



At our firm, we are committed to fulfilling the legal needs of families. Whether it is real estate matters, personal injuries, wills and estates, or Elder Law, we pride ourselves on delivering the highest quality, personalized service to our community. Robert Reid directs our Elder Law practice. He and his staff strive to create a structure for informed and timely decision making by our client families with elderly members.



The Elder Law attorneys have compiled the 20 Most Commonly Asked Questions About Elder Law. We hope that you find their answers thought provoking.

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1. What Is Elder Law?

In a nutshell, Elder Law is that group of legal specialties which deals with the legal needs of older Americans. Since these needs are varied, making Elder Law decisions may involve participation by the client's children, parents, medical personnel, financial advisors, and governmental agencies, as well as an Elder Law attorney.

2. Why Did Elder Law Develop?

Elder Law developed because we are living longer. With increased age usually comes increasing medical expenses and increased care giving burdens. Federal, state, and local governments have devised numerous complex programs to assist the elderly. Finally, older Americans are wealthier than several decades ago, so guidance concerning passing this wealth along has become more relevant.

3. With What Topics Does Elder Law Concern Itself?

Among others, Medicare and Medicaid, disability, Social Security, long term care insurance, competency, guardianships, supplemental needs trusts, wills, estate and gift taxes, income and capital gains taxes and advanced directives, such as health care proxies and powers of attorney.

4. What Is Medicare?

Medicare pays for acute care of persons aged 65 or older without regard to their health status or financial resources. It consists of two major programs, Part A and Part B, which cover hospitalization charges and physicians' fees respectively.

5. What Is MediGap Insurance?

These are policies which can be purchased to cover Medicare deductibles and those medical services which Medicare does not cover or only partially covers.

6. What Is Medicaid?

Medicaid is designed to pay the medical expenses of low-income individuals who are aged, blind, or disabled. It is funded by Federal, state, and local governments. Medicaid covers a wide array of services including inpatient hospital services, home health care services, dental, etc. Most often, older Americans apply for Medicaid to cover the payment of their nursing home care.

7. Do I Have To Have Virtually No Money Or Assets To Apply For Medicaid?

Not exactly. Medicaid eligibility is based on financial need of the applicant. You may apply for Medicaid at any time. But you may be required to "spent down" your assets until you come within the income and net worth eligibility guidelines. These guidelines do change, but they are quite low.

8. Who Is A Community Spouse?

This is the spouse who does not apply for Medicaid and who remains in the marital residence.

9. What Is A Spousal Refusal?

Each spouse is legally responsible to provide for the other. At the time one spouse applies for Medicaid, the community spouse may sign a spousal refusal form. This protects the assets of the community spouse from seizure by Medicaid. However, after the Medicaid spouse dies and if the community spouse is still alive, the local Medicaid administrator may sue the surviving community spouse to recover the money Medicaid paid on behalf of the Medicaid spouse. Your Elder Law attorney's advice is critical in these circumstances.

10. What Are Supplemental Needs Trusts?

These are trusts set up during a person's lifetime or by a will which provide money for another person who is in a governmental assistance program such as SSI or Medicaid without making that person ineligible. The trusts must be drawn in a very specific and precise manner in order to maintain eligibility. Many community spouses and parents with disabled children on SSI set up these trusts for the benefit of their loved ones.

11. When Does A Person Need A Guardian?

At the point when, because of mental disability, a person can no longer make the responsible decisions for himself, a guardian should be appointed. Guardianship is the Court supervised process of appointing a substitute decision maker for an alleged incapacitated person (AIP). The guardian makes all the decisions about his ward's person and property.

12. Are The AIP's Thoughts And Wishes Considered In A Guardianship Proceeding?

Absolutely. The AIP is invited to appear at Court to express his or her opinions and preferences. An independent evaluator interviews the AIP at the AIP's residence. Medical experts are called into Court. The Court is very careful to consider and protect all rights of the AIP.

13. After A Guardian Is Appointed, Is There Ongoing Court Supervision?

Yes. The Court supervises the guardians very closely. All major decisions of the guardian must be authorized by the Court before they are implemented. All financial transactions must be accounted for at least annually.

14. My Parent May Be Losing Mental Capacity. Should I Petition For A Guardian To Be Appointed Right Away?

Not necessarily. If your parent is still competent, have him or her execute a Health Care Proxy and a Durable Power of Attorney. The Health Care Proxy authorizes the holder to make medical decisions for an incompetent or incapacitated individual. The Durable POA authorizes the holder to manage the affairs of the grantor, even if the grantor becomes incompetent. This Durable POA should be drafted by a professional so that it contains expanded powers beyond those found in the standard office supply store form.

15 I Hear A Lot About Living Trusts. When Are These Useful?

These trusts are beneficial in only a few circumstances. First, if you have assets which you no longer wish to manage, the trustee will do it for you (for an annual fee, of course). Second, if you own real estate in several states when you pass away, owning it in a living trust will avoid ancillary probate proceedings in each of those states. Third, if you want to conceal who ultimately will receive your assets and what your assets are. Last, if you have no relatives closer than second cousins when you pass away, a living trust will avoid a long probate proceeding. Living trusts do not save on estate taxes. They also cost more to draft than normal probate fees.

16. Do I Need A Will?

Yes. Regardless of the size of your estate, you probably want your assets go to the people or institutions you care about. Without a will, State statutes dictate who in your family will get your assets regardless of your wishes.

17. How Often Should I Have My Will Reviewed?

Usually, every five years is the right interval for having a will reviewed. If you have significant life changes or your financial situation is altered, more frequent reviews are prudent.

18. If I Give Money To Someone, Do I Have To Pay A Gift Tax?

Each year, you may give \$11,000 each to as many people as you please, and no gift tax is payable. However, annual gifts of over \$11,000 to any one person may create a gift tax liability. Seek the advice of your Elder Law attorney.

19. Were Estate Taxes Repealed By The 2001 Tax Bill?

No. The amount of assets exempt from estate tax has been raised. Beginning in 2002, the first \$1,000,000 will be exempt and that amount will rise in succeeding years. However, these changes are in effect only until December 31, 2012. When the present rules come back into force, any estate planning should be done in a return of the present rules in mind.

20. I Am An Empty Nester. I Am Considering Selling My House. How Much Of The Gain Would Be Exempt From Capital Gains Taxes?

If you used the house you are selling as your principal residence for 2 of the past 5 years, you may exclude \$250,000 of the gain (\$500,000 if you are married and both you and your spouse owned and claimed the house as a principal residence for 2 of the past 5 years).

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