Being a caregiver is very rewarding. Helping someone you love allows you to be involved with their life at their time in need and it greatly enhances your loved one’s quality of life. Knowing that someone will “be there” and assist in their care is a great comfort to individuals needing care. As rewarding and beneficial as it is to be a caregiver, it is also one of the most demanding and difficult tasks you will undertake.

The demands depend upon the needs of the in-need person. Oftentimes, minimal time is necessary: you may be writing checks or balancing your loved one’s checkbook or you may occasionally be taking them to a doctor’s appointment. Sometimes, however, depending upon the loved one’s health condition, a great deal of time can be required. Caregivers spend between 8 and 40 hours a week providing care to their loved one; 20 hours a week is typical.

Understanding the legal issues surrounding caregiving for a loved one is very important. In order to provide care for your parent, spouse or loved one, it is vital to have certain legal documents in place, and sometimes it is vital to protect assets from nursing home costs. Having the necessary legal documents in place or a plan to protect assets in place, can help avoid financial and legal crisis that often occur when someone becomes ill.

There are certain legal documents that persons who are having health issues should always have; these are Powers of Attorney, Last Will and Testament and a Living Will, also known as an Advanced Healthcare Directive.

The most important legal document of the three is the Powers of Attorney (POA). A POA allows another person (the “agent”) to act for the ill or incapacitated person. As a caregiver for my parents, I am both my mother’s and father’s agent under their POA. Their documents allow me to handle their banking, investments, real property, bills, taxes and all other financial issues. Their documents also allow me to handle their healthcare issues, such as talking with their doctors, obtaining medical records for second opinions and handling their Medicare and insurance matters.

My responsibility as their “agent” is to act in their best interest. This means that everything I do for them should be in accordance with their desires and goals. Both of my parents are in their mid 80’s and are mentally sound and capable of making their own decisions. This makes it easy for me to be clear on their desires and goals. If your loved one or parents are suffering from dementia, Alzheimer’s or any type of illness or disease that reduces his or her mental capacity, it is much more difficult if you have not discussed their desires and goals with them prior to their diminished capacity.
Discussing your parents’ or loved ones’ desires and goals when they are mentally healthy will help you in your role as their caregiver. If or when your loved one or parent is no longer able to direct you because of his or her diminished capacity, you will be able to act based on their desires and ensuring that their wishes will be followed and fulfilled.

An “agent” under a POA has a duty or standard of care and can be held legally responsible for their actions. Therefore, knowing what you can and cannot do as an agent is very important. The actual document (the POA) should be written to provide you with the appropriate authority to take the actions you will need to take in order to care for your parent or loved one and meet their goals and desires. The POA should be drafted very carefully to ensure that you can act according to your parents’ or loved ones’ needs and desires.

The second legal document is a Last Will and Testament which primarily directs who is to receive the assets of an estate, how they will receive the assets of an estate, and who will be in charge of administering the estate. Last Wills and Testaments should be reviewed every three to five years, depending upon the individual’s wealth status, health and family issues and age.

The third legal document is a Living Will. This is the document that states what type of care and treatments a person wants when he or she is dying. The individual’s directions in the Living Will are used only when someone has a terminal condition or is in a permanent state of unconsciousness. If someone is suffering from either of those conditions, then and only then does the Living Will document and its directives take effect. An important component of a Living Will is appointing a surrogate or agent. The surrogate or agent’s responsibility is to communicate and enforce the directions in the Living Will regarding end-of-life care. Because of the recent governmental involvement in end of life cases, it is especially important to have end-of-life wishes carefully documented.

Protecting assets from nursing home costs is often key in providing for your loved one. If nursing home placement is required or anticipated, it is very important to understand the financial implications of that level of care. The average cost for nursing home care is $6,500 a month or $78,000 a year. Depending on your loved ones’ desires and needs, it may be appropriate to protect funds in order to provide for a spouse, disabled child or to protect a homestead or other assets. Although the laws are very complicated, assets can be protected from nursing home costs, even when someone is already in a nursing home.

This article deals with the most common legal issues facing a caregiver. Of course, there are many other legal issues that can arise, from Medicare appeals, to selling a home, to moving into an assisted living facility or a nursing home, and of course – taxes.
Although many of the situations you will face as a caregiver cannot be planned, if you have the legal documents in place or if appropriate, you have protected assets, you will be one or two steps ahead. Instead of worrying about the legal and financial issues, you can spend your time with your loved one, helping them with their health needs and enhancing the time you have together.