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Elder Law: Insight from an Elder Law Associate

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MASWA presentation

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Learning Objectives

- Compare and contrast Elder Law and other legal practice areas
- Identify clientele who can benefit from an Elder Law Attorney's expertise
- Review the process, role players, and costs associated with engaging an Elder Law Attorney



Estate Planning Attorneys

Estate planning generally focuses on the transfer of wealth from one generation to the next

- What happens to your assets when you die?

Estate planning may also include tax planning

- What are the tax implications upon my death or the death of my loved one?

Estate planning may also include disability planning

- What do my loved ones need to ensure they can help me with my end of life care decisions and finances?

It's all about PRESERVATION



Elder Law Attorneys

Elder law traditionally focused on “Medicaid” planning (a/k/a Medical Assistance planning)

- Review finances
- Evaluate and revise estate planning documents
- Determine suitable Medical Assistance plan
- Implement Medical Assistance plan
- Apply for Medical Assistance
- Prevent or reduce Medical Assistance estate recovery

It's all about PRIORITIZATION



Role of Elder Law

- “Under this holistic approach, the elder law practitioner handles general estate planning issues and counsels clients about planning for incapacity with alternative decision making documents. The attorney would also assist the client in planning for possible long-term care needs, including nursing home care. Locating the appropriate type of care, coordinating private and public resources to finance the cost of care and working to ensure the client's right to quality care are all part of the elder law practice.”



National Academy of
Elder Law Attorneys, Inc.



Life Care Planning Overview

- A unique, relational approach to Elder Law
- Goal: Promote health, safety, well-being, and quality of life of elders and their families
- An interdisciplinary approach to the practice of Elder Law that helps families respond to challenges of chronic illness or disability of an aging loved one
- Removes the “a la carte” service and replaces it with ongoing representation

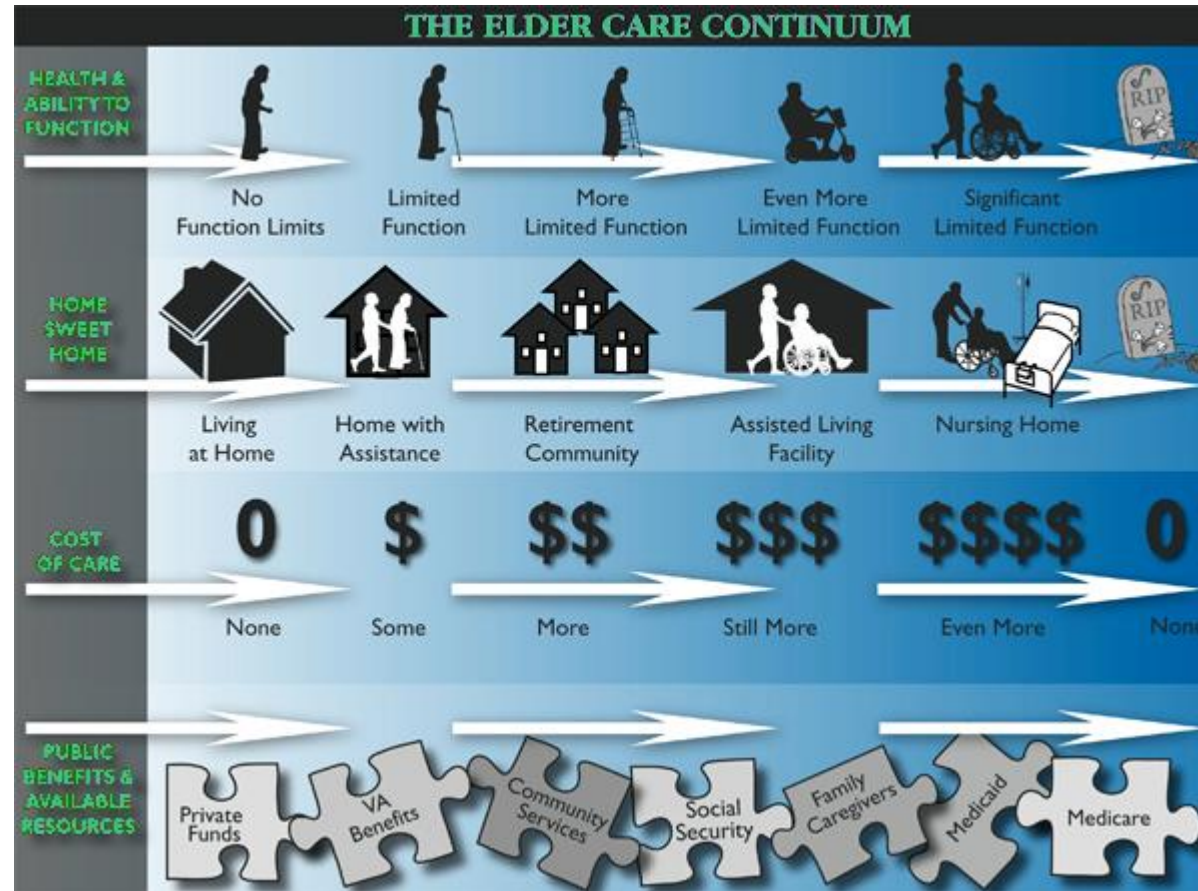


Goals of Life Care Planning

- Make sure the elder receives appropriate care to maintain the quality of life he or she desires
- Locate public and private sources to help pay for long-term care costs
- Offer peace of mind for families to ensure the best choices are made for their loved ones while maximizing and protecting family resources



Identifying a person in need of Elder Law expertise



It's time to
visit when...

- “The Five D’s”
 - Diagnosis
 - Decline
 - Death
 - Divorce
 - Decade
- Values/ Life Changes
 - Retirement
 - State-to-State moves
 - Receipt of Inheritance
 - Desire to Gift
 - Children/Grandchildren/Great Grandchildren



Common Client Concerns

- Availability of quality health care
- Ability to live independently in least restrictive environment
- Maintain mobility and control of decision-making
- Going broke from expensive long-term care costs
 - *Protect spouse and maximize legacy for children
- Isolation from family, friends, or community
- Changes to the family dynamic



Statistics

- The lifetime probability of becoming disabled in at least two activities of daily living or of being cognitively impaired is 68% for people age 65 and older
**Family Caregiver Alliance*
- Among the population aged 65+, 69% will develop disabilities before they die, and 35% will eventually enter a nursing home
**National Center on Caregiving*
- 75% of individuals over 65 are managing at least 1 chronic condition and 50% of those over age 65 are managing at least 2 chronic conditions
**Agency for Health Care Research and Quality*



Statistics

- In 2017, *Genworth* reported the average monthly costs of care in Minneapolis area were:
 - \$5,148 for home health care
 - \$4,506 for a one-bedroom ALF
 - \$8,499 for a private room SNF
- 1 out of 8 Americans age 65 or over has dementia. 1 out of 2 Americans over 85 has dementia.
 - *Alzheimer's Association*
- Every 8 seconds someone turns 65 in America
 - That equates to over 10,000 per day
 - That equates to almost 4,000,000 per year



Critical Questions When Planning

- How do you get the best quality care no matter where you reside and maintain or improve quality of life?
- How do you access all benefits available to you and understand which benefit provides each service?
- How do you protect the maximum amount of resources and income so that long-term care costs do not consume lifetime savings?



An Elder Law Attorney's Client

- Essentially, an Elder Law client falls into one of two categories:
 - 1) Ideal: They have the time, money, and trusted family members/advisors to institute a plan AND they are willing to do so.
 - 2) Emergency: They have minimal assets available to pay for ongoing care needs and must apply immediately for Medical Assistance or other benefits. This client may or may not have individuals willing or able to play a role in regard to planning for incapacity, or they may already be incapacitated in a way that limits the ability to institute proper planning.



Life Care Plan



Life Care Planning Team

- Elder Law Attorney
- Life Care Coordinator
- Public Benefits Specialist
- Authorized/appointed loved ones
- Care Providers
- Medical Professionals
- Professional Fiduciaries (if needed)
- Financial Advisors
- Accountants



Life Care Coordinator

The Role of a Life Care Coordinator:

- Help clients and families identify care problems and assist in solving them
- Assist families in identifying and arranging in-home help or other services
- Review medical issues and provide referrals to other geriatric specialists to provide appropriate care within your budget
- Coordinate with medical and health providers
- Provide education, guidance, and advocacy
- Offer counseling and support



Other Team Members

- Placement Assistance (+/-)
- Death Doula
- Therapist
- Support Group
- Medicare Insurance Specialist
- Funeral preplanner | Celebrant



The Costs of an Elder Law Attorney

- Attorneys bill in a variety of ways:
 - Hourly
 - Flat Fee
 - Contingent
- Elder Law Attorneys primarily bill hourly or via flat fee
- Life Care Planning is a new, cutting-edge model
- The fee structure is set forth in a “Retainer Agreement”



Free Consultations

- A common legal marketing tool for Estate Planning and Family Law Attorneys
- Consultations are an information gathering process with legal advice limited until the client “signs on”
- Maser, Amundson & Boggio streamlines this process through a client questionnaire a dedicated intake specialist



The Process

- Intake/First Contact
- Client Questionnaire/ Attorney Assignment
- Initial Office Conference
 - Develop the plan
 - Discuss fees and sign retainer
- Document creation and draft review period
- Office Conference to execute and deliver original documents
- MA/VA applications completed as necessary
- Ongoing engagement and plan maintenance



The Questionnaire

- Why so much personal information?
 - The MOST DANGEROUS aspect of developing a Life Care Plan is not knowing of all the details, including:
 - Family health history and longevity
 - Total assets and debt
 - Family conflict
 - Irresponsible or troubled family members
- The ultimate goal is to LIMIT UNCERTAINTY



The Dangers of DIY

- Online forms are becoming more frequently available.
 - Generic (unclear jurisdiction and creation date)
 - Improper forms or execution can make invalid
- Inflexible documents that cannot be tailored to reflect specific wishes or unique situations.
- Scenarios that absolutely require an attorney:
 - Blended families
 - Estate taxes
 - Disabled family members



MAB
specific- benefits

- A “large” firm for the Elder Law practice area
- Experienced and reputable
- Membership in:
 - National Academy of Elder Law Attorneys
 - Academy of Special Needs Planners
 - Life Care Planning Law Firms Association



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Thank You!

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