

January 26, 2012 1:56 p.m. EST

PRACTICE MANAGEMENT

As Population Ages, Disclosure Forms Become Key

By Caitlin Nish

A DOW JONES NEWSWIRES COLUMN

--As baby boomers age, more clients will have memory problems

--Don't share info with a client's family without permission

--Plan ahead with disclosure forms, updated yearly



NEW YORK -- Financial adviser Gordon Bernhardt could tell his senior-aged client was having memory problems: The man had called his office two days in a row to ask the same question about an investment.

So Bernhardt asked the client's wife, who was also named on the account, to begin participating in all conversations. "She volunteered that it wasn't her strength and she wanted her son to be involved," says Bernhardt, president of fee-only Bernhardt Wealth Management in McLean, Va.

Bernhardt couldn't simply start calling the son, however. First, he had to have his clients sign a document giving him permission to send their son copies of his parents' account statements and to discuss their finances.

As baby boomers age, advisers will increasingly face clients showing signs of diminished mental capacity. To avoid lawsuits or running afoul of securities regulations and state privacy laws, advisers need prior approval before sharing any financial information with a client's family or friends.

The sometimes tricky issue is when to seek that authorization.

Steven Thomas, former chief compliance examiner for the state of South Dakota, recommends that advisers discuss a third-party disclosure form with all clients when they start a relationship. Raising the topic later, when the client is older, can be difficult.

Back in the mid-2000s, when Thomas was a regulator, most advisers hadn't even thought about the issue, he says. Today, many advisers who regularly work with seniors use disclosure forms, says Thomas, now director of Lexington Compliance, a division of RIA In A Box.

He recalls a broker whose client not only provided a list of people who could be contacted about his account, but also specific instructions on who the broker couldn't speak to -- in this case, an ex-wife.

But many advisers still aren't planning ahead, Thomas says, particularly those who deal with mostly younger clients.

Some attorneys say that an adviser doesn't need permission simply to alert family members about a client's possible memory issues. However, since that conversation is likely to lead to a discussion of finances, it's best to have written authorization beforehand.

And age doesn't need to be the focus when broaching the idea of a disclosure form with a client, says New York-based elder law and estate planning attorney Wendy Sheinberg. A sudden illness or accident could require an



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adviser to reach out to a family member, as could abnormal activity in an account at a time when the client is on vacation and unreachable.

The authorization can be tailored to be as broad or specific as the client wants, but it should be put in writing. It can even be drafted into a limited durable power of attorney, Sheinberg says. However, she notes that any disclosure agreement should be reviewed by an adviser's legal department to make sure it doesn't violate regulations.

While Wells Fargo & Co.'s (WFC) advisers aren't required to ask clients if there's anybody else with whom they would feel comfortable sharing their financial information, the company encourages advisers to do so, says Mary Mack, the head of wealth brokerage services. It's particularly relevant for seniors, she says, "but it's a good practice with clients of any age to ask that question." Wells Fargo requires that prior authorization be in writing.

If an adviser shares financial information without a disclosure form, they're opening themselves up to a lawsuit if the client suffers financial damages as a result, says Bernard A. Krooks, founding partner of Littman Krooks LLP and past president of the National Academy of Elder Law Attorneys.

Krooks suggests confirming and, if necessary, updating all disclosure authorizations once a year, at the same time that beneficiaries are checked.

He recalls a client who once accused her financial adviser of improperly disclosing financial information, although she had in fact signed an authorization years earlier. In the meantime, she'd fallen out with the family member named in the document. That meant the adviser was protected, but his relationship with the client soured a bit, Krooks says.

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