

WHAT IS ELDER LAW?

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Elder law is a specialized area of law that focuses on assisting older individuals and those with disabilities preserve their dignity, protect their assets, and make good decisions despite increasingly complicated laws. This specialty encompasses such areas as planning and paying for long-term care, asset preservation, housing options, disability planning, estate planning including the use of financial and health care durable powers of attorney, and when necessary, the involvement of the probate court.

HOLISTIC APPROACH

Holistic eldercare planning focuses on enhancing and extending the quality of life and quality of care for the older individual. Ideally, care planning and advocacy is fully coordinated with the client's legal and financial needs. Holistic planning often incorporates more involvement with the client's support or care network – family members, trusted advisors, care providers and others. The overall goal is to meet the client's broad range of needs, including the social, psychological, medical care, and financial needs, as well as the client's legal needs.

ESTATE PLANNING FOR THE OLDER CLIENT

Advanced planning, including the use of financial and medical powers of attorney, can help the elder or disabled client avoid the need for court intervention, loss of privacy and dignity, and save time, money and emotional stress. Further, advanced planning, such as the use of a Revocable Living Trust or Will, may also give the older client peace of mind to know that the client's estate will be properly distributed at death.

A Durable Power of Attorney is used to give authority to an Agent to act on the client's behalf with respect to finances and legal decisions, avoiding Probate Court. A Durable Power of Attorney can be effective immediately or it can be designed to go into effect when the client becomes disabled. It is important to note that special powers, such as the power to qualify the client for Medicaid, are typically included in the ElderCare Durable Power of Attorney.

A Power of Attorney for Health Care (Patient Advocate Designation, Living Will) is designed to empower a Patient Advocate to help to carry out health care,

personal care and end-of-life medical decisions for the patient when the patient is no longer able to make those decisions.

PROBATE COURT

Probate is a Court process that can protect the person (i.e., Guardianship), protect the assets (i.e., Conservatorship/Protective Order), or distribute assets after death (i.e., Death Probate). Typically, when advanced planning is not done or is insufficient, it is necessary to utilize the Probate Court to grant a Conservator or a Guardian the power to manage the affairs of the incapacitated individual. However, it is possible to avoid the need for the Probate Court with proper planning. Although most individuals would prefer to stay out of the Probate Court, it can be invaluable when proper planning was not done in advance.

MEDICARE AND MEDICAID BASICS: LONG-TERM CARE

Long-term care costs are not covered by private health insurance. After a three-night hospital stay, Medicare pays for up to 100 days of skilled care in a nursing home. The majority of long-term costs are either paid privately by the resident and the resident's family, long-term care insurance or are paid by Medicaid.

Eligibility for Medicaid is determined based on strict income and asset rules. However, typically a single person can only have \$2,000 in countable assets and certain excluded assets such as the individual's personal residence, one car, personal effects and a pre-paid funeral contract. There are various planning techniques that may allow an individual to protect more assets. However, the Medicaid rules frequently change. It is wise to seek the advice of an elder law attorney when engaging in any asset preservation strategies.

Mr. Mall practices Holistic ElderCare and Estate Planning at Mall Malisow & Cooney, P.C., in Farmington Hills, Michigan. For more information about Elder Law, Care Advocacy, Estate Planning or any of the information contained in this article, contact Mall Malisow & Cooney, P.C. at (248) 538-1800.