchangeably with the term "we" in this article, as the term "client" is used to mean *the person who is planning for his or her own long-term care.*

## II. From Brooke Astor We Learned: *Great Wealth Is Not Enough to Protect Care*.

Brooke Astor had significant wealth but, according to what we have heard, her final days were spent in squalor inside her expensive home. Apparently Brooke was a great fan of legal planning, often changing her Will and her beneficiaries. However, despite considerable legal attention and documentation, she did not have an effective plan to protect her own care when she

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[2] This author posted questions to an elder law list serve on how we should be helping clients plan when they do not have perfect successor trustee children. Among the responses (public and private), there were at least a dozen that said (paraphrased): "You have just described me and I do not know what I am going to do." Hence it appears that focusing on ourselves will help us develop the most useful approaches for clients.

became frail and vulnerable. Having great wealth without an effective care plan may not protect one's care. Money is not enough to prevent a lonely and painful end to one's life.

## III. From Mollie Orshansky We Learned: *A Great Plan Is Not Enough to Protect Care*.

Mollie Orshansky, a famous economist[3], created a meticulous plan for her later years, which included appointing devoted family members as fiduciaries, keeping a ready-to-occupy condominium close to family, funding a trust with her family members as successor trustees, and putting other directives and documents in place. When she started to decline, her family members acted as she anticipated that they would: *they stepped in to help implement her plans.* What Mollie did not anticipate, however, was that she herself would become the component of the plan that failed. As her capabilities declined, she resisted the help of family and became more suspicious of those she had trusted all her life and who had track records of caring for other family members. She refused to implement her own plans. A long, painful, expensive, multi-state guardianship dispute went on for years, causing incalculable pain and suffering not only to Mollie but also to the family members she loved and who tried to help her.[4] Hence we learned that having a great plan may not be enough, if there is not an ideal way in which to transfer control—before it is too late.

## IV. Brooke + Mollie: We Learned We Need A Plan + Implementation of the Plan.

Many times individuals, sometimes with the help of their attorneys, create plans that have no clear implementation steps. For example, many of us have the following plan: *To live at home, driving where we need to go and taking care of ourselves as we see fit, until we die peacefully in our sleep at age 95 or older.* However, that is a goal and not a plan. A plan would include anticipating the various scenarios that could occur and deciding upon steps that fiduciaries could take to achieve one's goals and objectives.

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[3] The U.S. Social Security Administration web site includes a profile of Mollie under "Social Security Pioneers" found at www.ssa.gov/history/orshansky.html.

[4] See the following articles in *The Washington Post,* "Caught Between Dueling Guardians; N.Y. Relatives in Tug of War With D.C. Court Over Retiree's Care," May 28, 2002; "Appeal Heard in Case of Elderly Woman; Family Wants Her to Stay in N.Y.; D.C. Judge Ordered Her Back to Washington," June 26, 2002; "Judge Rebuffed For Ignoring Patient's Wish; D.C. Woman's Family Wins Control in Appeal," Aug. 16, 2002; "Who Repays Ms. Orshansky?" Aug. 17, 2002; "Mollie Orshansky's Best Interests," Aug. 20, 2002; and "Rights and Funds Can Evaporate Quickly; Attorneys' Powers Thwarted D.C. Residents Trying to Remain Independent," June 16, 2003. See also "Mollie Orshansky, Statistician, Dies at 91," *The New York Times,* April 17, 2007, which noted that some of the legal battles were still unresolved.

## Title search: Planning for Clients without Perfect Successor Trustee Children

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