

Elder law is a relatively new practice area in the legal profession. The rapid increase in size of the elderly population created a need for assistance in a wide variety of legal practice areas.

Attorneys who focus their practice on assisting the elderly or disabled persons, on protecting the individual, their families, and preserving their property/affairs are often referred to as Elder Law attorneys.

Among other areas of representation, Elder Law can include estate planning, health care planning, planning for incapacity or mental incompetence, preparing applications for or the management of the receipt of benefits, guardianship, and asset preservation.

Do Elder Law attorneys only assist the elderly?

No. Disability and death are age nondiscriminatory. These events can impact anyone regardless of their age. However, more elderly individuals become disabled than any other segment of society. Mr. Abraham's clients range in age from their 20s to well into their 90s.

As a society, do we preplan?

No! Nationally only about 40% of all adults preplan for disability or death by signing a Power of Attorney, Advance Health Care Directive, and Last Will & Testament.

What happens in Maryland if the individual fails to preplan and dies or becomes disabled?

If the individual dies without a Will, their financial affairs may be subject to the laws of intestacy. Should that occur, Maryland's laws and the cases interpreting them make all of the decisions such as who inherits, what they inherit, who serves as the Personal Representative (executor), etc.

Dying intestate can result in outcomes that do not match a person's wishes. An example could be their spouse not inheriting all probate assets.

Individuals who fail to preplan and become disabled may also face a formal, involuntary court proceeding called a guardianship.

What is a Guardian of Person or Property?

Guardians of the Person and Property are appointed by the Circuit Court to assist someone who could not otherwise manage their medical care or financial interests.

A Guardian of Property is responsible for managing the disabled's property and affairs. This can include collecting income, paying bills, applying for benefits, etc.

Failing to plan is planning to fail!

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A Guardian of Person is responsible for managing the disabled's person's medical care. This can include determining where they live, receive care and medicine, and whether treatment they are receiving is to be continued or is withheld, etc.

Both Guardians MUST file annual reports with the Court detailing the care their ward received and any changes in their finances. When the disabled person dies or recovers from the disability a Petition to Terminate must be filed.

What is Medical Assistance ("Medicaid")?

Medicaid is a program which partially offsets the cost of long term care in a nursing home for those individuals who can no longer afford the cost of their care and who qualify for these benefits.

As opposed to Medicare which is a Federal social medical insurance program, Medicaid is a needs-based, means-tested social welfare program which is funded federally with contribution also coming from state and local governments.

Who should develop a plan to preserve assets in a Medicaid setting?

Due to the strict and strictly enforced eligibility requirements, these plans must be carefully developed and implemented. As a result, an experienced Elder Law attorney should always be consulted.

Disclaimer - This handout is provided for general information relevant for planning undertaken in Maryland only. None of the information within should be relied upon. Statutes, regulations, and the cases interpreting them are constantly changing. Consult an attorney before taking any action. Your reliance on or use of this information does not create an attorney/client relationship or privilege between you and the law firm and its employees, or their heirs, personal representatives, successors, or assigns.

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The Towson Office of the Firm Concentrates its Practice in:

- Estate & Trust Planning
- Estate/Probate Administration
- Elder Law
- Guardianships
- Deed Preparation
- Asset Preservation Planning
- Medical Assistance Applications
- Medical Assistance Denial Appeals

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