

SOUTH CAROLINA BAR

# Elder Law

Planning for the elderly and people with disabilities



**S**enior citizens and those with disabilities 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 and those with disabilities. By looking at the whole picture, 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 care be required. Federal and state laws 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 care or to provide for basic health 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 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 health care decisions for you.

• **Supplemental Needs Trusts** — If you are providing for a disabled family member, you will want that person to be protected in case you die or

become disabled. One way to ensure continued security for the disabled person is to establish a Supplemental Needs Trust as part of your estate plan. This trust is intended to provide extras to the person without jeopardizing his or her eligibility for government benefits.

• **Special Needs Trusts** — When a disabled person needs to qualify for Medicaid or maintain Medicaid eligibility and receives a personal injury settlement or an inheritance, these funds can often be placed in a Special Needs Trust; which can be used for the benefit of the disabled person without causing a loss of Medicaid benefits. Because the rules are complex, you will need a lawyer to guide you through the process.

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

• **Government benefits** — It is important to know what government benefits are available to you. These could include Social Security retirement benefits, Social Security Disability, Supplemental Security Income, Medicare, Medicaid, food stamps, housing subsidies and VA benefits. Consulting with a lawyer who is knowledgeable in these areas may allow you to access assistance more readily.

• **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 a person 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 relating to 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.

### **WHY DO YOU NEED AN ELDER LAW ATTORNEY?**

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.

By planning ahead and consulting an elder law attorney, you may be able to save substantial sums of money, protect family property and access additional benefits or services to meet your needs.

## General information:

[www.scbar.org/public](http://www.scbar.org/public)

The South Carolina Bar is dedicated to advancing justice, professionalism and understanding of the law. Please visit [www.scbar.org/public](http://www.scbar.org/public) for information on free services offered to the public, including legal clinics, publications and other Bar programs and services.

### 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 Friday. Call 1-800-868-2284; if you are in Richland or Lexington counties, call 799-7100. Access the Lawyer Referral Service online at [www.scbar.org/lrs](http://www.scbar.org/lrs).

### Additional Legal Tips

To access the answers to frequently asked questions on other legal issues, please visit [www.scbar.org/public](http://www.scbar.org/public) and click the link to "LawLine."

Provided as a public service of the



P.O. Box 608 | Columbia, SC 29202  
(803) 799-6653 | Fax: (803) 799-4118  
[www.scbar.org](http://www.scbar.org)

Copyright © 2007 South Carolina Bar  
Revised 2007