

Working with a Certified Elder Law Attorney (CELA)

DISCOVER THE DIFFERENCE



NELF
National Elder
Law Foundation

MARCH 16, 2023



Why Elder Law Planning is Important

THE BENEFITS OF WORKING WITH A Certified Elder Law Attorney (CELA)

- This presentation will discuss the importance of elder law planning and the benefits of working with a CELA. Elder law planning is an important aspect of preparing for the future and ensuring the well-being of loved ones as we age.
- A Certified Elder Law Attorney can provide personalized solutions and bring peace of mind to the complex process of elder law planning.
- By the end of this presentation, you will understand the importance of elder law planning and the benefits of working with a CELA.



What is Elder Law Planning?

ELDER LAW PLANNING IS THE PROCESS OF PREPARING FOR THE FUTURE AND ENSURING THE WELL-BEING OF OURSELVES AND LOVED ONES AS WE AGE.

It involves a variety of legal and financial considerations, such as Medicaid planning, veterans' benefits, long-term care planning, and estate planning.

The importance of elder law planning cannot be overstated as it helps to protect assets, ensure the comfort and care of older adults, and provide peace of mind for their loved ones.





What is a Certified Elder Law Attorney (CELA)?

A CELA IS A LAWYER WHO HAS MET THE RIGOROUS STANDARDS AND DEMONSTRATED EXPERTISE IN THE FIELD OF ELDER LAW.

- ✓ To become a CELA, an attorney must have extensive experience in areas such as Medicaid planning, Veterans benefits, and long-term care planning.
- ✓ The CELA certification is a testament to the attorney's commitment to providing personalized and effective solutions for their clients.
- ✓ When working with a CELA, you can trust that they have the expertise and experience necessary to assist with the complex issues that may arise during the elder law planning process.
- ✓ CELAs must maintain a constant pursuit of legal scholarship by submitting to recertification testing every five years.
- ✓ Less than 1% of attorneys in the United States are CELA's.*
- ✓ The National Elder Law Foundation is the only organization authorized by the American Bar Association to certify qualified lawyers as specialists in elder and special needs law.
**According to figures published by the ABA 2023.*



The Benefits of Working with a CELA

DEEP UNDERSTANDING OF ELDER LAW:

CELA's have extensive knowledge of the laws, regulations, and best practices in the field of elder law. They can provide insightful advice and effective solutions to help you navigate the complexities of this area of law.

EXPERTISE IN KEY AREAS:

CELA's are experts in a wide range of areas, including assisted and independent living facility planning, elder abuse and healthcare options, estate planning, family caregiver agreements, long-term care planning, Medicaid planning, Powers of Attorney/Living Wills, probate, trust, and estate administration, injury settlement planning, special needs planning, and Veterans benefits.



The Benefits of Working with a CELA

PERSONALIZED SOLUTIONS:

CELA's understand that every client is unique and has different needs and goals. They take the time to understand your situation and provide tailored solutions to help you achieve your goals.

COMMITMENT TO EXCELLENCE:

CELA's are committed to maintaining the highest standards of professionalism and ethical conduct. They are dedicated to providing exceptional service to their clients and always act in their best interests.



Common Challenges of Elder Law Planning

DESPITE ITS IMPORTANCE, ELDER LAW PLANNING CAN BE A COMPLEX AND CHALLENGING PROCESS.

- Common challenges include navigating government benefits, protecting assets, and ensuring the comfort and care of older adults.
- ¶These challenges can be overwhelming for individuals and their families, but a CELA can help navigate these issues and provide personalized solutions.

By working with a CELA, you can have confidence in the planning process and be assured that your future and the well-being of your loved ones are protected.





A CELA is Trained to Navigate All Issues and Matters of Concern

CELA'S ARE TRAINED EXPERTS IN
THESE AREAS THAT FOLLOW:



Assisted & Independent Living Facility Planning

**ARE YOU PLANNING FOR YOUR OWN ELDER YEARS?
HELPING YOUR PARENTS AND OLDER RELATIVES ANTICIPATE
THE APPROACHING CHANGES?**

Make choices that meet your needs in the most comfortable, enjoyable environment.

Quality elder care communities cost \$10,000/month plus! Seniors and their families often face financial pressure to accept unwelcome compromises.

An experienced Certified Elder Law Attorney can:

- ✓ Widen your range of available options
- ✓ Preserve family assets
- ✓ Improve eligibility for Medicaid subsidies





What's Included in Assisted & Independent Living Facilities Planning?

CELA'S USE A VARIETY OF TOOLS TO CUSTOMIZE PLANS FITTING EACH CLIENT'S FINANCIAL, HEALTH, AND SOCIAL NEEDS.



Keeping every client's unique set of goals and issues in mind, the appropriate components of an effective and secure plan can be implemented to transition into an assisted or independent living facility.

- What level of personal assistance or nursing care is needed?
- Will there be one resident or a couple living together?
- Does the resident expect to return home in the future?
- Will family provide care before the resident transitions into residential nursing care?
- What property and assets need protection?
- How much income does the person receive, and from what source?
- Can the person preserve their assets and qualify for Medicaid?
- Are there trusted family members nearby who can manage decisions if necessary?
- Does the person planning to transition have dependents with special needs?



Estate Planning with a Certified Elder Law Attorney

WHAT'S AN ESTATE PLAN?

- A set of decisions you make to control how your property and assets will be managed and distributed if you become incapacitated or pass away.
- Can ensure that your valuable assets are received by your heirs and beneficiaries without paying unnecessary taxes or legal expenses or delays.



WHAT'S INCLUDED IN AN ESTATE PLAN?

Every estate plan is customized to the needs of the individual client.

Certified Elder Law Attorneys specialize in advising clients what legal tools and instruments will best achieve the client's goals based on their individual circumstances

- The nature and amount of their property
- Their family's needs
- The best means of reducing or eliminating any tax liability

The best estate plans are those established **before they are needed**. No one should find that they "should have" taken steps to protect their family and preserve their wealth when it's too late to do so.



Important Topics to Consider:

SECURING YOUR FAMILY'S WELFARE AND ASSETS



- **LIFE INSURANCE**
- **GUARDIANSHIPS**
- **TRUSTS**
- **ADVANCE DIRECTIVES**
- **GOVERNMENT BENEFITS PLANNING**



Important Topics to Consider:

SECURING YOUR FAMILY'S WELFARE AND ASSETS



LIFE INSURANCE

Life insurance benefits go directly to your beneficiary without going through probate court.



GUARDIANSHIPS

Name a guardian for your minor children specifying directions for their care if you are incapacitated.



TRUSTS



ADVANCE DIRECTIVES



GOVERNMENT BENEFITS PLANNING



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Important Topics to Consider:

SECURING YOUR FAMILY'S WELFARE AND ASSETS



➤ LIFE INSURANCE

➤ GUARDIANSHIPS

⌵ **TRUSTS**

- A revocable trust, you control your assets during life, but a trustee you choose acts as you directed after your incapacity or death.
- ☐An irrevocable trust yields some control during life but offers additional tax benefits.
- ☐Both avoid probate court, legal expenses, and estate and gift taxes.

➤ ADVANCE DIRECTIVES

➤ GOVERNMENT BENEFITS PLANNING



Important Topics to Consider:

SECURING YOUR FAMILY'S WELFARE AND ASSETS



➤ LIFE INSURANCE

➤ GUARDIANSHIPS

➤ TRUSTS

▼ **ADVANCE DIRECTIVES**

- **Living Will:** You can control your healthcare when incapacitated or at the end of your life.
- **Financial Power of Attorney:** You authorize someone to manage your finances during a period of incapacitation, with either general or limited powers, as you decide.
- **Healthcare Proxy:** You designate a trusted relative or friend to make your healthcare decisions when you're incapacitated and unable to express your own decisions.

➤ GOVERNMENT BENEFITS PLANNING



Important Topics to Consider:

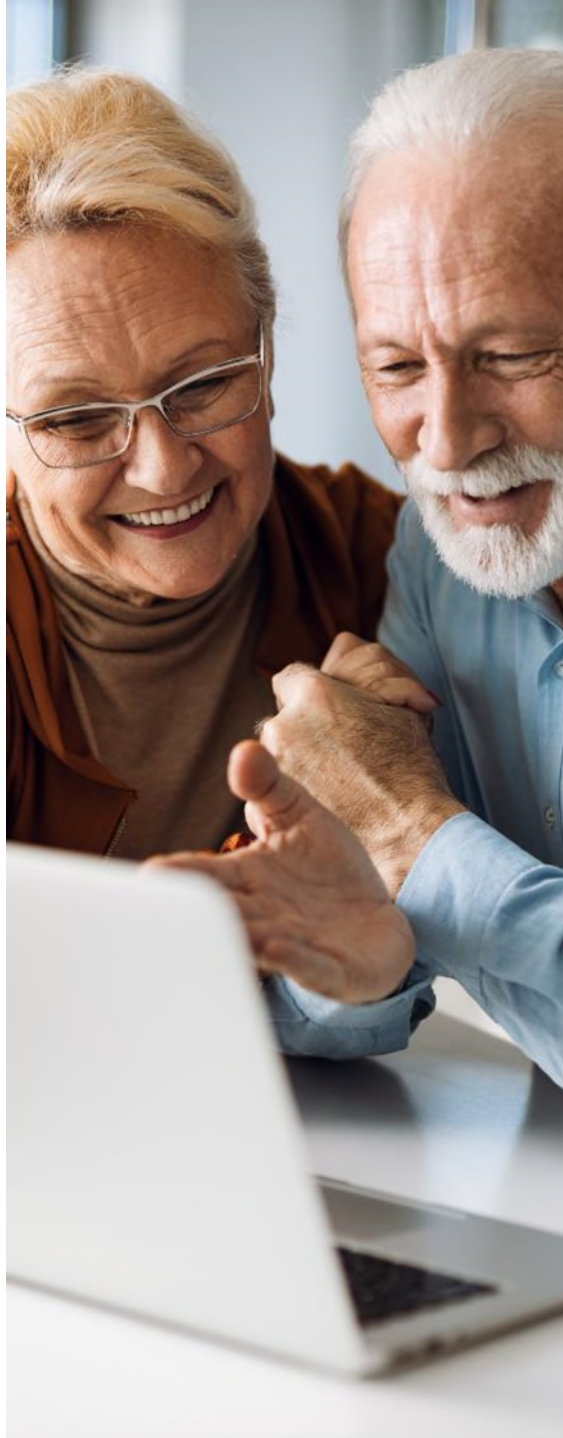
SECURING YOUR FAMILY'S WELFARE AND ASSETS



- LIFE INSURANCE
- GUARDIANSHIPS
- TRUSTS
- ADVANCE DIRECTIVES
- ✓ **GOVERNMENT BENEFITS PLANNING**
 - Medicaid.
 - Medicare
 - Social Security benefits
 - Veterans Benefits



Government Benefits Planning



GOVERNMENT BENEFITS PLANNING



MEDICAID

- Retain control of your valuable assets and still be eligible for Medicaid.
- ☐ Already in the Medicaid 5-year look-back period? You may still qualify and protect most assets from Medicaid's reimbursement claim.



MEDICARE



SOCIAL SECURITY BENEFITS



VETERANS BENEFITS



Government Benefits Planning



GOVERNMENT BENEFITS PLANNING

> MEDICAID

✓ MEDICARE

- Medicare is health insurance for people 65 or older. You're first eligible to sign up for Medicare 3 months before you turn 65.
- You may be eligible to get Medicare earlier if you have a disability.

> SOCIAL SECURITY BENEFITS

> VETERANS BENEFITS



Government Benefits Planning



GOVERNMENT BENEFITS PLANNING

➤ MEDICAID

➤ MEDICARE

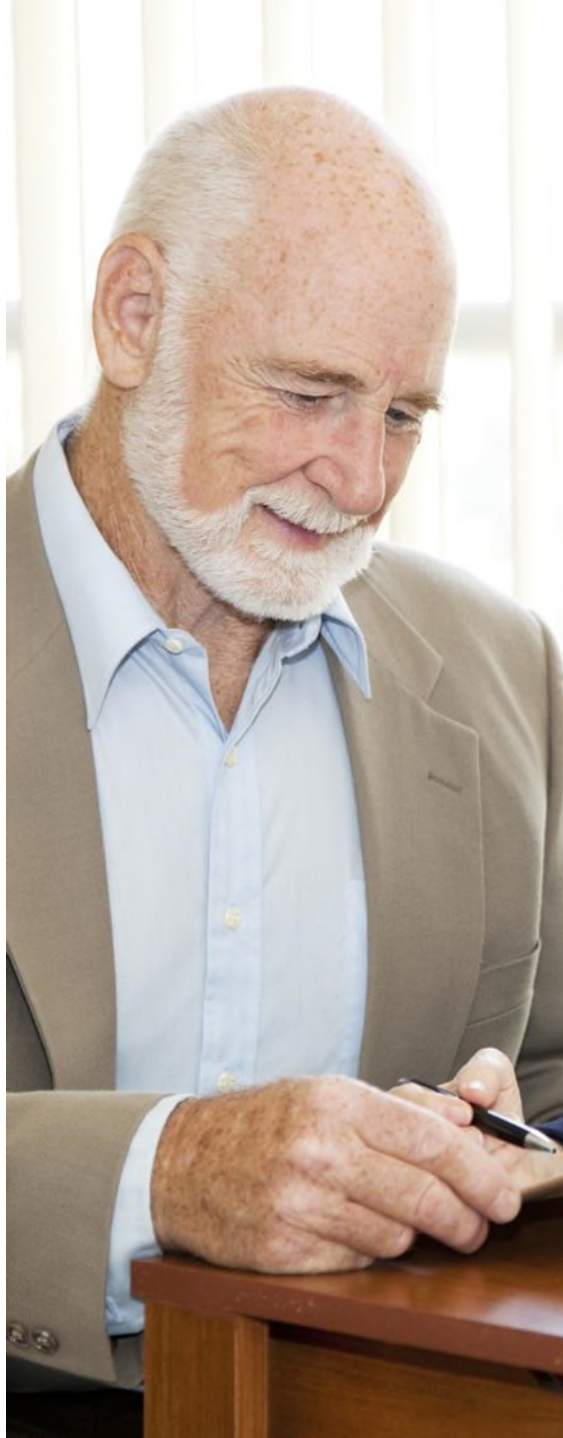
✓ **SOCIAL SECURITY BENEFITS**

- How does Social Security fit into your plans?
- When is the best time for you to initiate your Social Security?
- How does Social Security affect my other benefits?

➤ VETERANS BENEFITS



Government Benefits Planning



GOVERNMENT BENEFITS PLANNING

➤ MEDICAID

➤ MEDICARE

➤ SOCIAL SECURITY BENEFITS

✓ VETERANS BENEFITS

- Veterans benefits are sometimes obstructed by endless bureaucracy.
- CELA's can facilitate access to veterans benefit programs, spousal benefits, long-term care, and other entitlements earned through honorable military service.



Family Caregiver Agreements Help Medicaid Eligibility

NO ONE SHOULD ATTEMPT TO CREATE A LEGAL DOCUMENT ON WHICH MEDICAID ELIGIBILITY DEPENDS EXCEPT AN EXPERIENCED CERTIFIED CERTIFIED ELDER LAW ATTORNEY.

☐ Drafting a formal agreement between person needing care and family caregiver allows payment to caregiver without Medicaid penalty for transferring assets within 5-year look back period and reduces need for spenddown.

☐

Without a Caregiver Agreement, Medicaid will not recognize the value of the caregiver's services.

FORMALITIES:

- ☐ Detailed log of hours and services performed
- ☐ Caregiver agreement must be drafted before care begins to be recognized by Medicaid
- ☐ Care duties must be specified
- ☐ Signatures of both parties (or power of attorney) must be notarized

NELF conducts regular training and member conferences to ensure the highest level of competence is maintained.

Medicaid's Five-Year Look Back Period

Medicaid will "look back" five years from the date of the application to identify any assets transferred to others for less than market value.



What is Long-Term Care Planning?

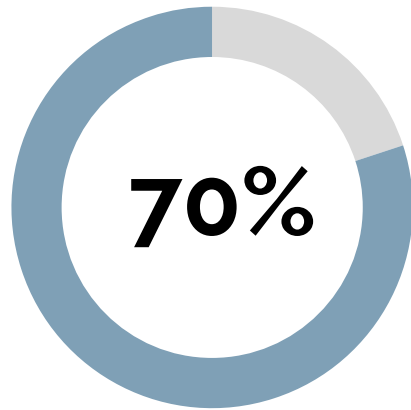
PLANNING FOR FUTURE LONG-TERM CARE IS A CHALLENGING TASK, BUT THE TIME WILL COME WHEN THE DECISION WILL BE UNAVOIDABLE.

Financial circumstances can affect decisions, but there are still many care options for those with limited means to choose from.



Deciding What Long-Term Care Plan is Right for You

ANSWERS MAY BE UNCLEAR WHEN WE ARE YOUNG BUT BECOME CLEARER AS WE AGE.



2022 statistics show
70% of seniors will need some
type of long-term care

YOU AND YOUR FAMILY MAY CONSIDER THESE BASICS AS A STARTING POINT:

- What level of care will you need?
- How long will you need each level of care?
- Is your home adaptable?
- Do you have family care options?
- What financial resources will you have for long-term care?
- What can you do now to improve your long-term care security?



Self-Pay:

REQUIRES THE MOST ADVANCED
PLANNING TO SET ASIDE FUNDS
TO PAY FOR IN-HOME CARE OR
RESIDENTIAL CARE FACILITY.



LONG-TERM CARE INSURANCE POLICIES

- Varying amounts of coverage and levels of premiums
- Require a “qualifying period” during which no benefits are paid
- Often limit coverage for daily care costs and a lifetime cap
- Expenses may exceed the value of the daily coverage



FAMILY IN-HOME CARE

- Physical and mental health is prolonged when a person can remain home
- Costs are minimized
- Less practical as age or illness advances
- Physical and emotional toll on family caregiver



MEDICAID



TRUSTS



Self-Pay:

REQUIRES THE MOST ADVANCED PLANNING TO SET ASIDE FUNDS TO PAY FOR IN-HOME CARE OR RESIDENTIAL CARE FACILITY.



LONG-TERM CARE INSURANCE POLICIES



FAMILY IN-HOME CARE



MEDICAID

- Medicaid coverage pays entire cost of long-term residential care if eligible
- Only people with assets and income below the Medicaid eligibility limits qualify
- Person with more income or assets than Medicaid limits faces spending down on care until eligible



TRUSTS

- Certified Elder Law Attorneys counsel you on types of trusts and property and assets to transfer, permitting you to control how and when the assets are used and for what purpose.
- Medicaid does not consider them available to you.
- Should be created before 5-years before Medicaid application, or Medicaid imposes ineligibility penalty.



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Planning for Medicaid Eligibility and Avoiding Asset Spend Down

Medicaid will disqualify you until your assets are “spent down” to a level within the program’s eligibility criteria. Exempt assets vary by state. Medicaid considers assets “available” if transferred during five years preceding application.

HOW A CERTIFIED ELDER LAW ATTORNEY CAN HELP YOU PLAN FOR MEDICAID

Medicaid rules and federal law permit legal strategies (trusts, annuities, insurance, etc.) to preserve assets and remain eligible for nursing care funded by Medicaid.

IT'S NEVER TOO LATE FOR MEDICAID PLANNING

Don't give up if you think you've delayed Medicaid planning too long. Skillful elder law attorneys can usually find significant savings for you even if you did not establish a plan earlier.

Contacting a Certified Elder Law Attorney (CELA) in your state will get you the help you need to maximize the assets you can still protect from Medicaid reimbursement claims.



What are Powers of Attorney and Living Wills?

WHAT HAPPENS WHEN YOU CANNOT CARE FOR YOURSELF, OR DECIDE YOUR OWN MEDICAL CARE?

Two essential documents affecting healthcare during periods of incapacitation or end-of-life medical care:

- Living Will
- Durable Power of Attorney for Healthcare



What is a Living Will?

A LIVING WILL IS YOUR WRITTEN DECLARATION OF WHAT HEALTHCARE MEASURES YOU WANT TO BE PERFORMED OR NOT PERFORMED IF YOU CANNOT COMMUNICATE OR MAKE YOUR OWN HEALTHCARE DECISIONS BECAUSE OF INCAPACITATION.

A Living Will can describe life-prolonging treatments or procedures that the author wants or forbids their medical team to attempt:

- ☐ CPR if other conditions are present
- Blood product transfusions
- Mechanical respiration or intubation
- Heart massage or other intrusive emergency surgery
- Limit treatment to palliative care only when near death
- Do Not Resuscitate (DNR) order

A Living Will has nothing to do with a Last Will and Testament designating asset distribution after your death.





What's a Durable Power of Attorney for Healthcare?

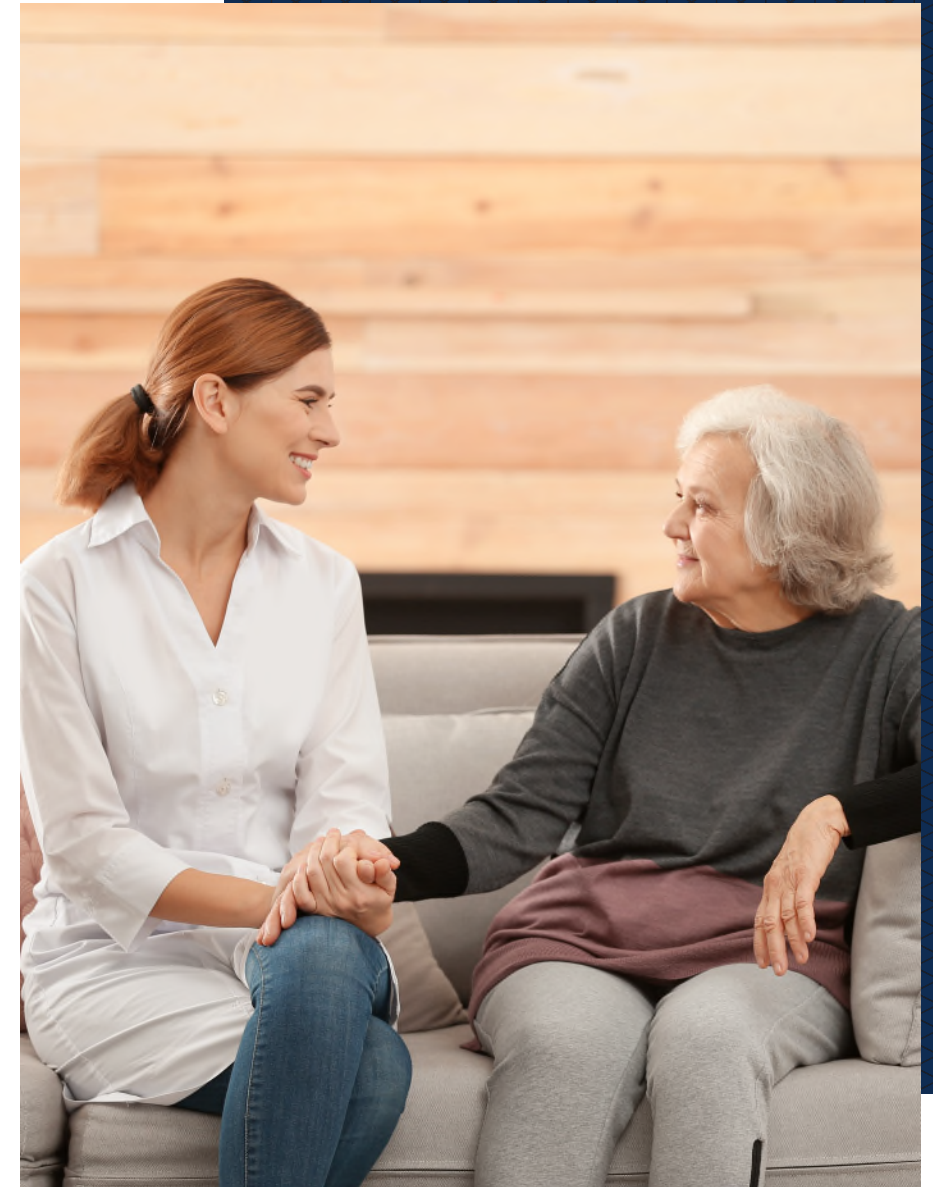
A DURABLE POWER OF ATTORNEY (POA) FOR HEALTHCARE NAMES A PERSON TO MAKE YOUR HEALTHCARE DECISIONS FOR YOU IF YOU BECOME TOO INCAPACITATED TO MAKE, OR TO COMMUNICATE, YOUR OWN PREFERENCE FOR YOUR MEDICAL TREATMENT.

Only someone you trust to exercise wise, informed, considered judgment should be named as your POA for healthcare decisions. Typically, the person chosen as the POA for healthcare is a spouse or adult child, but any person who is competent, trustworthy, and who will be available can be named.

Various States' Names for Similar Legal Instruments

In some states similar documents have different names:

- ☐ Living Will and the Durable Power of Attorney for Healthcare are called Advance Healthcare Directives
- ☐ Physician Orders for Life Sustaining Treatment (POLST)





What are Probate, Trust & Estate Administration?



What is Probate and Estate Administration?

LEGAL PROCESS FOR ORDERLY SETTLEMENT OF A DECEDENT'S PROPERTY AND OTHER ASSETS.

Last Will and Testament is presented in court to assure estate assets are distributed according to the terms of the person's Will, after valid debts and final expenses are paid.

When a decedent leaves no Will, (die "intestate,"), state law dictates who inherits any assets and in what amount.

This is called the law of "intestate succession."





Drafting Wills and Other Testamentary Documents

EXPERIENCED CERTIFIED ELDER LAW ATTORNEYS UNDERSTAND THE STRATEGIES THAT WILL BEST ACCOMPLISH THE GOALS OF THE CLIENT ESTABLISHING THEIR ESTATE PLAN.

To avoid the potential of substantial litigation costs and risks inconvenient delays for the testator's survivors, most CELA's seek to bypass probate court by using other estate planning techniques.

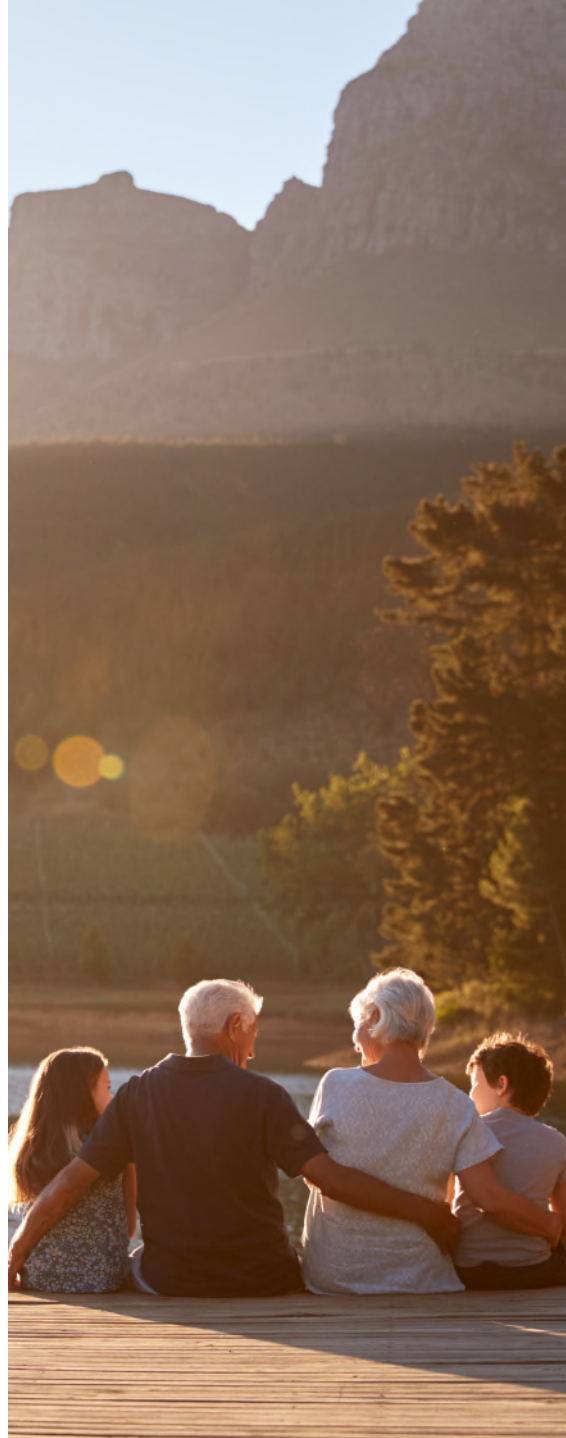




Administering Estates

PERSON NAMED AS EXECUTOR OF THEIR WILL IS ENTRUSTING TO CARRY OUT THE SPECIFIC WISHES REGARDING THE DISPOSITION OF DECEDENT'S ESTATE'S ASSETS.

Untrained family members or friends not usually competent to administer the fiduciary duties of estate executor without a professional Certified Elder Law Attorney:



PRESERVING AND MAINTAINING ESTATE PROPERTY

Attorneys managing estate administration:

- ☐ Search for unidentified or unaccounted assets
- ☐ Respond to claims filed by decedent's creditors
- ☐ Prepare and file tax returns
- ☐ Preserve and maintain residential/commercial real estate
- ☐ Represent the estate against parties who legally contest the terms of the Will

As an officer of the court with fiduciary responsibility to the estate and its rightful beneficiaries, Certified Elder Law Attorneys in your jurisdiction know the best practices to follow.



What is Injury Settlement Planning?



Why Do You Need to Plan a Personal Injury Claim Settlement?

RECEIVING PERSONAL INJURY SETTLEMENT IN THE WRONG MANNER CAN NEGATIVELY IMPACT A DISABLED VICTIM'S ENTITLEMENT TO RECEIVE FEDERAL AND STATE GOVERNMENT BENEFITS.



If a federal or state disability benefits recipient has too many financial assets, they are ineligible to receive Medicaid coverage for healthcare expenses, nursing home costs, prescription drugs, and other valuable benefits.

Your personal injury lawyer and your settlement planning attorney consider these issues:

- Is long-term nursing care in a residential facility likely? If so, when?
- Are any needs-based government benefits available?
- Is the person disabled to the extent a responsible trustee is required to manage the funds?
- Is the settlement for a minor child?
- Will the funds be needed for higher education?
- What future medical expenses are expected?
- Is there an effective, long-term plan for health insurance coverage?
- What are the tax advantages and disadvantages of particular settlement structures?



How Can Settlement Planning Help?

A **Spendthrift Trust** can preserve the funds and protect from person's impulse to spend rashly and unwisely.

A **Special Needs Trust** can be the legal owner of the assets.





What is Special Needs Planning?

A SPECIAL NEEDS TRUST (SNT)

Permits unlimited financial assets to be held by trustee and used for the benefit of a person with special needs without jeopardizing their eligibility to receive public benefits like Medicaid and Supplemental Security Income (SSI).

MEDICAID AND SUPPLEMENTAL SECURITY INCOME (SSI) BENEFITS

Supplemental Security Income (SSI) and Medicaid

- Needs-based benefit programs providing financial support for disabled individuals
- Only if available financial resources do not exceed federal and state eligibility criteria
- They own or control more assets or income than allowed under the rules, their benefits are suspended until they spend down their assets to a level meeting program eligibility

THE SPECIAL NEEDS TRUST SOLUTION

By establishing a Special Needs Trust (SNT), family and friends can transfer unlimited funds “for the exclusive benefit” of the person with special needs to pay for:

- Uncovered needs for the person's physical or mental health or enrichment of their life
- Uninsured medical equipment
- Home adaptation construction
- Transportation, education, clothing, travel, and entertainment

WHO CAN ESTABLISH A SPECIAL NEEDS TRUST?

- Third-parties can fund SNT
- 2016, federal law: **“Self-Funded Special Needs Trust.”** Disabled person use their own assets to fund their SNT with wealth they accumulated before acquiring disabling special needs, inheritance, settlements



What are Veterans Benefits?

ACCESSING THESE AND OTHER VA BENEFITS WITH THE HELP OF AN CERTIFIED ELDER LAW ATTORNEY

Plan to maintain eligibility for VA and other federal and state benefits. Enjoy elder years with comfort and dignity.



DISABILITY COMPENSATION

The amount of compensation will depend on the percentage of disability assessed by the Veterans Administration (VA).



DISABILITY PENSION BENEFIT

Payable to veterans who are unable to work due to disability not necessarily service related. Available to veterans enlisted prior to September 7, 1980 serving minimum 90 days with one day during a period of war.



AID AND ATTENDANCE

Pay for in-home attendant, could pay up to \$2,800 per month for qualified veterans. Vets living in assisted living facilities are presumed to be in need.



ADULT DAY CARE



RESPITE CARE



LONG-TERM CARE



What are Veterans Benefits?

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DISABILITY COMPENSATION



DISABILITY PENSION BENEFIT



AID AND ATTENDANCE



ADULT DAY CARE

For veterans enrolled in the Veterans Healthcare Plan, adult day care is available to provide the level of care required.



RESPIRE CARE

Families caring for veterans with severe injuries become exhausted, depressed, and worn down from care work. Respite care will pay to give the family caregiver "a break" they may need desperately.



LONG-TERM CARE

Veterans enrolled in the VA Healthcare plan can be eligible for the VA to provide substantial payments toward the cost of long-term care. Coverage depends on the veteran's need, degree of disability, relatedness to their service, other insurance, and other factors.



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Summary

ELDER LAW PLANNING IS IMPORTANT TO PREPARE FOR THE FUTURE AND ENSURE THE WELL-BEING OF LOVED ONES AS WE AGE.

☐ Certified Elder Law Attorneys (CELA) provide valuable benefits:

- Personalized solutions
- Protection of assets
- Peace of mind

☐ CELA's meet rigorous standards and demonstrate expertise in Medicaid planning, Veterans benefits, and long-term care planning.

☐ Your elder law planning challenges can be navigated with the help of a CELA.

☐ Schedule a consultation with a CELA to ensure the best possible outcome for your elder law planning needs.

TERESA K. BOWMAN PA

Call today to schedule an appointment.

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