

## WHY YOU SHOULD CHOOSE AN ELDER LAW ATTORNEY FOR YOUR ESTATE PLANNING

You have decided to take the advice of your friends, family and financial planner and have your estate planning documents prepared. Who should you hire – a traditional estate planner, or, an elder law attorney?

While most elder law attorneys are estate planners, most estate planners are not elder law attorneys. Traditional estate planners focus on the transfer of your property at your death and minimization of estate taxes. While elder law attorneys also plan for transfer of property at your death as well as estate tax minimization, in addition, they attorneys formulate plans that also help protect your assets while you are alive, both from the expense of long term care as well as from financial exploitation in your later years. Also, elder law attorneys craft plans that protect you and your estate if you become incapacitated.

An elder law attorney will discuss and advise you on these lifetime circumstances:

- 1. Plan for your long-term care.** Unless you are covered under a long-term care insurance policy, the cost of home care, assisted living, and nursing home for you and your spouse will primarily be your financial responsibility. Medicare covers only limited skilled care. Older persons who need care most often need assistance with activities of daily living – eating, bathing, dressing, toileting and transferring (walking), which is considered custodial, not medical. Because it is not medical, neither Medicare nor health insurance covers much or any custodial care. Therefore, you will need to either save for long-term care or purchase long-term care insurance. If you cannot afford long-term care insurance or are uninsurable because of a medical condition, your estate plan should include the flexibility to allow for Medicaid planning to qualify you or your spouse for Medicaid coverage of long-term care. This often takes the form of customized Medicaid planning powers which must be included in your power of attorney for property and trust documents. If your spouse is diagnosed with a chronic illness, it may be prudent to restructure your assets. An elder law attorney will take all of these issues into consideration when crafting your estate planning documents.
- 2. Plan to protect assets for your children.** Asset protection planning from an elder law perspective takes several different forms. You may have a child with a disability, or with health or mental problems that makes you question their ability to support themselves. An elder law attorney will consider those issues and may advise that you establish a special needs trust for that child which is established only if that child requires public benefits programs at the time of your death. An elder law attorney may recommend a credit-protection trust for a child who is in debt or has spending problems. Finally, if you have sufficient assets to make a substantial gift in the form of an irrevocable gift trust, an elder law attorney will be able to counsel you on a 5-year Medicaid plan to protect assets for your children.
- 3. Plan for your potential incapacity.** The longer we live, the greater the likelihood that each of us will spend some portion of our life with diminished mental capacity and will need assistance with management of our finances and other important decisions. Planning for decision-making and financial management in the event of incapacity is critical to a good estate plan. An elder law attorney will be able to counsel you as to appropriate surrogate decision-makers and will have referrals to appropriate professionals if you need them.

**4. Plan to protect you, as you age, from possible financial exploitation.** The financial exploitation of the elderly is a rapidly growing problem. Dementia and the aging brain make the older elderly especially vulnerable to exploitation by family and neighbors, as well as by scams and con artists. While not foolproof, there are estate planning provisions that may reduce your risk of being victimized. Elder law attorneys build accountability into trusts and powers of attorney to minimize the opportunity that those documents may be used to exploit. Elder law attorneys may include provisions to make it more difficult to revoke or amend documents at a certain age, in order to protect you from undue influence. An elder law attorney may also advise that when you reach a certain age that your documents allow for more assistance and oversight by trustworthy family members or professionals. Minimizing your exposure to financial exploitation is an important concern for elder law attorneys.

Having an elder law attorney prepare your estate plan may be critical. If you are over the age of 50, have a spouse or other family member with a chronic illness or disability, or need to plan for your own long-term care, it is important that an elder law attorney prepare your estate plan.

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When you have questions related to elder law, estate planning, probate, and guardianship, think of the attorneys at Dutton Casey & Mesoloras. With over 130 years of combined legal experience, you can depend on our team for the knowledge, advice, and support you deserve to resolve your legal needs.

Resources:

National Elder Law Foundation - [www.nelf.org](http://www.nelf.org)

National Academy of Elder Law Attorneys - [www.naela.org](http://www.naela.org)

(rev. april 2019)