



ELDER LAW: 10 SUBJECTS YOU NEED TO ADDRESS WHEN PLANNING FOR YOUR SENIOR YEARS

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1. Safeguard Your Assets.

Two key parts of elder law planning are (1) to protect your assets from the high costs of long-term nursing home care, and (2) to organize your estate so you benefit from Medicaid and other assistance programs. You do this by creating an elder law plan far in advance of when you need it, taking care not to violate any of Medicaid's rules that could result in penalties or ineligibility.

You have probably heard that you need to "spend down" nearly all of your resources before you are eligible for Medicaid. You may not know that there are special regulations that apply to this spend-down. What's more, there are special provisions relating to your spouse's assets.

Your elder law attorney will explain these complex rules to you in simple terms and describe how you can protect your assets and income. This will help you overcome any fears you have about this necessary and complicated process.

2. Protect Your Home from Spend-Down.

Many people mistakenly believe that if you transfer your home into a child's name, it will remove the home from your countable assets. However, this can create a substantial period when you are not eligible for Medicaid benefits if the date of the transfer falls within the "look-back period." In addition, many people don't realize that if you transfer your home, it loses its status as an exempt asset and may be subject to spend-down requirements at the home's fair market value.

In many cases, you are in a much better position when you leave the home in your name, retaining it as an exempt asset, which you can enhance without disqualification. Work with an elder law attorney to meet your spend-down requirements, while protecting your exempt assets.

3. Plan for Nursing Home or Other Long-Term Care.

Few people want to enter or put a loved one into a nursing home; however, at times, you may have no other choice. As a result, you must consider nursing home care, even if it's a last resort. Because nursing home care is so costly -- usually between \$7,000 and \$8,000 per month in Pennsylvania -- you must consider its impact on your finances. An elder law attorney can explain how best to plan your estate so you take advantage of public money to pay long-term care costs, as well as how to protect your spouse from becoming destitute. It's important that you get advice from an elder law attorney **before** you sign any nursing home documents.

4. Plan Carefully to Take Full Advantage of Medicare and Medicaid.

Medicare is a federal health program for people who are elderly and disabled. It provides general medical insurance, as well as temporary coverage of hospital, nursing home care, home health care, hospice services, and other skilled care. To be eligible, you must be at least 65 years of age. If you receive Social Security benefits, you are entitled to Medicare and hospitalization insurance (Part A). Plus, you have the option of enrolling for general medical insurance, Part B.

Medicaid is a federal health program for people who have limited assets. It is administered by the states, with each state having its own regulations. Medicaid is a complete medical insurance program that covers long-term care, including nursing home care and comparable services. To qualify, you must meet both financial and medical requirements.

Your income and resources will be carefully analyzed. This includes joint accounts and assets in the name of your spouse. If you give away assets or transfer property for less than fair market value, you will be subject to a penalty period during which you are not eligible for Medicaid.

You are wise to consult an elder law attorney before you need these programs so you plan your estate to your maximum advantage and minimize any penalties that could affect your eligibility.

5. Protect Your Spouse from Poverty.

Many people fear that their spouse will be left destitute due to the high cost of nursing home care. Pennsylvania has special rules to protect your spouse by allowing him or her to keep a certain amount of your resources and income to meet his or her needs.

The earlier you consult with an elder law attorney and create your elder law plan, the better you will be able to protect your assets for your spouse's benefit. The longer you wait the fewer options you may have.

Do not rely on the advice of your local social services agency or nursing home admissions directors. Protecting your spouse is too important to depend on the advice of people whose job includes making sure you spend down your estate. Instead, consult an elder law attorney who represents only **your** interests.

6. Guard Against Elder Abuse.

Many people take advantage of seniors. Elder abuse can take the form of neglect, or physical or psychological mistreatment. Family members and caregivers often take advantage of seniors under the guise of care and concern. Transferring assets and changing beneficiaries on documents may cause hardship and serious problems for the elderly person. The result is often bitter quarrels and broken relationships among family members and friends.

An elder law attorney's guidance and planning can significantly reduce the potential for such elder abuse. And while a senior citizen can take legal action against the abuser through the court system, careful advance planning can prevent many stressful, expensive problems.

7. Prepare for Your Special Needs.

Seniors and family members often prepare powers-of-attorney for use when the senior can no longer make decisions for himself. But in many cases, mere powers-of-attorney are not enough. If you need to provide for the support of a disabled child, or an aging parent or loved one, ask your elder law attorney about a trust.

Trusts are a highly effective tool when you're planning for someone's disability. And, depending on what you want to accomplish, your elder law attorney can choose from a variety of legal tools. These include revocable living trusts, family trusts, spendthrift trusts, credit-shelter trusts, life insurance trusts, supplemental needs trusts and irrevocable trusts.

8. Plan for Physical and Mental Incapacity.

If you become physically or mentally incapacitated, someone you trust should have the clear legal authority to make decisions on your behalf. You may give this person a wide range of powers, or limited powers to perform specific acts. One simple, inexpensive approach is to appoint someone you trust as your attorney-in-fact by signing a power-of-attorney.

You should have two powers-of-attorney: a medical power-of-attorney for your health care decisions and a general power-of-attorney for your financial affairs, such as paying bills, managing property, and depositing checks.

You must be mentally competent to execute a power-of-attorney, so don't wait until an illness or injury occurs. Prepare your powers-of-attorney now, while you can still make informed, intelligent decisions. By having powers-of-attorney in place, you make it much easier for your representative to act quickly on your behalf. Plus, you avoid the stress, delay and cost of a guardianship proceeding.

9. Make Your Own End-of-Life Decisions.

Most people don't want to be kept alive on a life-support machine or by getting nutrition through feeding tubes. Yet, state law is very specific about how you make your feelings known. You use a living will, which is your statement to the world that you do not want to be kept alive through these measures.

A living will applies when you are terminally ill and death is imminent, or when you are in a vegetative state with no reasonable prospect of recovering. In your living will, you appoint someone you trust to make health care decisions for you when you can no longer make them for yourself.

State law sets out exactly what should be in your living will. You are wise to ask an elder law attorney to prepare your living will so you don't risk making mistakes, which could have terrible consequences.

10. Choose and Work With an Elder Law Attorney.

As you can see, nearly every step in elder law planning requires the help of an experienced elder law attorney. If you try to do your own elder law planning, you risk making yourself or your spouse ineligible for government benefits, such as Medicaid.

Elder law planning involves several areas of law, including estate planning, probate law, tax law, marital law, real estate law and Medicaid law. What's more, elder law involves understanding your legal rights and options -- and taking action at the most opportune time, before you face penalties and may no longer be eligible for certain programs.

This is why it's smart to consult with an elder law attorney at the beginning of this process. Then you and your attorney can create the elder law plan that works best for you.

Remember, the sooner you create your elder law plan, the more options you have. So you gain nothing by waiting -- and you could lose a lot.

You're Invited to Call or E-mail Today.

“If you have questions regarding any of our firm’s practice areas or attorneys, please don’t hesitate to call. We pride ourselves on being a small firm -- with the highest level of knowledge, skill, judgment and experience. And we’ll be pleased to help you in every way.”

-- Ralph Minto

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