

## ELDER LAW: IT'S NOT JUST FOR OLD PEOPLE

Richard A. Courtney, CELA  
Certified Elder Law Attorney  
(published in Mississippi Business Journal, Fall 2006)

**The Need for a Plan.** Every business owner understands the importance of a business plan – a mapped out course for the success of the enterprise. Every **individual must also have a plan** that addresses decision-making, health and financial goals, based on the family's unique circumstances and values. The plan should address continuing family financial support, education for children and grandchildren, caregiving and long-term care for family members who require assistance with life activities, and transfer of a valuable estate to heirs. These results do not just happen! They require planning.

**Our Aging Population.** Estate planning is more than drafting a will to transfer assets at death. Today we must plan for long life. Thirteen percent of our population – over 33.5 million people – is over age 65. Approximately 77 million “baby boomers” began to reach age 60 in 2006, and by 2030, one-fifth of the population will be over 65, with the fastest growing contingent being the over-85 group. Someone age 65 today had a life expectancy of age 64 at birth, but has a life expectancy of age 85 today. We may live longer, but experience periodic illnesses associated with aging or chronic conditions such as Alzheimer's disease or congestive heart failure. Also, climbing divorce and remarriage rates have resulted in “multiple-family families” and the often conflicting or competing legal and financial relationships of such families.

Charles Sabatino, of the American Bar Association Commission on Legal Problems of the Elderly, has noted that “baby boomers” exhibit three generational characteristics. First, they tend to be better educated, insist on doing things their own way, distrust traditional authority, and demand more convenience and service. Second, boomer estates are more complicated, diverse and geographically far-flung, due to the growth in investment products and increased job mobility. Third, boomers will likely experience more career changes, more marriages, more non-traditional family affinities and a more fluid mixing of educational, retirement and work cycles. (Sabatino, *The Future of Elder Law: One Perspective* (New York, N.Y.: Panel Publishers, 1999)). In

addition, the “sandwich generation” has found boomers becoming primary caregivers not only for their own children (often into young adulthood) but also for their aging parents.

**Elder Law – The Planning Process.** These factors – the need to plan for future financial security and for personal security in the face of potential declining health, and the growing desire for customized legal services designed to meet particular needs and goals – have brought about the area of the law known as **Elder Law**. The National Elder Law Foundation (which grants the Certified Elder Law Attorney, or CELA, designation to attorneys based on experience, continuing education, peer recommendation and rigorous examination criteria) identifies **thirteen areas of legal services** which include: *health and personal care planning* (Medicare plans, medical/health care decision-making), *estate planning* (wills, trusts, property ownership and other means for management and transfer of personal and business assets), *fiduciary representation* (advising executors, trustees, guardians and other agents), *legal capacity counseling* (powers of attorney, guardianships and conservatorships for current or future disability), *public benefits advice* (Medicaid, Social Security, SSI, Veterans programs), *retirement accounts* (including customized beneficiary designations), *tax advice*, as well as advice and advocacy pertaining to *insurance matters, housing, nursing home resident’s rights,* and *age-related discrimination*. Thus, a CELA has the ability to recognize the legal and financial issues and problems facing a client and design a complete plan to solve the problems and achieve the client’s goals. In the planning process, the attorney may work with non-legal professionals to ensure that the right plan is designed and implemented to meet the needs of any person, regardless of age. In addition, this author has hired a professional geriatric care manager to assist and advocate for clients in obtaining financial and health-care services and care for children, parents or spouses with disabilities.

**Why Plan?** Statistics show that approximately 65% of all adults in America have no will, trust or estate plan of any kind. This failure to plan results in great sorrow and conflict in many families each day. Properly drafted wills or trusts can provide for guardianship of children, effective management of funds for disabled or “spendthrift” children, and smooth distribution of estate assets to family over time. Special trusts can be created to hold assets for care of a disabled spouse or child while keeping eligibility

for Medicaid medical assistance, which would be unavailable without such a trust. Financial and medical powers of attorney can assure that one's decisions will likely be carried out by trusted persons in the event of incapacity, thereby preventing confusion and family conflict. And having a care plan developed for a spouse or parent in ill health can ensure that all available financial resources and care supports are obtained as the needs arise. So, contact an Elder Law attorney to help you design and implement your plan. The old saying is true: **those who fail to plan, plan to fail.**

*Richard A. Courtney, CELA is the only Certified Elder Law Attorney in Mississippi. He limits his practice to elder law, estate planning, and special needs planning.*

---