

THE NEW YORKER'S GUIDE TO ELDER LAW PLANNING

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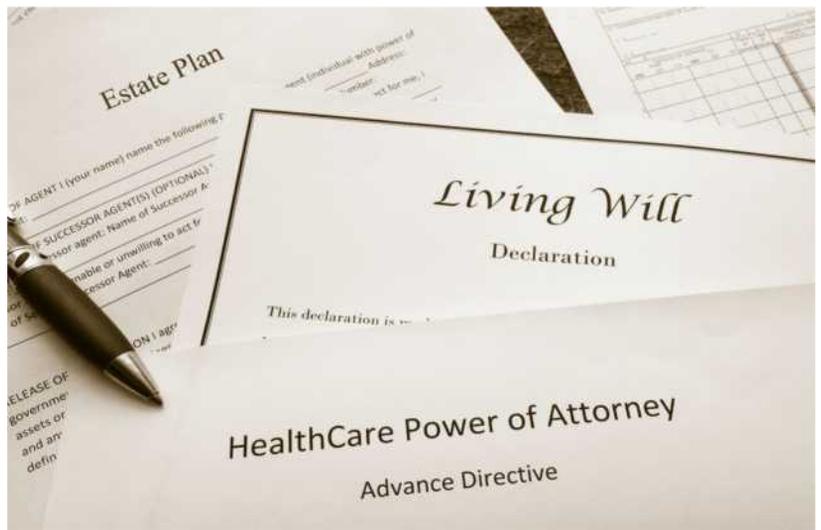
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WHAT IS ELDER LAW?

Elder law is an area of the law that helps people who are planning to retire, people with disabilities, people who may need Medicaid services or people who are worried about Nursing home costs. New York Elder law attorneys are specialists in the needs of seniors and elders regarding estate planning, asset protection, Medicaid planning and family law in the State of NY. As our loved ones age and become seniors, we have many questions around finances, assets, estates, health care and long-term care, to name a few.



WHAT DOCUMENTS SHOULD BE EXECUTED IN MY ELDER PLAN?



Elder Law attorneys can help set up advance directives that are best for you. Some of these documents include a:

Health Care Durable Power Of Attorney: this document will ensure that a trusted individual of your choice will have the ability to make medical decisions on your behalf. If you're currently receiving care, we highly recommend that you check with your doctor to see if they can suggest any criteria when it comes to picking a healthcare power of attorney. A licensed attorney can also help you properly draft your documents to ensure a smooth transition if you're no longer able to make medical decisions for yourself.

Living Will: this document can help you control your medical at the end of your life. In addition to providing instructions for your end-of-life care, a living will outline exactly the medical procedures that you approve of when it comes to trying to preserve your life. With a living will you're able to control what happens to you in the event that you're unable to voice your preferences.

Will/Revocable Trust: Most people draft wills which explain how they'd want their assets to be handled at death, which works well for small and modest estates. However, because wills must go through the process, which often takes several weeks to many months to complete, some prefer to use a revocable trust which allows their assets to completely bypass the process.

6 ELDER PLANNING MISTAKES

#1: Not Having A Plan

In any case, you do not want to leave your estate in the hands of the state. This can result in a family member receiving assets that you would not have passed down to them had it been your choice. Avoiding this is as simple as making sure you have some sort of estate plan, whether or not you hire a professional, that will prevent such a thing from happening.



#2: Having Only A Will

While a will is certainly a useful document to have as a part of your estate plan, it should not be the only one. It is recommended that one also has a trust in place, as trusts do not have to go through probate. Probate court is costly and takes at least a few months to a year to finish, so it is definitely favorable to skip the process if you are able to.



#3: Not Planning For Disability

Although we all wish to be healthy up until the very last minute of our lives, that does not always coincide with reality. In elder law, one should consider planning for the possibility that they one day may be incapable of making their own decisions. In that case, having a power of attorney and health care proxy is essential.



#4: Not Considering The Possibility of Long-Term Care

In accordance with planning power of attorney and health care proxies, one should understand that they very well may one day end up needing long-term care, such as an assisted living facility. Nursing homes can be very costly, ranging anywhere from \$12,000 to \$18,000 per month. To lessen the financial burden of having to pay such high rates, one can obtain long-term care insurance.



#5: Naming A Minor or Estate Beneficiary

As mentioned before, it may be in your best interest to avoid the probate process for many reasons. If a grantor names a minor as a beneficiary, the assets that are to be inherited will have to go through probate. The same will occur if you list "estate" as a beneficiary in an IRA or life insurance policy. If you'd like to ensure that a minor inherits certain assets, it is best to leave them those assets in a trust to avoid probate.



#6: Not Updating Your Plan

The final, but the most important mistake that one can make in elder law planning is not updating your estate plan on a consistent basis. The law can change, as can your financial situation and life circumstances in general.



6 COMMON ELDER PLANNING MISTAKES YOU SHOULD AVOID

It is important to make sure that you avoid some of the most common mistakes when it comes to elder planning. Not having an estate plan is the most common mistake, as well as having only a will, not planning for disability, not considering the possibility of long-term care, not planning for disability, and lastly not updating your plan. For these reasons, it is important to meet with an elder law attorney to make sure that your elder plan has no flaws

We highly recommend that you seek out a licensed attorney to handle your estate/elder planning needs to ensure a smooth and seamless retirement and transfer of assets upon your death.



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HOW CAN AN ELDER LAW ATTORNEY HELP?

As our loved ones get older, and become seniors, questions and concerns about assets, estates, finances, health care, and long-term care do arise. Elder Law is a complex issue and is an area of law that is always evolving. It is important to meet with an experienced Elder Lawyer who can help you address concerns such as:

- What will happen to my assets, and what is the best possible way to carry out my estate plan?
- Should I prepare a will, a trust or any other estate planning document?
- You are concerned with the current long term care plan for yourself or your elders.
- How will your long-term care be paid for?
- Who will take care of you if you're no longer able to do so?
- How can I assure that my wishes will be carried out if I become incapacitated, disabled, or unable to care for yourself?
- What long term care options are best for you and unique to your situation?



BENEFITS OF ELDER PLANNING

An experienced Elder Planning attorney can help make sure you:

- Advise your elders about comprehensive Financial Planning in order to avoid paying for a Nursing Home, which can become very costly.
- Create a Pooled Income Trust, that way your elderly can qualify for Medicaid while still having an income.
- Prepare an estate plan, including Revocable or Irrevocable Trusts that help protect your assets.
- Prepare a Medicaid Home Care Application.
- Establish Guardianship of disabled adults.



WHAT IS A POOLED INCOME TRUST?

A Pooled Income Trust is a special type of trust that allows people of any age to become financially eligible for public assistance benefits, such as Medicaid home care, while preserving their monthly income in trust for living expenses and supplemental needs. Although American citizens who are over the age of 65 qualify for Medicare, this insurance will not pay for long-term care or home health care. That means that if you are disabled you will have to pay for your care out of your savings. It is possible to get insurance to pay for long term care, however, if you have your long-term planning done by a knowledgeable estate attorney who will qualify you for Medicaid benefits, an insurance program designed to provide health care for the disabled and people over 65.

WHO CAN BENEFIT FROM A POOLED INCOME TRUST?

- Younger people with special needs
- Recipients of personal injury settlements who need to apply for, or protect, government benefits
- Elderly persons who have become unwell and are living at home
- Recipients of government benefit programs
- Applicants for government benefit programs



WHAT IS LONG TERM CARE PLANNING?

Long term care refers to a variety of services designed to meet an individual's medical and/or personal care needs for a relatively long period of time. The cost of long-term care is the primary reason why elder care planning is as big of an industry as it is in the United States. Long-term care is often costly, with monthly fees for nursing homes or assisted living facilities often being upwards of \$5,000 (even higher prices are not uncommon).

WHY IS LONG TERM CARE PLANNING BENEFICIAL?

Long-term care is very expensive and living in a nursing home facility in New York can cost as much as \$14,000 a month. Home Health Aides can also be costly and charge about \$20 per hour of care. Assisted living facilities can have fees up to \$5,000 per month. In order to minimize these long-term living costs, it is important to set up proper estate and financial planning. Our elder care attorney fees are extremely reasonable in relation to how much money we are typically able to save Clients who plan with us and we can provide essential estate planning guidance to help protect your assets from expensive nursing home costs. Placing your assets into an Irrevocable Trust will protect them from Nursing Home bills, if such a transfer was made five years or more from the time one gets into the nursing home.



WHAT IS ADULT GUARDIANSHIP?

Adult Guardianship, or adult conservatorship is a legal procedure where a court rules that an individual is no longer able to make their own decisions as a result of severe disabilities and needs protection. The individual may not be to competently make decisions about medical care, or obtain livable circumstances including appropriate food and shelter. This is also known as a “disability.” If a court believes that a disability is negatively impacting a person’s ability to make decisions, it will appoint someone to make these decisions on behalf of the disabled person. This person is known as a legal guardian.

HOW CAN AN NYC ELDER LAW ATTORNEY HELP?

The Guardianship process could be lengthy and hiring an attorney could help ensure that this process goes smoothly and without any complications. An NYC Elder Attorney can help assist you or a loved one to appoint a guardian. Additionally, an elder care attorney can help gather necessary documentation that would prove the individual requiring assistance is an incapacitated person. Once a guardian is approved, an attorney can give the approved guardian the consent to pay bills and prevent self-neglect of the incapacitated person.



HOW TO FIND AN ELDER CARE LAWYER?

When you decide to meet with an elder care lawyer, it is important to make sure the attorney you find is right for you. When hiring an elder attorney, you want to make sure that you're comfortable with whomever you choose to hire, because they will be someone you will have to work closely with. Before meeting with clients, most attorneys will have an initial consultation with possible clients either over the phone or in person. At this time, it is crucial for the attorney to become familiar with your case and it is also a great time for you as a client to ask questions and address concerns that you may have.



FREQUENTLY ASKED QUESTIONS

Who is considered an Elder by Law?

There is no legal benchmark that exists in order to be classified as an elder, but the practice of Elder Law usually involves clients who are over the age of 60.

What is Undue Influence in Elder Law?

Undue influence occurs in Elder Law when an individual exerts pressure on another person to act against his or her wishes in favor of the influencer. Undue influence can take place in many forms, but some of the most common being deception, threats, and isolation. Elderly people, especially those who are ill are more susceptible to undue influence than most people.

Will Medicaid take my house if I get into a nursing home or other long term care facility?

The answer depends on your situation. If you live with your spouse and only one of you gets into the nursing home without proper elder care planning in place, the house will remain in the other spouse's possession during his life. However, the Medicaid can put a lien on the house if the proper Medicaid planning is missing. Thus, losing your home to pay back to Medicaid is a real possibility.

What is Elder Abuse?

Elder abuse can take place in many different types of forms like, physical, sexual, emotional, psychological, or financial forms. Elder abuse could be perpetuated by strangers, but it could also be done by friends and or family members of the elderly person. Elder abuse could range from harmful actions, such as assault to neglect of the elderly person's needs, which could result in problems such as malnutrition, dehydration, and inadequate personal hygiene.

FREQUENTLY ASKED QUESTIONS

Do I Lose Any Rights If I Make A Power of Attorney?

No. A power of attorney simply allows you to appoint an individual whom you trust to handle your decision-making on your behalf. While powers of attorney usually cover a range of areas that will require decision making, the “power” that a power of attorney has is solely up to the terms you specify when drafting the document.

Is Medicaid Planning Moral?

Of course. Congress has deliberately passed legislation within Medicaid law to allow many members of the middle class to qualify for Medicaid who otherwise would not have been eligible. At the end of the day, people engage in tax planning to minimize their tax liability, planning to become eligible for Medicaid to reduce the often-inflated costs of nursing homes is no different.

Will Medicaid Cover My Long-term Care?

Medicaid is a Federal and state program that covers the cost of a nursing home stay or a personal home health aide for qualifying individuals. When applying for Medicaid, the local Department of Social Services considers the need of the applicant for the care they’re seeking, their annual income, and the value of their assets. While many believe they may not qualify for Medicaid, with proper Medicaid planning, many clients have been able to qualify and enjoy their later days with Medicaid covering the cost of long-term care.

What Are My Options for Long-term Care?

Aside from the traditional nursing home facility that comes to mind, long-term care can be had through a personal home care aid or through an assisted-living facility which provides medical care in a relatively home-like environment.

HIRE AN ATTORNEY

Law Office of Inna Fershteyn and Associates, P.C. understands that elder planning is personal. With over 22 years of experience, estate planning and elder law attorney Inna Fershteyn has served New York City, including Brooklyn, Manhattan, Bronx, Queens and Staten Island. As we are licensed in New York and New Jersey, we have also served clients in the Tri-State area and are referred to by out of state Attorneys. If you or a loved one needs to create an elder plan, please give us a call at 718-333-2394 to schedule a consultation.



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