

BUCKS COUNTY ELDER LAW, LLC

HENRY A. CARPENTER II, CELA

YOUR ELDER LAW ATTORNEYS

***PROVIDING SECURITY FOR
YOUR FAMILY . . .***

AND PEACE OF MIND FOR YOU

Elder Law is more than just Wills. It includes all areas of law that effect Seniors . . . from Lifetime Planning, through Long Term Health Care Planning, to Estate Planning.

Our goal as your Elder Law Attorney is to provide comprehensive legal advice to help you:

- *provide for you and your family during life, in the event of disability and at death*
- *protect your family and your assets*
- *accomplish your goals and desires*
- *preserve your assets*
- *save tax dollars*
- *be there for your family in their time of grief*

But what is Elder Law Planning . . .

LIFETIME PLANNING

Many people mistakenly think the only legal document they need is a Last Will and Testament. However, Wills only become effective when you die. You also need legal documents to protect you and your loved ones during your lifetime.

What happens if you can't manage your finances or suffer a catastrophic illness? While potentially more important than planning for death with a Will, this planning for lifetime is often overlooked.

Lifetime Planning consists of inexpensive, uncomplicated documents that make your life easier, protect your family and provide for you and your property in the event of disability.

The four basic documents are the *Information Organizer*, *Power of Attorney*, *Medical Power of Attorney* and *Living Will*.

Information Organizer. In an *Organizer* you list all the important information in your life. This helps you maintain your assets during life and in the administration of your estate after death. The *Organizer* can be as simple or detailed as you desire and it should contain:

1. Personal Information

- Names, Addresses, and Dates of Birth of you, your spouse, and family
- Names and Addresses of all persons named in your estate planning documents
- Names and Addresses of Doctors, Lawyers, Accountants and Financial Planning Professionals
- Names and Addresses of any Organizations of interest

2. Asset Inventory (including how owned, account number, address, phone numbers and contact information)
 - Cash and cash equivalents
 - Stocks, bonds and mutual funds
 - Real estate
 - Business interests (include percent of ownership)
 - Investment property
 - Owned automobiles
 - Employee Benefits
3. List of all life insurances (including owner, beneficiary, policy type (term, universal life, etc.) and policy amount)
4. Estate Planning documents
 - Document type
 - Date and where located

General Power of Attorney. In a *General Power of Attorney* you (the “principal”) appoint someone as your agent and give them the authority to handle your financial and legal matters on your behalf. A *Durable Power of Attorney* remains effective even if you become disabled.

In view of the significant authority and discretion conferred by a general power of attorney, the agent must be someone in whom the principal has complete trust and confidence.

We usually recommend signing a *Standby Power of Attorney*. A *Standby Power of Attorney* only becomes effective when, and if, you become disabled. This allows you to control your matters while you can, and the agent to manage your financial affairs and protect your property if you can't.

Medical Power of Attorney. As an unintended consequence of recent Federal Legislation, access to medical records by third parties is now extremely limited. While this keeps information from prying eyes, it can cause great difficulty if a spouse or child is refused access to medical information needed to aid a loved one.

In a *Medical Power of Attorney* you (the “principal”) appoint someone as your agent and grant them access to your medical records. The only power granted in a *Medical Durable Power of Attorney* is access to medical records.

A *Medical Power of Attorney* should also be coupled with a *General Power of Attorney*.

Living Will. In a *Living Will* you state your intentions and desires regarding end of life medical care. A Living Will provides your instructions to your family and the attending physician to continue, to withhold or to withdraw life-sustaining procedures in the event of a terminal condition.

A *Living Will* only becomes effective if you can't communicate your desires **and** you are in the last stages of a terminal illness or are permanently unconscious.

You may also name someone to make these medical care decisions for you. They consult with your physicians, consult the *Living Will*, and make the care decisions on your behalf.

At first this may seem a terrible burden to place on a loved one, but in actuality just the opposite is true. A *Living Will empowers your loved ones* and **removes a terrible burden** by giving them your express directions to rely upon . . . they are merely following your desires, and not making these hard decisions themselves. A Living Will (and a Power of Attorney) can avoid confusion and anguish for your loved ones in what is already a painful situation.

LONG TERM HEALTH CARE/MEDICAID

A critical concern of Seniors is “What will happen to my spouse and my assets if I become disabled and need to enter a Nursing Facility or need medical assistance?” The high cost of such care can exhaust a lifetime of savings in a very short period.

An extremely useful tool to address these concerns is Long Term Health Care Insurance. If you are fortunate enough to have this type of coverage, it may go a long way toward paying the cost of the nursing home. However, such Insurance is frequently not available for many reasons including medical history and premium cost.

You could pay these costs with your own funds. This is the method many people are required to use at first. Quite simply, it means paying for the cost of a *nursing home* out of your own pocket. Unfortunately, with nursing home bills averaging between \$4,000 and \$7,000 per month in our area, few people can afford a long term stay in a nursing home.

Many people look to Medicare. This is the national health insurance program primarily for people 65 years of age and older, certain younger disabled people, and people with kidney failure. However, Medicare provides only short term assistance with nursing home costs, and only if you meet the strict qualification rules.

In general, you receive benefits if (1) you are enrolled in the traditional Medicare plan, (2) you've had a hospital stay of at least three days, and (3) are admitted into a skilled nursing facility (often for rehabilitation or skilled nursing care). If you qualify, traditional Medicare may pay the full cost of the nursing home stay for the first 20 days and can continue to pay the cost of the nursing home stay for the *next* 80 days, but with a deductible that's nearly \$100 per day. However, the strict qualifying rules must continue to be met.

Lastly, we look to Medicaid, or Medical Assistance as it is called in Pennsylvania. This is a federally mandated and state administered medical benefit's program which can pay for the cost of the *nursing home* if certain asset and income tests are met.

Medicaid, unlike Medicare (which only pays for skilled nursing care), will pay for long term care in a nursing home once you've qualified. Eligibility to receive Medicaid benefits requires that you pass certain tests on the amount of income and assets that you have. With proper Medicaid planning you can provide enough assets for the security of your loved ones -- they too may have a similar crisis. However, the rules are extremely complicated and confusing. The result is that without planning and advice, many people spend more than they should and their family security is jeopardized.

Congress has recently passed laws limiting the planning options available to Seniors, and in fact has criminalized certain transfers of assets without valid consideration for the purpose of qualifying for Medical Assistance.

The Elder Law Attorney has the expertise to guide a client through this complex area. A variety of planning techniques remain which can preserve assets for spouses and heirs while still qualifying for Medical Assistance.

However, **the most important tool is prior planning.** Once you need Medical Assistance most techniques are no longer available.

The first step to proper planning is an **Asset Ownership Analysis.** How assets are held, whether by husband, wife or jointly, will greatly impact on all planning, and is particularly important when undertaking asset protection planning or applying for Medical Assistance.

ESTATE PLANNING

Estate Planning is much more than just preparing a Will.

A properly crafted **Estate Plan** protects your assets and your heirs, provides for the distribution of your assets according to your desires and minimizes the amount of Death Taxes your Estate must pay.

A comprehensive **Estate Plan** includes a Will, Asset Ownership Analysis and Tax Planning, and may include a Trust.

Last Will and Testament. A **Will** sets forth how you want your assets distributed upon your death. This includes not only to whom the assets will be given, but also what limitations and/or protections will be placed on the assets. You also provide direction to your heirs as to your intent and select your Executor to administer your Estate.

A **Will** may also contain trust provisions for disabled or minor persons and Tax Planning provisions.

Trust. A **Trust** is a separate legal entity that holds, maintains and distributes property in accordance with your instructions. You select a person (the “Trustee”) to administer the assets in the Trust (the “Corpus”) for the benefit of the persons receiving the Trust (the “Beneficiaries”).

A **Trust** allows you to choose who gets the income and corpus of the **Trust**, when they get it and, more importantly, when they cannot get it. A **Trust** can provide for the long term protection of your spouse, children and grandchildren as well as provide management and protection of your assets.

Lastly, a **Trust** is a very useful vehicle for Death Tax planning.

ANSWERS TO COMMON ELDER LAW QUESTIONS

1. Can I protect my assets for my Family?

Yes. Techniques exist to protect your assets from the high cost of Nursing Homes, medical bills, taxes and many other expenses. For example, we can almost always protect the family home for the home spouse and heirs.

2. What happens if I become unable to manage my affairs?

Without proper planning, a Guardianship proceeding must be filed in Court to have the Judge name someone to manage your affairs. Guardianships are very costly, emotional and time consuming.

With planning, you name a person in your **Power of Attorney** and **Living Will** to manage your affairs in accordance with your instructions.

3. What happens if I die without a Will?

If you fail to plan and die without a Will, State law decides who gets your property and how your property is divided. The distributions provided by law are inflexible and may not satisfy your desires as to distribution of your estate.

Your surviving spouse receives the first \$30,000 in Pennsylvania (\$50,000 in New Jersey) and the remainder is divided 50% to your surviving spouse and 50% to your children. The surviving spouse will have your children as a “partner” in the property.

4. Where should I keep my Will?

You should store the original of your estate planning documents in

your safety deposit box, safe or other secure location where you keep your important records. A copy should be kept with your household records. Additionally, My practice is to keep a copy of executed Wills in my file.

I also recommend letting family members and close friends know that you signed estate planning documents. In the event of your death, they will know to look for your Will and other important documents.

5. What is “administration” of my estate?

Administration (also called “Probate”) is filing your Will with the County, collecting your assets, paying your bills and taxes, and distributing assets to your beneficiaries or heirs.

6. How will my estate be taxed at my death?

Your estate may be subject to at least two taxes: the Federal Estate Tax and a State Death Tax. The Federal Estate Tax is based on the fair market value of your estate and is calculated using tax rates up to a maximum of 45%.

Both federal and state estate tax laws provide you with a “marital deduction” for bequests of property to your surviving spouse. The marital deduction in effect allows transfers between spouses to pass tax free. In order to qualify for the marital deduction, property must be transferred to the surviving spouse in a fashion that satisfies the technical requirements of the statute.

7. What is the Unified Credit?

The Unified Credit is the right every person has to transfer up to \$2,000,000 Federal Estate tax-free during life or on death.

8. What is the Marital Deduction?

Tax laws view a husband and wife as one “entity”, therefore, the marital deduction makes all transfers between spouses tax free.

9. How frequently should I review my estate plan?

As a general rule, I suggest that you review your Will every year. Additionally, I suggest that you review your Will with a lawyer every three years. I offer a free, no obligation conference to review your estate plan and to update the information in your permanent file.

I also recommend that you contact a lawyer in the event of a dramatic change in your finances or in your family situation. For example, a substantial increase in your estate (through increased life insurance, inheritance, gifts, or successful investments) may create opportunities for tax savings, as well as necessitate further family financial planning. A death, divorce or other life change will reopen completely the matter of planning your estate.

10. Why do I need an Elder Law Attorney?

Americans are living longer than ever before. As a result, we face more challenges and transitions in our lives than those who came before us. The same is true for the legal issues we face.

Elder Law is a blending of many traditional areas of law. Estate Planning, Asset Protection, Medical Care, Financial Planning, Real Estate, Guardianship, Nursing Home and many other legal issues impact seniors on a daily basis.

The Elder Law Attorney focuses on these areas *as they impact seniors* to provide the specialized knowledge and services seniors need.

Henry Carpenter is an Attorney specializing in the areas of Elder Law and Estate Planning. He is a Certified Elder Law Attorney by the National Elder Law Foundation. His practice focuses on the client and emphasizes providing individualized counsel to Elders (and their families) in all areas of Elder Law Planning, including long term health care, asset protection, Medicaid eligibility, Estate Planning and Tax Planning, as well as Estate Administration.

Henry practices in Pennsylvania, with offices in Yardley and Jenkintown, and in New Jersey. He is a member of the Pennsylvania and New Jersey Bar Associations, the Elder Law Committee of the Pennsylvania Bar Association, the National Academy of Elder Law Attorneys and the Bucks County Estate Planning Council.

Henry was awarded his Master of Laws of Taxation from Villanova University, his Law Degree from Syracuse University, and his Undergraduate Degree from the University of Connecticut.

Henry is heard weekly on his radio show

Senior Legal Strategies

on WBCB 1490AM

and is a frequently published author and lecturer on a wide range of topics relating to Elder Law, Estate Planning and Business Law.

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