

Retirement planning with a wider focus

Retirement planning intersects with other aspects of your financial planning. The most obvious examples are estate planning and planning for incapacity or illness. When taking a more comprehensive approach to your retirement planning, a brief survey of what elder law is all about may be beneficial. (A general understanding of elder law may be helpful, too, for those who now care for a spouse or relative with long-term needs.)

A brief overview

Elder law, which deals with issues affecting older adults, is a burgeoning specialty as the baby-boom generation deals with its own financial needs or those of retired parents. Elder law attorneys specialize in such matters as: estate and gift tax planning; relations between retirement plans and planning for heirs; and legal solutions to preserving wealth or minimizing taxes.

Elder law specialists also delve into the more esoteric areas of growing older, ones often little understood. These include: Medicaid trusts; long-term care insurance; veterans' benefits; intrafamily and heirs' disputes; business succession planning; living arrangement options; medical decision-making; age discrimination; and a host of others.

Many aspects of elder law involve family participation. For example, here are the major capacities in which you may serve when working with an elder law attorney.

Agent under a power of attorney (POA)

Powers of attorney are relatively well-known, for they apply to various stages of our lives. They give another party (an "attorney-in-fact," or agent) the right to make financial or legal decisions for another (the donor of the power). However, not all POAs are alike. A durable POA gives authority to the attorney-in-fact beyond the period of a donor's mental incapacity. A nondurable POA ends at that incapacity. A springing POA permits a donor to act on his or her own behalf until some specified event occurs, such as entry into a long-term care facility. Finally, many states have general POA laws that permit a donor—regardless of the type of POA selected—to authorize a full array of powers to the attorney-in-fact, or to be selective in the powers granted.

Guardians and conservators

Guardians and conservators are appointed by courts when a person of any age is unable to take care of himself or herself, and no POA is in effect. A person can petition a court to act in this capacity, but states vary as to when and if such an appointment may be made under state law. Therefore, having a POA in place may avoid the problem.

Representative payees

These have much less authority than an attorney-in-fact, guardian or conservator.

Representative payees receive a person's income, set up a fund and pay living expenses out of it. Both parties must agree to such an arrangement. It may be cancelled at any time. No court appointment is necessary. Only bill paying is permitted by the designated party. It usually works best for spouses who are somewhat incapacitated.

Agent for health care decisions

A durable power of attorney for health care (DPAHC), sometimes referred to as a health care proxy, is a document designating an agent to make health care decisions when the individual is unable to do so. The agent chosen has, generally, the same rights to request or refuse treatment that the donor of the power would have if he or she were capable of making and communicating his or her own decisions.

A DPAHC is different from a living will. There is no agent involved with a living will, but, rather, it is a document that specifies the kind of treatment that an individual wishes should he or she suffer an incurable or irreversible disease and physicians determine that the individual's condition is terminal. A living will, then, has more narrow applicability than a DPAHC.

Resources

As you do your retirement and other planning, and want to find out more about elder law, the Internet is a good place to start. One Web site that may be helpful is:

<http://www.elderlawanswers.com>. The site offers general information, similar to what you have read here, but in more depth.*

If you are looking for an elder law attorney, and neither your attorney nor his or her firm specializes in elder law, he or she may be able to make a referral to a practitioner in your area. Your local bar association may be able to furnish a list of elder law attorneys as well.

In sum, elder law and its applications should be of interest to anyone looking beyond the mere financial aspects of retirement or preretirement planning. As a discipline, it addresses issues involving not only how much money you live on and preserve, but also how you live. Therefore, it is extremely important that the selection of an elder law attorney be an informed decision, based upon research and evaluation.

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Any developments occurring after January 1, 2008, are not reflected in this article.