

SOUTH CAROLINA BAR
Elder Law



Senior citizens must deal with many legal issues. In recent years, there has been a growing awareness of the need to address these issues, and there is now an area of practice known as elder law. Elder law is specifically designed to address the particular concerns of older citizens. By looking at the whole picture, before a crisis occurs, a plan can be developed to carry out your wishes to the greatest extent possible.

WHAT ARE SOME OF THE CONCERNS YOU, THE CLIENT, MAY HAVE AND HOW CAN THEY BE ADDRESSED?

- **Long term care planning**—

You may need help in assessing long term care needs and getting recommendations to ensure your wishes are carried out.

- **Spousal impoverishment issues**— One of the greatest concerns is what will happen to your spouse should long term nursing home care be required. Recent changes in federal law

provide some protection of assets for the benefit of the community spouse. Planning ahead will allow you to maximize the amount that can be protected.

- **Medicaid qualification**— If it is likely that you will need Medicaid benefits to cover the cost of long term nursing home care, it is important to know the qualification criteria and to plan accordingly. There are strategies that can be used to reduce countable resources, protect assets for children and speed up eligibility for Medicaid.

- **Disability planning**— Should you become incompetent, someone must handle your financial affairs and make personal care and health care decisions for you. To plan for such circumstances, a durable power of attorney for property and a health care power of attorney are the most important tools. You appoint an agent to act on your behalf. This agent has the legal authority to make decisions for you. A living will can also be used to express your wishes concerning withholding or withdrawal of life support.

- **Conservatorships and guardianships**— In the event that you become incapacitated without appointing an agent under a durable power of attorney, it may be necessary to have a conservator appointed to manage your assets and a guardian appointed to make decisions for you.

- **Supplemental Needs Trusts**— If you are providing for a disabled adult child, you will want that child to be protected in case you die or become disabled. One way to ensure continued security for the disabled child is to establish a

The key is to plan for the future while you are still able to express your wishes. Then you can be comfortable knowing that, in the event of a crisis, those you love will be protected and will also know how to protect you.

Supplemental Needs Trust. This trust is intended to provide extras to the child without jeopardizing the child's eligibility for government benefits.

- **General estate planning**—

Like everyone else, you need a current will to carry out the disposition of your estate in accordance with your wishes.

- **Reverse mortgages**—

If you own a home and wish to remain at home, the home may be used as a source of additional income to make repairs and accommodations or to help pay for in-home care. Unlike the standard mortgage, no repayment is required until you die or no longer occupy the home.

- **Estate administration**—

When you die, your estate is usually administered through probate court. Legal assistance may be helpful in probating the will, resolving creditor claims, transferring title to real estate, filing estate tax and income tax returns and making distributions to your heirs.

- **Nursing home issues**—

When you or a family member needs nursing home care, there are numerous admission documents to be signed. It is helpful to have a lawyer knowledgeable in this area review the documents and advise the client before signing. After admission to a nursing home, there are often issues related to the patient's rights and the nursing home's obligations to the patient and family. Sometimes these issues revolve around the quality of care being administered or the method of payment for care. There are numerous state and federal laws in place to protect the rights of the nursing home resident, to assure quality care and to prevent discrimination based on whether a resident is paying privately or receiving government assistance. Many people are unaware of their rights and are therefore unable to protect themselves when the nursing home takes a position adverse to them.

Many people wait too long before seeking legal advice. When planning for disability, it is important that the plan be made early while you are still competent to express your wishes regarding care. A prime example of this is the difference in cost between a durable power of attorney and a conservatorship.

While you are competent, you can sign a durable power of attorney selecting the person you wish to act on your behalf

for about one-tenth the cost of having to bring a conservatorship action after you are incapacitated. Even more important than the cost consideration is the fact that you are no longer in control of the selection process after incapacity. In the Medicaid planning area, substantial sums of money can be saved by planning well before the need for nursing home care arises.

General information:

South Carolina Bar Lawyer Referral Service

If you need a lawyer, contact the South Carolina Bar Lawyer Referral Service from 9 a.m. to 5 p.m. Monday through Thursday. Call 1-800-868-2284; if you are in Richland or Lexington Counties, call 799-7100.

Additional Legal Tips Available

To access prerecorded information on other legal issues, call the South Carolina Bar's LawLine. In the Columbia area, call 771-0011. From anywhere else in South Carolina, call 1-800-521-9788. Follow the recorded instructions.

Provided as a public service of the



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