



Elder Law: The Issues (And Opportunities)

The aging of America has had — and will continue to have — a significant impact on government, politics, communities, families and business. Quite simply, people are living longer. The number of people 65 years of age and older is expected to double by 2030, and many experts are concerned that aging issues will reach a critical point as early as 2010, when the “baby boom” generation first starts to reach retirement age.

For most, aging will bring an increased complexity to life. And this is where the opportunities lie in the growing area of elder law.

What Is Elder Law?

In a sense, most attorneys could think of themselves as elder law attorneys, especially when they are preparing estate planning documents, consulting a client on a pension plan or retirement timing, or evaluating Social Security benefits.

To be sure, elder law attorneys focus on the legal needs of the elderly. But elder law is different from traditional estate planning in that more emphasis is placed on planning for the contingencies of an extended lifetime. This includes planning for the time when finances, health, mental capacity and support structures may change — either rapidly or progressively.

Employing A Holistic Approach

The elder law attorney works cooperatively with a host of allies. including medical professionals. social workers.

finance and tax consultants, and family and professional caregivers. Using a holistic approach, the elder law practitioner handles general estate planning issues and counsels clients about planning for incapacity, especially the need for alternative decision-making documents.

Increasingly, the elder law attorney also assists the client in planning for possible long-term care needs, including assisted living and nursing home care. The elder law attorney must also be able to assist the client in making preparations for death. Often, time is of the essence and the elder law attorney must be able to confront emotional as well as legal issues facing a dying client and the surviving family.

The Challenges

Elder law attorneys can face significant ethical issues relating to identifying the client, maintaining confidentiality, exercising independent professional judgment, addressing multiple representation and handling the questionably competent client. Issues of “undue influence” may be even more difficult to identify and resolve. The elder law attorney must be particularly sensitive to the pressures that may be exerted on the client as well as on the attorney by third parties, including family members. Another obstacle may be the older person’s reluctance to take the necessary planning steps in the first place.

The Rewards

The elderly population not only possesses a significant percentage of the wealth in this country but, for the most part, also desires to maintain control over their own fortunes and destinies while continuing to contribute to the community.

Health, isolation and financial problems rank as the top worries of older persons. Elder law attorneys can play a meaningful role in preserving the ability of a person to exercise his or her own self-determination, autonomy and independence for as long as possible. The elder law attorney is rooted in the concept of “successful aging.”

As you develop your elder law team, feel free to call on our experienced accounting professionals for valuable assistance with estate planning and taxation issues.

