

Avoiding Elder Law/ Elder Care Pitfalls



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Pitfalls

- Financial Elder Abuse
- Marriages Later in Life
- Family Dynamics
- Failure to Consider Tax Consequences
- Failure to Include Pets in Estate, Disability and Long-Term Care Planning
- Failure to Consider Social Security-Claiming Strategies
- Long-Term Care Expenses
- Impaired Capacity
- Medicaid Estate Recovery
- Filial Responsibility Laws
- Sale of Home for Less Than Assessed Value



Financial Elder Abuse

- Widely believed to be under-reported by the victims.
- MetLife Mature Market Institute estimates that the financial loss by victims of elder financial crimes and exploitation exceeds \$2.9 billion dollars annually.
- Va. Code § 18.2-178.1
- Solution: Incorporate Safeguards into Estate & Long Term Care Plans



Marriage Later in Life

- An estimated 500,000 Americans 65-years-old and older remarry each year.
- However, there are potential liabilities for older married couples, i.e., liability for partner's long term care and family dynamics.
- **Solution:** Financial Plan, Long-Term Care Insurance and Pre-Marital Agreement



Family Dynamics

- When an elderly person's capacity declines, there is frequently a shift in the family "power" structure.
 - Rivalries
 - Competition
 - Arguments
- **Solution:** Family meetings and conversations; carefully chosen agent(s)/trustee(s).



Failure to Consider Tax Consequences

- Many common Elder Law techniques have tax consequences and require the filing of returns.
- For Example:
 - Gifts: Carryover Basis and Gift Tax Return
 - Care Giver Agreement: Payroll Taxes & Ordinary Income
 - Irrevocable Trusts: Compressed rates, NIIT, & form 1041
 - Payment of LTC expenses: deduction
- **Solution:** Incorporate tax advice as part of the Plan.



Failure to Include Pets in Estate, Disability and Long-Term Care Planning

- Pets can reduce depression, keep seniors on a regular eating schedule, and give them greater self-esteem.
- “Seniors for Seniors” Program through Norfolk SPCA
- If not planned for properly, pets can be abandoned by family members with no interest in or financial means to care for the pet.
- **Solution:** Create care and support instructions to protect pets in estate, disability and long-term care planning.



Failure to Consider Social Security - Claiming Strategies

- Males have a life expectancy of 85 at age 65. For females, it is age 88.
- 25% of males will reach age 92. 25% of females will reach age 94.
- However, 74% of retirees claim a reduced benefit
- Improved claiming strategies can significantly increase lifetime benefits.
- **Solution:** Implement a planned claiming strategy.



Failure to Plan for Long-Term Care Expenses

- 70% of 65-year-olds will require Long-Term Care assistance.
- Average period of assistance is 3 years.
- On average, a 65-year-old needs to set aside & invest \$50k for long-term care expenses; 16% will need \$100k, and 5% will need \$250k
- Median net worth of families at age 65: \$206k
- **Solution:** Develop a Long-Term Care Plan at retirement.



Impaired Capacity

- 4 million Americans currently suffer from dementia.
- 10 % of all people over age 65 and up to one-half of those over age 85 have dementia.
- **Solution:** Develop a comprehensive incapacity plan, carefully select fiduciaries, and hold a family meeting.



Medicaid Estate Recovery

- In 2010, Medicaid paid \$123B for Long-Term Care Services in the United States.
- Virginia treats a home as a countable resource ,if not occupied by the spouse for six (6) months.
- Virginia has the right to recoup Medicaid costs from deceased person's assets.
- **Solution:** Create and transfer personal home to Trust five (5) years before Long-Term Care services are needed.



Filial Responsibility Laws

- Filial responsibility laws are laws that impose a duty upon adult children for the support of their impoverished parents.
- John Pittas case
- Thirty States, including Virginia, have filial responsibility laws. (See Va. Code § 20-88)
- **Solution:** Develop Long-Term Care Plan for Parents



Sale of Home for Less Than Assessed Value

- Medicaid provides assistance with the payment of Long-Term Care expenses, but has financial eligibility rules.
- Medicaid penalizes sales of assets for less than fair market value.
- Sale of home for less than assessed value will be considered a sale for less than fair market value.
- **Solution:** Reduce assessment, document and apply for hardship waiver, list at assessed value, or plan for penalty period.





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