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## ELDER LAW 101:

# Important Legal Planning for Aging with Confidence

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**January 6, 2026**

# Key Takeaways

- ❖ Overview of Elder Law
- ❖ The Importance of Early Planning
- ❖ Options May Be Available If Planning Was Delayed



# Roadmap

- ❑ Basic Estate Planning Documents
- ❑ What is Long-Term Care and where to receive it?
- ❑ How to Pay for Long-Term Care
  - ❑ Focus on Medicare and Medicaid

# Basic Documents

- ❖ Advanced Directives
  - 1) Health Care Proxy (with HIPAA)
  - 2) Living Will
  - 3) Durable Power of Attorney
- ❖ Last Will and Testament (Will)
- ❖ Trust

# Advance Directives

- What Are They?
- Why Do I Want Them?
- Competent Adult
- What Documents?
  - 1) Health Care Proxy
  - 2) Living Will
  - 3) Durable Power of Attorney

Advanced  
Directives:

# 1) Health Care Proxy

- Designate an agent to make health care decisions
- Statutory Form
- One agent at a time
- Competent Adult (18+)
- **Requirements**
  - In writing
  - Signed and dated
  - Two witnesses

## 2) Living Will

- **Why it's important**
  - Sets forth your wishes regarding Nutrition, Hydration and other end of life care choices
  - Given to Health Care Proxy as guidance (“permission slip”)
- **Requirements**
  - In writing (No Statutory Form)
  - Clear expression of wishes
  - Two witnesses (recommended)
  - Signed and dated

# 3) Power of Attorney (Durable)

## Advanced Directives:

- Appoint individual(s) to manage assets
- Durable vs. Springing
- Statutory Form (6/13/2021)
- Competent Adult (18+)
- Primary Agent(s) and Successor Agent(s)
- Powers (Standard vs. Modified) – Gifting
- **Requirements**
  - In writing
  - Signed and Notarized
  - Two Witnesses
- Revocable

## 3) Durable Power of Attorney (Continued)

### Common Challenges and How to Avoid Them

#### Advanced Directives:

- Capacity
- Undue Influence
- Errors of execution
- Scope of powers is too limited
- Bank refusal
- Agent misuse

- **What if I don't have  
Advanced Directives?**

Advanced  
Directives:

**Possibly...**

## **Guardianship**

- Avoid if possible
- Available if necessary

# Estate Planning

**Why is it Important?**



# Estate Planning

## Last Will and Testament

### Estate Planning



- Statement directing for the distribution of your assets when you die
- Only assets in your name alone
- Does not protect your assets during your life
- Can create Testamentary Trusts
- Requires Probate
  - What is Probate?
  - Should you avoid Probate?

# Estate Planning

## Trusts

- What is a Trust?
  - An Agreement between person establishing the Trust (“Grantor”, “Settlor”) and person managing the Trust (“Trustee”).
- There are different types of Trusts
  - Testamentary
  - Revocable vs. Irrevocable
- You should always have a Will
  - Why?
  - Pour-Over Will

## Estate Planning



# Estate Planning

## Trusts continued

- Assets can be transferred into the Trust during your life.
- The Trust Agreement determines what happens to the trust assets after your death.
- In some circumstances, it is preferred over a Will.
- Revocable Lifetime Trust

## Estate Planning



# Medical Care

## Long-Term Care (LTC)

- Services to meet a person's physical or personal needs.
- Medical and Non-Medical
- Most Americans who live to Age 65 can expect to need some form of LTC.
- Activities of Daily Living (ADLs)
  - Bathing
  - Contingence
  - Dressing
  - Eating
  - Toileting
  - Transferring
- Skilled Care vs. Custodial Care



# Places to Receive LTC

	Pros	Cons
<b>At Home</b>	<ul style="list-style-type: none"> <li>• Preferred option for most</li> <li>• Familiar environment</li> <li>• Maximum independence</li> <li>• Family can be more involved</li> </ul>	<ul style="list-style-type: none"> <li>• Caregiver burnout risk</li> <li>• Care can be expensive</li> <li>• Risk of social isolation</li> <li>• Potential for elder abuse</li> <li>• Home may require costly modifications</li> <li>• Limited access to medical supervision</li> <li>• May require coordination of services</li> </ul>
<b>Independent Living</b>	<ul style="list-style-type: none"> <li>• Socialization and community</li> <li>• Independence and privacy</li> <li>• Safety features (emergency call services)</li> <li>• Transportation and Meals</li> </ul>	<ul style="list-style-type: none"> <li>• No medical or personal care provided</li> <li>• Additional services can be costly</li> <li>• Less suitable for seniors with mobility or health issues</li> <li>• May require relocation as care needs increase</li> </ul>
<b>Assisted Living</b>	<ul style="list-style-type: none"> <li>• Custodial Care - assistance with ADLs</li> <li>• Maintain independence</li> <li>• Likely more affordable than nursing home</li> <li>• Meals and housekeeping included</li> <li>• Private or semi-private living spaces</li> <li>• Social engagement and activities</li> </ul>	<ul style="list-style-type: none"> <li>• Usually not equipped for high-level medical care</li> <li>• Often private pay</li> <li>• Costs can rise with increasing care needs</li> <li>• Staff to resident ratio varies</li> <li>• May require transition to nursing home</li> </ul>
<b>Nursing Home</b>	<ul style="list-style-type: none"> <li>• Skilled Nursing and Medical Care</li> <li>• Access to nurses, therapists and rehabilitation services</li> <li>• Medicare/Medicaid participation</li> <li>• Suitable for complex medical conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Institutional Setting</li> <li>• Limited privacy and independence</li> <li>• Only short-term Medicare coverage</li> <li>• Varying quality among facilities</li> <li>• Potential emotional impact of leaving home</li> </ul>
<b>Continuing Care Retirement Community</b>	<ul style="list-style-type: none"> <li>• Continuum of Care Types</li> <li>• “Aging in place”</li> <li>• Remain in a familiar community as needs change</li> <li>• Stability in long-term planning</li> </ul>	<ul style="list-style-type: none"> <li>• Expensive with high entrance fee</li> <li>• Complex contracts</li> <li>• Potential financial risk if medical needs change</li> <li>• Long waiting lists</li> <li>• Not ideal for seniors with immediate high-level needs</li> </ul>

## Paying for Care: How Much Will it Cost?

### Approximate average range

#### Home Care:

- \$6,000 - \$8,000 per month

#### Assisted Living:

- \$10,000 - \$12,000 per month

#### Nursing Home:

- \$18,000 - \$25,000 per month

The cost of care varies greatly.

# Other Ways to Receive Care

## Medical Care:



- Naturally Occurring Retirement Communities (NORCs)
- Village Concept
- Telemedicine
- Green House / Small Home Program

# Skilled Care

What is it?

How to Pay for it?

Medical Care:  
Long Term  
Care

- Private Insurance
- Medicare



# Skilled Care

**Medical Care:  
Long Term  
Care**



## Medicare

- Federally-Funded Health Insurance
- Basic (limited) coverage for 65+ and SSDI
- No Income Requirements
- Deductibles
- Types
  - A (Hospital Insurance)
  - B (Medical Insurance)
  - C (Medicare Advantage)
  - D (Drugs)
  - Medigap - Supplemental

# Custodial Care

## What is it and how to pay for it?

**Medical Care:  
Long Term  
Care**

- Private Pay
- Long-Term Care Insurance
- Veterans' Benefits
- Medicaid



# Paying for Care Needs:

## Long-Term Care Insurance

- Pays for Custodial Care
- Benefit based on daily rate, up to policy maximum
- Insurance policy must be purchased prior to need
- Costly
- May be able to remain at home, preserve assets and have greater independence
- Dwindling number of issuers in New York



# Paying for Care Needs:

## Medicaid

- Joint Federal and State program
- Healthcare coverage
- For people with Limited Income and Assets\*
  - Assets: \$32,532
  - Income: \$1,800/month
- Can Qualify for Medicare and Medicaid
- Applying can be a time-consuming process
- Need determines the type of Medicaid applied for
- Consult an elder law attorney to discuss strategies for becoming Medicaid eligible.
- Must consider potential future needs and spouse, if any.
- Community Medicaid vs. Institutional Medicaid

\*Individual Rates.  
New York Medicaid  
Asset and Income  
rates may be adjusted  
for 2026



# Community or Home Based

## Medicaid:

- 30-Month look-back → Not implemented yet.
- At Home or in Assisted Living
- Assistance with ADLs
  - Home Care
  - Home Health Aides
  - Adult Day Care
  - Transport
  - Medical Supplies
  - Housekeeping
- Benefits are Determined by Need (as assessed)



# Institutional or Nursing Home

## Medicaid

- 5-year Look-Back Period
- Gifts and ineligible transfers can trigger penalty periods and delay coverage
- Benefits pay for care in a Skilled Nursing Facility / Nursing Home
- Strict Asset and Income Limits

## Recap



- Plan Early
- Documents
  - Health Care Proxy
  - Living Will
  - Power of Attorney (Durable)
  - Will
  - Trust
- There are resources and strategies available if you haven't planned early.
- Consult an estate planning attorney who understands elder care planning



# Questions?

## Contact Information



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