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Elder law basics

A new specialty in legal practice has emerged over the past couple of decades: “elder law.” Retirees and senior citizens have some special laws and programs that apply only to them, and the laws that apply to us all may take on a new aspect when applied to the unique circumstances faced by the elderly. The core areas that elder law attorneys provide advice about include the following:

- health and long-term care planning;
- access to public benefits, including Medicare, Medicaid and Social Security;
- surrogate decision-making, including both medical and property management decisions;

- older persons’ legal capacity;
- wills, trusts, and estates.

Although any attorney may include elder law advice in his or her practice, some are now becoming specialists in this field, and national organizations have been created for specialist certification. To achieve a specialist designation, an attorney must be able to help with insurance, housing, long-term care, employment, and retirement issues.

Planning for health care needs

Most retirees will not need to consult an attorney to secure their routine Medicare benefits or Social Security payments. Medicaid benefits are another matter and are subject to an array of complex rules that an attorney can help sort through.

The elder law attorney should also be consulted for drafting a living will, to provide guidance on making medical decisions when one is terminally ill. These are among the questions to consider before executing a living will:

- How do you feel about ventilators, surgery, drugs, or tube feeding if you become terminally ill? If you are unconscious and not likely to awaken? If you develop Alzheimer’s?

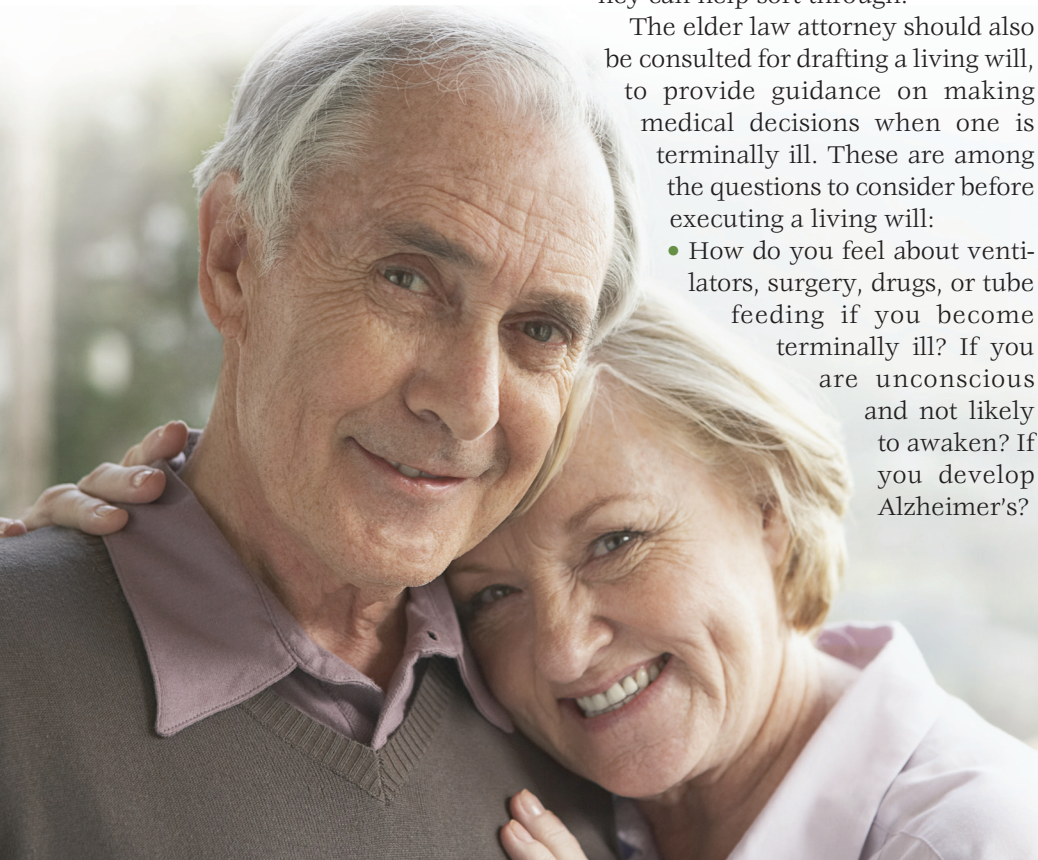
- What kind of medical treatment would you want if you had a severe stroke or other medical condition that made you dependent upon others for all your care?

A living will tries to answer such questions, yet one can readily see that answers are almost impossible. No one can guess what medical emergency might be faced in the future, nor what medical advances might be made in the coming years to deal with it. In fact, some studies have shown that similarly situated patients tend to get the same care whether or not they have living wills.

That’s why most experts advise having a durable power of attorney for health care, in addition to a living will. This document identifies an individual whom you have chosen to make health care decisions on your behalf, when you are unable to make your wishes known.

Advance financial directives

The most basic tool for delegating authority to make financial decisions is the power of attorney. The power normally is drafted by an attorney, such as an elder law specialist, and the authority that it creates may be as broad or as narrow as needed. However, a traditional power of attorney is effective only so long as the person who created it is competent. Therefore, a durable power of attorney may be a better choice because it continues in force, regardless of the competence of the person whose affairs are being managed. In some cases, a power of attorney doesn’t become effective until the occurrence of a future event, such as the onset of



Documents for delegating

Planning at the end of life involves the delegation of various responsibilities to others, who must act on behalf of the one doing the delegating. Here are the types of documents that one may encounter.

DOCUMENT	WHAT IT DOES
MEDICAL:	
Living will	Provides guidelines for medical decisions when an individual becomes terminally ill.
Do not resuscitate order (DNR)	Specifically requests that cardiopulmonary resuscitation not be used if one's heart or breathing stops.
Power of attorney for health care	Identifies an individual to make medical decisions when one is unconscious or incapacitated.
FINANCIAL:	
Power of attorney for financial matters	Delegates authority to an agent to make financial decisions. The agent's authority ends when the principal is incapacitated.
Durable power of attorney	Delegates financial decision power to an agent even if the principal is incapacitated. In some cases, the power "springs" into being upon incapacity or other identified event.
Revocable living trust	Transfers assets and full financial management authority to a trustee. The trust may continue into incapacity, even beyond the death of the trustor.

Source: Merrill Anderson Company

a disability. Such an approach is called a springing power of attorney.

The more comprehensive approach to financial management at the end of life is the revocable living trust. Investment assets are placed in the care of a trustee, who manages them in a way that's consistent with the terms laid out in a trust agreement. The trustee may be empowered to handle routine financial chores, such as paying bills and taxes, as well as the more demanding duties associated with portfolio management.

A living trust provides continuous financial protection in the event that the trust grantor becomes incapacitated. There's no need to involve a court in a public proceeding for a guardianship or conservatorship to handle financial matters.

Wills and estate planning

Everyone needs a will to provide a plan for the final distribution of his or her property. That is the primary function of a will, together with designating a person or an institution (such as us!) to supervise the process of

estate settlement. An estate plan may include trust planning to handle longer term wealth management issues.

A variety of tax issues may also be addressed in the estate planning process. Federal estate taxes have receded in importance for all but the wealthiest families, at least for this year and next, given the \$5 million federal estate tax exemption. However, many states continue to levy estate taxes, inheritance taxes, or both at the deaths of their citizens, often with much lower exemptions than the federal government provides. What's more, the federal exemption is scheduled to fall to just \$1 million in 2013. Given the chronic federal budget deficits, there is a chance that the tax increase will go forward. Accordingly, planning for death taxes will remain an essential part of estate planning.

Are you ready?

We don't practice law — elder law or otherwise. For that, you must seek advice from an attorney. We do provide investment management and trusteeship services. One of today's most cherished luxuries is attentive, personalized service from people who not only know their business but also enjoy helping others. We work hard to provide our living trust customers with that standard of service. You can gauge our capabilities by talking over your own plans with one of our asset managers. Why not make an appointment this month? ☐

Living trust candidates

Any comprehensive review of an older person's financial planning is likely to touch upon the value of a revocable living trust for investment management. The trust approach provides a great tool for delegating investment responsibility into experienced hands without giving up control of assets. Anyone with a substantial portfolio should consider a trust and the benefits of professional trusteeship, such as we provide. Other good candidates for a living trust include those who:

- own assets in more than one state;
- are concerned about financial management upon illness or incapacity;
- value family financial privacy; or
- want to ensure immediate family access to assets after the owner's death.

Think you might be a candidate for a living trust? Please come in and talk it over with us to learn more.



Quarterly Economic Review for June 2011



Gary S. Wolfer
Senior Vice President
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The Global Expansion Remains on Track

Real annualized Gross Domestic Product (GDP) in the fourth quarter of 2010 expanded by 3.1%, marking the sixth consecutive quarter of positive growth. Geopolitical turmoil in the Middle East, coupled with the earthquake/tsunami/nuclear disaster in Japan, has created a higher level of uncertainty for financial markets,

commodity prices and the global recovery. Despite the two-year bull market in stocks, consumer sentiment fell significantly in March, following seven straight months of increases. Recent data suggests consumer expectations for both income and employment growth have yet to fully recover since the recession “officially” ended in June 2009. The increase in the price of gasoline and food has heightened inflation expectations, causing the gap between consumers’ “perception” of growth in real income and inflation to widen considerably. While this development is somewhat disconcerting, it is more likely reflective of consumer sentiment that is much too pessimistic, considering the economy may be only in the early to mid stages of a prolonged global expansion.

The Economic Outlook

We believe the economic expansion is now in the process of transitioning from one led by growth in productivity to an expansion sustained by both viable job and income gains. Capital spending remains robust on a global basis and not likely to weaken anytime soon. Corporate earnings for the first and second quarters of 2011 are projected to increase by 13% and 15% respectively on a year-over-year basis. Despite our positive outlook, concerns abound regarding the direct longer-term impact of higher gasoline prices on consumer behavior. This requires us to lower our 2011 real GDP estimate slightly from 3.5% (as reported previously) to about 3.2%, based primarily on a downward revision in first-quarter 2011 GDP of 1.8%. While our first-half outlook may seem somewhat tentative, we believe consumer spending will bounce back in the second half of the year as real GDP growth reaccelerates. The U.S. economy has proven to be resilient despite repeated shocks from overseas markets and a domestic housing industry that continues to struggle amidst a dysfunctional mortgage market.

The Federal Reserve Bank and the Ending of Quantitative Easing

Despite a rather “hawkish” tone by several members of the Federal Open Market Committee (FOMC), we do not anticipate any deviation from the monetary policy views articulated by Chairman Bernanke. As such, the second round of “quantitative easing,” totaling \$600 billion in purchases of longer-term bonds will be completed by June 30 as originally intended. We foresee no extension of the program or a “round three” of “quantitative easing.” With the absence of the largest purchaser of U.S. Treasuries from the marketplace, i.e., the FRB, interest rates could start to tend higher sooner rather than later, despite slower growth in the first quarter. As the expansion continues, the demand for credit will rise, putting additional pressure on rates. With the ending of QE2 in June, the FRB will probably hold the benchmark rate steady at 0.25% for the remainder of the year. In the first half of 2012, monetary policy could tighten via a rate increase in an attempt to rein in stronger economic growth and rising inflation expectations. Such a move would directly impact the short-end of the U.S. Treasury yield curve, resulting in some flattening of the curve between two- and ten-year maturities.

Bonds and Stocks

With the FRB maintaining an accommodative monetary policy stance for the last several years, the risk for higher interest rates has increased. Given the backdrop of easy financial conditions engendered by a low interest rate environment, we believe the risks are definitely tilted towards yields moving higher. Accommodative policies are likely to come under more scrutiny by dissenting members of the FOMC and by the Treasury market itself, thus resulting in a tightening of monetary conditions well ahead of any FRB policy action. At this time, we believe taxable investment grade corporate and tax-free municipal bonds represent far better value than U.S. Treasuries.

Given turmoil overseas, U.S.-based stocks have become much more attractive to investors on a global basis. Investors seeking higher returns are now focusing attention on equities in the wake of the advance in the Standard & Poor’s 500 Index since bottoming out on March 9, 2009. First-quarter 2011 total return for the S&P 500 was 5.9% and 15.7% for the 12 months ending March 31, 2011—the highest in more than ten years. We believe the positive trend in earnings will continue as corporations possessing solid “pricing power” (the ability to raise prices) will be able to cover escalating energy, raw material and labor costs, thereby maintaining or even enhancing profit margins. An explosion in merger and acquisition activity will also occur as corporations attempt to deploy excess cash reserves, with the primary objective of both solidifying and expanding market share. □

The top 400

The IRS issued a report in May on the top 400 taxpayers by adjusted gross income (AGI) each year for the years 1992 through 2008. This club gets a new membership every year. According to the report, 73% of the people who fell into this group were there for only a single year during the study period. Another 12% appeared in only two years. These could be situations in which a business owner has sold a business or someone has converted valuable real estate holdings to cash. Only four taxpayers appeared in the top 400 in every single year.

The report demonstrates that top incomes are derived from investments, not wages. Here are the relative contributions to AGI for sample years:

Components of income for the top 400 taxpayers

	1992	2000	2008
Salaries	26%	17%	8%
Taxable interest	7%	4%	7%
Dividends	6%	3%	9%
Capital gains	36%	72%	57%
Partnership and S corp. income	18%	8%	19%

Source: Internal Revenue Service

Capital gains fell sharply from 2007 to 2008, as the recession got under way. Still, in 2008, the top 400 taxpayers collected 13% of all net capital gains reported to the IRS for the year, their highest share during the study period.

Most of the top 400 taxpayers did not pay the Alternative Minimum Tax. Until 2005, fewer than 25% of these taxpayers had any AMT liability. The high water mark came in 2007, when 36% of this group were snared in the AMT web.

Homebuyer tax credit follow-up

A recent item on SmartMoney.com suggests that the now-expired \$8,000 tax credit for homebuyers probably cost these buyers about \$15,000. That's because the median home value fell to \$170,000 in March from \$185,000 a year earlier, according to Zillow.com. However, averages don't mean much when it comes to setting the value for a particular home. Many homebuyers likely have experienced no real change in their home's value. Still, it is fair to say that the homebuyer tax credit did not achieve its purpose of stabilizing the market for house prices. According to Zillow, average home prices have declined steadily since June 2006, and additional modest declines are forecast for this year. □



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Trusts for Seniors

In the past, people set up trusts primarily for the benefit of others. Now trusts are more frequently set up for themselves—especially as they enter their retirement years. These living trusts are one facet of financial planning and an excellent way to plan successfully. Financial planning is making the most of your money, now and in the future. Consider these aspects of a living trust:

- With a living trust, you can gain the added peace of mind that comes from professional, personalized investment management. At the same time, our services as trustee can free you from many time-consuming chores associated with the care and handling of securities. While executives and professionals find these advantages attractive, so do retired men and women who want to be free to travel or pursue new interests.
- Your trust also can provide an important element of financial protection if you become ill or incapacitated for a prolonged period or if you become preoccupied with caring for an ill or incapacitated spouse.
- And, your trust can continue beyond your lifetime as a source of income and support for one or more beneficiaries.
- Most living trusts today are revocable, meaning they may be amended or even terminated at any time during life. This flexibility permits the trust-maker to observe how the trust functions to meet his or her needs—and the future needs of his or her family—and then make changes accordingly.



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