



## Elder Law: So much for 'reactive' estate planning

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With Julian Gray and Frank Petrich

We guess we're all procrastinators to a certain degree. In fact, when meeting with elderly clients, one of the most common questions asked by adult children who happen to be in the room is, "When should I see an elder law attorney?" As any seasoned lawyer would respond, "It depends." Unfortunately for many families, they only reach out for help in the midst of crisis.

While there are almost always options available at the eleventh hour (often limited because of timing), obviously advance planning will save time, money and stress.

Let's divide things up into two camps and examine the characteristics: Those who plan in advance and those who are in crisis.

Probably the most common indicator that a client is reactively planning is that they have only a Last Will and Testament. In addition, they may have (if lucky) a Power of Attorney document and Living Will as well. These documents are the cornerstones of any basic estate plan.

However, many clients just aren't aware of what reactive planning means – for both lifetime issues and post-death issues. When we speak at seminars, frequently we ask the audience if anyone has ever served as an executor of an estate. Usually, several people raise their hands and we ask how they liked being an executor. Then, the groans ensue as the audience complains that it took years to settle, no one knew where all the stocks were located, the attorney's fees were too much and the heirs fought over Mom's pots and pans.

Contrast this scenario with a phone call we received recently from the daughter of a deceased client for whom we had established a trust several years ago. After expressing our condolences and finding out what had happened, the client's daughter was relieved to hear that there was nothing she had to do legally or tax-wise because of her father's death. In fact, we explained to her

that she didn't even need to walk into a courthouse or our office; a great example of proactive planning.

Proactive planning has many layers. For example, purchasing private long-term care insurance is a very proactive way to transfer the risk of future long-term medical needs such as home care, assisted living or nursing care onto an insurance company. But, just purchasing the insurance is not enough.

Recently, we ran into a situation where a couple had purchased long-term care insurance and subsequently the husband did need nursing home care. Fortunately, the insurance company paid out what it had promised in benefits for about four years of his care. This greatly helped the wife's situation at home. Unfortunately, no one ever considered that the husband might live longer than four years after making the policy claim. So, over the course of those four years, the husband's care costs continued to increase and then the insurance was exhausted.

The wife then reacts to the severe changes in cash flow due to the loss of the insurance by contacting an elder law attorney. The next step would be to qualify the husband for Medicaid to pay for his long-term care costs so that the wife can take advantage of the anti-impoverishment provisions in the federal Medicaid laws. Guess when the proactive time would have been to discuss this issue? When the long-term care insurance is exhausted or four years ago when the claim was filed? While there are still options available, the results may be significantly limited in a reactive planning situation. As the old Dutch proverb says, "We'll land your plane, but it may be dented."

So, that gets us back to when to contact an elder law attorney? Frequently, we see the greatest utility in helping clients at the intersection of age and disability; as either one will trigger the need for planning. More specifically, the special planning considerations unique to the discipline of elder law become relevant when a person is at retirement age (or older) or has the onset of a disability (even if not having reached retirement age). But as we've shown from just the few examples here, it literally "pays" to be proactive.

Here are a couple of additional things to know:

The Steve Gleason Act was passed by Congress on July 15. The Act helps ensure that Medicare will pay for Speech Generating Devices, allowing people (especially ALS patients) to keep them for as long as they need them, regardless of the care setting they find themselves in and provides coverage for needed accessories. Thousands of Medicare beneficiaries will literally have their voices.

Finally, how about a shout-out for the 50th anniversary of the Medicaid and Medicare programs on July 25! This was accomplished by adding to the Social Security Act (which turned 80 this year) both Title XVIII (Medicare) and Title XIX (Medicaid). Many readers are no doubt enjoying the benefits of one or both of these programs as is one of us). Also note that the federal Older Americans Act turned 50 on July 14. So, have a small bit of birthday cake and celebrate (but, not too hardy)!

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