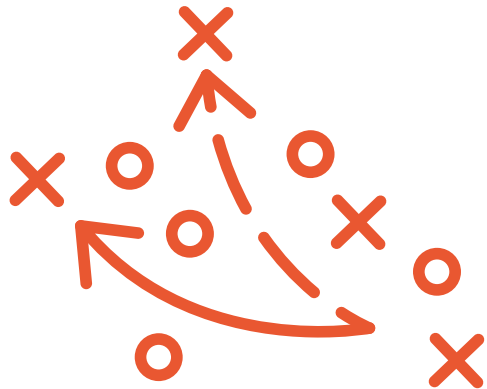




**CENTRALINA**  
Area Agency on Aging

## Powers of Attorney, Guardianships. and End of Life Planning



**Marjorie Brown, Attorney  
Elder Law & Estate Planning  
Solutions**



# Powers of Attorney, Guardianships, and End of Life Planning

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# Agenda

## Powers of Attorney

- Health Care
- Durable Power of Attorney

## Guardianships

## End of Life Planning

- Advance Directive
- Funeral Trust/Preneed





## 2 Basic Forms of Powers of Attorney





# Health Care Power of Attorney





# WHAT IS A HEALTHCARE POWER OF ATTORNEY?



This document allows a principal to appoint a person, who is trusted to follow healthcare directives and to make healthcare decisions for the principal when they are unable.



This document also allows you to further grant/deny certain healthcare treatments or responsibilities to your healthcare power of attorney.



The healthcare power of attorney handles ALL aspects of healthcare. This can include making dental appointments.



# Durable Power of Attorney





# WHAT IS A DURABLE POWER OF ATTORNEY?

- ▶ A Power of Attorney is a legal document whereby the Principal grants an Agent broad powers to handle the Agent's affairs. It includes EVERYTHING except Healthcare.
- ▶ A durable power of attorney remains in effect after the grantor becomes incapacitated and ends with the grantor's death.





# 2018 NC Uniform Power of Attorney Act: Key Differences



Except for in the case of real estate they do not have to be filed at the Register of Deeds to be effective. However it is HIGHLY recommended because financial institutions will usually not accept them unless filed and in order to handle real estate transactions, they must be filed.



The act specifically states revocation procedure for a previous recorded Power of Attorney.



The agent is a FIDUCIARY and held to higher standard of conduct. (i.e. if they are taking money and putting it in their pockets, they can be civilly and criminally liable for breach of fiduciary duty)

# Durable Power of Attorney Can be Limited By

1. Time
2. Scope
3. Wording in the Power of Attorney restricting certain acts; certain acts must be expressly stated in the power of attorney (gifts)





## CAPACITY



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Health Care Power of  
Attorney Capacity =  
Informed Consent

---

Durable Power of  
Attorney Capacity =  
Contractual Capacity

# Benefits of Durable Power of Attorney

Can protect family (agent) from liability of principal's personal debts

- ▶ Signing Hospital paperwork
- ▶ Signing assisted living paperwork
- ▶ Signing skilled nursing paperwork
- ▶ Always a good idea to have an elder law attorney review paperwork before signing

Ability to sign paperwork related to Medicaid application for LTC or SA

- ▶ Designation of Authorized Representative
- ▶ Restructuring assets for spend-down
- ▶ Power of attorney must state can give gifts (especially for spouse)



# Informed Consent vs Contractual Capacity

## Informed Consent

- ▶ Minimum 18 years of age
- ▶ Understanding the risks, benefits of a treatment
- ▶ Risks, benefits of refusing a treatment
- ▶ Capacity to understand information presented and make a decision

## Contractual Capacity

- ▶ Minimum 18 years of age
- ▶ Understand the purpose of their decision
- ▶ Understand the effect of their decision
- ▶ Know with whom they are contracting
- ▶ Power of attorney must state can give gifts (especially for spouse)

CAPACITY CAN BE FLUID





# Definition of Legal Incompetence

## Definition of an Incompetent adult

An adult (age 17 ½ or older) or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition. An adult or emancipated minor does not lack capacity if, by means of a less restrictive alternative, he or she is able to sufficiently (i) manage his or her affairs and (ii) communicate important decisions concerning his or her person, family, and property.

Less restrictive alternative = Durable Power of Attorney, Health Care power of Attorney





# Variety of Guardianships

## **Guardian of the Person**

Entitled to custody of the person and makes the medical and residential decisions for the Ward/Person under the guardianship

Cannot have a person sterilized without an order from the court

## **Guardian of the Estate or Conservator**

Manages the assets of the Ward; pays the bills of the ward. Files accounting with the state each year.

Cannot sell the real property of the Ward without an order from the court

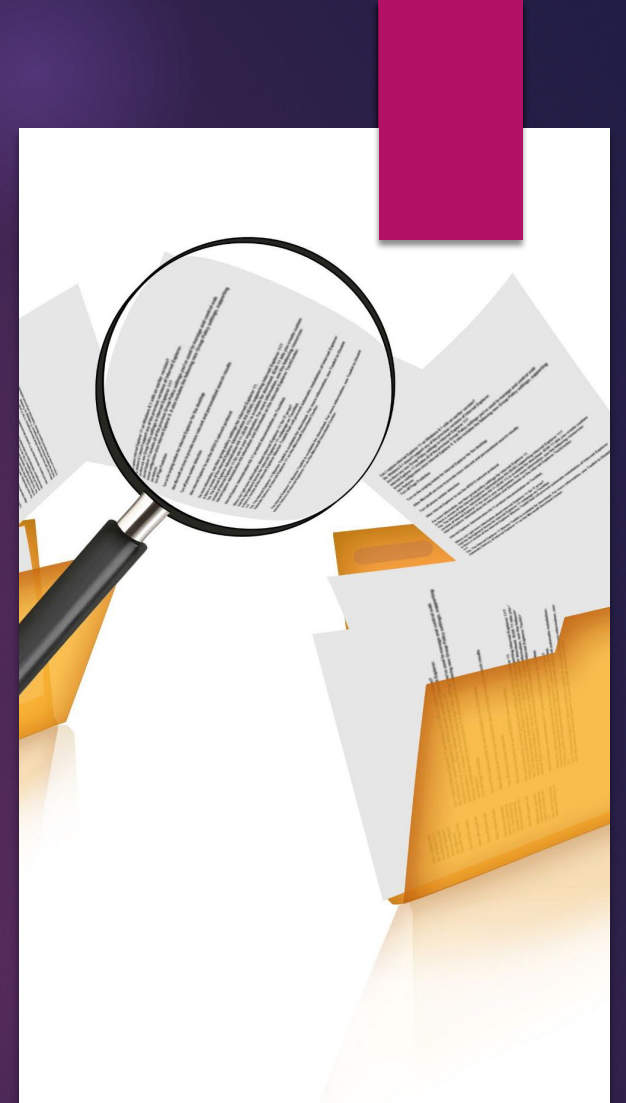
Cannot sell personal property valued at more than \$5000 in one year without a court order

## **General Guardian**

An individual who has both roles of Guardian of the Person and Guardian of the Estate.

## **Limited Guardianship**

Ward retains some rights that are stated by the court and placed in the order.





## Key Points

IF someone does not have capacity to complete a durable power of attorney or health care power of attorney and are at least 17 ½ years old, and one has not already been completed then a guardianship may be necessary

For the SAME benefits as a Durable Power of Attorney – but more annual paperwork and more legal fees

Petition for Adjudication of Incompetence MUST state why a Health Care or Durable Power of Attorney is not possible

# Guardianship and Medicaid

## MA 2230 VI C & D

Do not count resources for an individual applying for Medicaid if they do not have a POA or a guardian and they have been alleged incompetent for at least 30 days; supported by documentation from physician or nurse

- ▶ (specific wording in the Medicaid manual <https://policies.ncdhhs.gov/document/ma-2230-financial-resources/>)
- ▶ Application for adjudication must be filed within 30 days of Medicaid application
- ▶ Or within 30 days of receipt of new asset or resource
- Once a guardian is appointed, guardian will have 30 days to address liquid assets
- Or as long as a court process for sale of real property



A close-up photograph of a person's hand holding a silver fountain pen, writing on a white document. The hand is wearing a light-colored, long-sleeved shirt. The background is blurred, showing what appears to be an indoor setting with some greenery.

## **Essential End-of-Life Documents**

# End of Life Planning



Documents that lists all persons you want to be able to inspect your Medical and Mental Health records.



Generally, anyone you have as a healthcare power of attorney will be listed on this document.

# WHAT IS A HIPAA AUTHORIZATION/WAIVER?



# WHAT IS A LIVING WILL/ADVANCED HEALTHCARE DIRECTIVE?

- ▶ An Advance Health Care Directive is a legal document in which you give written instructions/directives about your whether you want extraordinary measures used to sustain your life, when near death—consider a COVID Addendum/Statement

Can Include:

- ▶ A **declaration of a desire for a natural death** (or living will) is a statement that you desire not to have your life prolonged by extraordinary measures if you have a terminal or incurable illness or if you are in a vegetative state.





# Now that I have the Healthcare POA, Advance Directive, HIPAA Waiver?

- ▶ You should take a copy of your executed Healthcare Power of Attorney, Living Will/Advanced Healthcare Directive, and HIPAA Authorization/Waiver to your doctor's office and have it scanned in your health records.
- ▶ Directives should be readily available to those who will need to make decisions for you in event you are unable to. (i.e. Healthcare Power of Attorney)





# Funeral Trust/Preneed

- ▶ Should be IRREVOCABLE
- ▶ Regulated by the NC Board of Funeral Service
- ▶ Effective spend down of funds for Medicaid approval while maintain funds for a burial or cremation





## END OF LIFE PLANNER

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Start with a 3-inch binder and tabs labeled with Vital Records, Life Insurance and Retirement, Bank Accounts, Health Care, and Ownership.

---

Gather the following documents to place behind each tab:



# TAB 1: VITAL RECORDS

Will

Trust  
documents

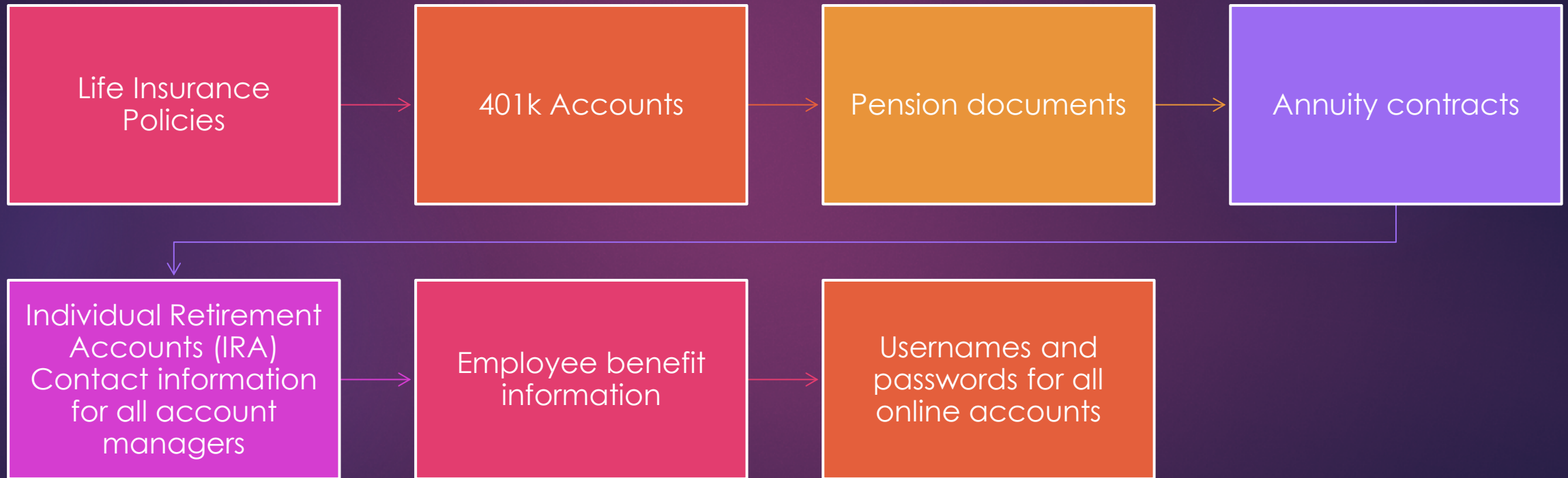
Power of  
Attorney

Marriage  
papers

Divorce  
papers

Military  
discharge  
(DD-214)

# TAB 2: LIFE INSURANCE AND RETIREMENT





# TAB 3:

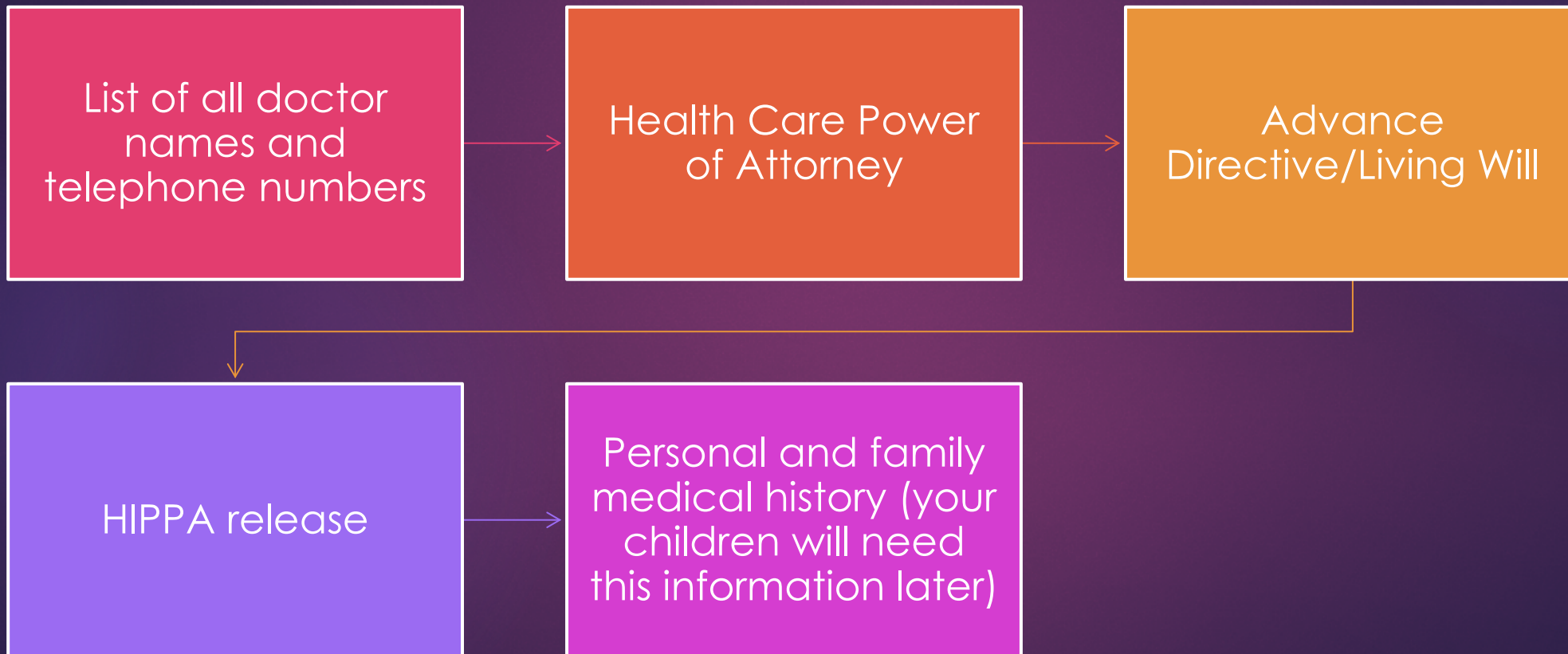
## BANK ACCOUNTS

List of all bank  
accounts

List of safe deposit  
boxes and locations  
– the name of all  
signers for safe  
deposit boxes

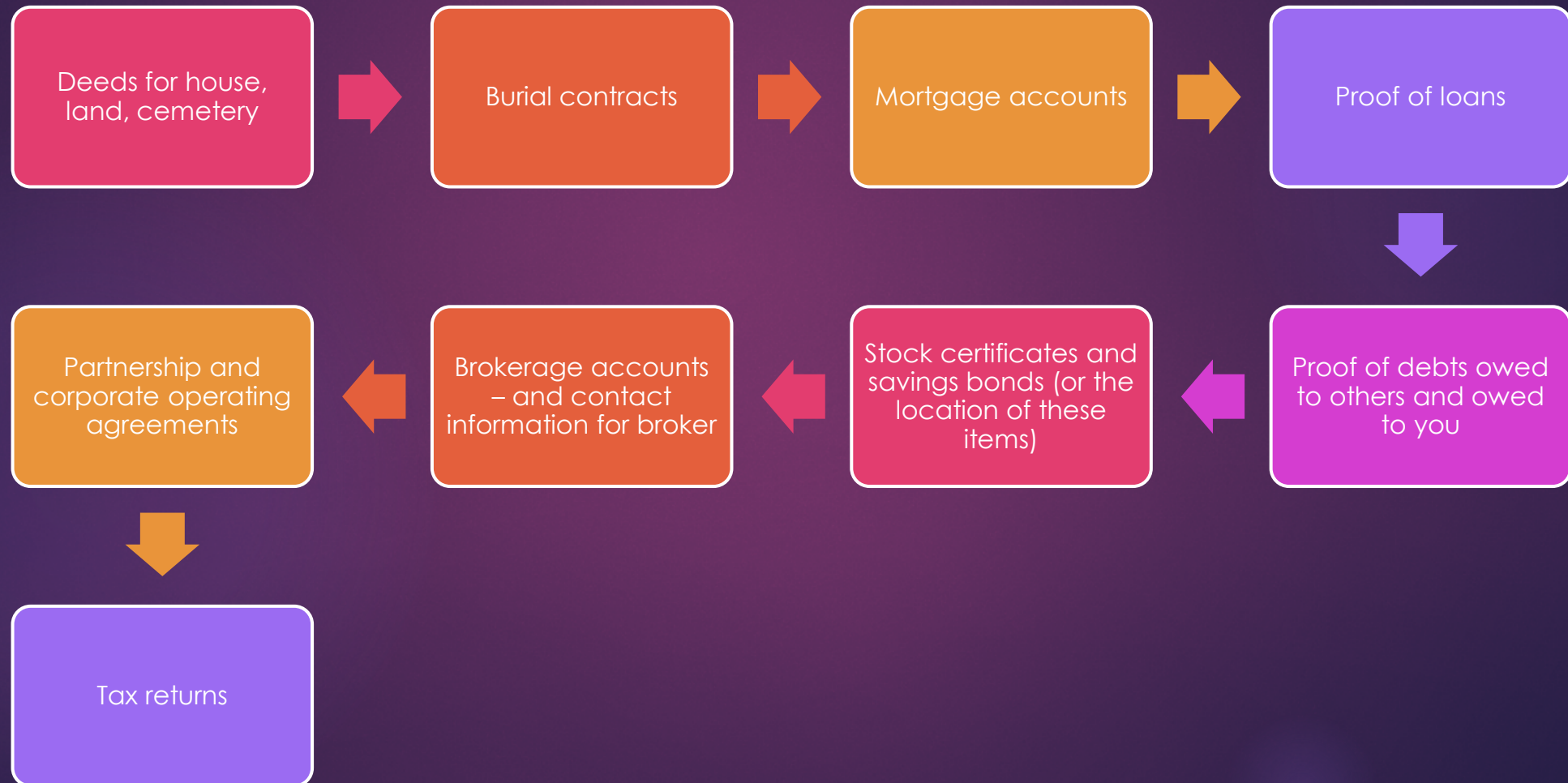
List of all usernames  
and passwords for  
accounts

# TAB 4: HEALTH CARE





# TAB 5: OWNERSHIP



# LAST STEP

Gather any other additional documents you may feel would help your family and place them in the section you feel is appropriate.



Place the notebook in a location that is easily found and TELL your family where the notebook is located.



# Our competition

- ▶ Seek feedback
- ▶ Reflect on performance
- ▶ Explore new techniques
- ▶ Set personal goals
- ▶ Iterate and adapt

## Consistent rehearsal

- ▶ Practice makes perfect, so strengthen your familiarity with the presentation

## Refine delivery style

- ▶ Pacing, tone, and emphasis

## Timing and transitions

- ▶ Aim for seamless, professional delivery

## Practice audience

- ▶ Enlist colleagues to listen & provide feedback



The background is a dark purple gradient with a repeating pattern of light purple speech bubbles, each containing a dark question mark. A solid pink rectangle is positioned in the top right corner.

QUESTIONS ?



Thank You!







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# THANK YOU

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