

Elder Law: Not Just for the “Elderly”

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“Elder law” as a law practice area is relatively new. As more and more of us reach our 60’s, 70’s, 80’s, and beyond, we have specialized legal needs. Many these concerns overlap and can be addressed with sound estate planning, as describe elsewhere [insert a link to the Estate Planning article]. However, there are additional concerns as we grow older.

Even if you are not within that age group, you may find yourself in the “sandwich generation” – those of us simultaneously raising children and having to care for older relatives. If you are in this group, getting a handle on elder law planning will help you also (not just as a care giver, but as a future care recipient).

Nursing Homes and Home Health Care are Costly

As people age, they tend toward more illnesses requiring more care. Eventually, many people age and are no longer able to care for themselves or perform activities of daily living we take for granted. In-home health care for those able to remain in the home are one option. For those who can no longer remain in their home by themselves, nursing homes and rehabilitation centers are a common destination.

It is no secret that health care expenses have long been one of the fastest rising costs in our economy, frequently outstripping the rate of inflation by a significant margin. It is not uncommon for nursing home expense on Long Island, New York, to reach – and exceed — \$10,000 per month (not a misprint! — TEN THOUSAND DOLLARS A MONTH!).

How to Pay for It

If nursing home or home health care is required, how will it be paid? Do you have private funds that can support you in a nursing home for, say 10 years (120 months) at \$10,000 a month (assuming the cost won’t rise – and we know it will). Another option is long-term care insurance – these policies, which can be expensive, need to be researched and chosen carefully. As a tool for planning elder care needs, long-term care insurance is one strategy.

Medicaid is also a source for paying the costs of nursing home or home health care. What is Medicaid? It is a health program for eligible individuals and families jointly funded by the U.S. government and states. It serves a varied clientele, including children, senior citizens, and the disabled. There are strict limitations on eligibility, including income requirements and requirements limiting a person’s assets or resources.

The purpose of Medicaid planning is enable a person to get the nursing home or home health care they need without impoverishment beforehand. In the past, many elderly made property transfers to reduce their assets and resources to the point where they

could qualify for Medicaid. Restrictions on these transfers for Medicaid qualifications purposes have tightened in recent years, most recently with the federal Deficit Reduction Act of 2005, but there are available strategies. The advantages of these strategies must also be balanced against potential negatives, such as income tax implications.

While it is possible for a client no matter the age to benefit from some elder law planning, the earlier it is undertaken and strategies are implemented, the better. So, even though you may not consider yourself "older," early asset protection can help your spouse and loved ones.

Other Areas that Affect Older Persons

Nursing home care and Medicaid planning are significant aspects of elder law. However, elder law also includes several other areas, some of which affect you, even if you are not elderly.

One example of this is in housing. This includes age discrimination in housing. It also includes housing conversions (e.g., single family to mother/daughter) to enable a family member to be on site for an elderly person.

Another is age discrimination. The federal Age Discrimination in Employment Act offers protection from discrimination to persons age 40 and over.

Let us Help

Our firm can offer you the expertise to navigate these and other areas of elder law planning to meet your needs. Please contact us if you, or an older relative, need help with elder law issues.

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