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Elder Law Basics

Foundational Estate Planning & Asset Protection Planning for Seniors

About Us



Michele Procino-Wells, Esquire



Amber B. Woodland, Esquire



Leslie Case DiPietro, Esquire

Our full biographies are available on our website at www.pwwlaw.com.

Procino-Wells & Woodland, LLC

Seaford & Lewes, DE & Berlin, MD ♦ 302.628.4140

Serving families in Delaware and Maryland



Disclaimer

Please be advised that due to the nature of this session, no attorney-client relationship will be formed between the attorney(s) and the attendees. While the attorney will do her best to answer all questions, she will be doing so based on Delaware law and the limited information provided during the session and may not have all the facts necessary to thoroughly answer all questions. Thus, all attendees are advised to take caution in relying solely on information discussed at the session in making future legal decisions. To obtain the most reliable, personalized guidance, attendees should schedule an individual consultation with an attorney's office. That attorney can then gain all the information needed to provide the client with thorough legal advice.

Estate Planning Basics

What is estate planning?

- ♦ It is making a plan that serves to manage an individual's decision making and assets in the event of their incapacitation or death, including the bequest to heirs.

Who needs a well-rounded estate plan?

- ♦ Nearly everyone over 18 years of age.
- ♦ Too many people put off estate planning because they don't think they own enough, they're not old enough, they're busy, they think they have plenty of time, they're confused, or they just don't want to think about it.
- ♦ Panic and/or conflict results when there is no plan in place.

3 Phases of Estate Planning

"Lifetime" Planning

- ♦ Power of Attorney
- ♦ Advance Health Care Directive

"End of Life" Planning

- ♦ Last Will and Testament
- ♦ Revocable Living Trust
- ♦ Supplemental Needs Trust
- ♦ Retirement Account Trust

Asset Protection Planning for Long Term Care

- ♦ Irrevocable Asset Protection Trust
- ♦ Medicaid and Veterans Pension with Aid & Attendance



Foundational
Estate Planning

Elder Law Basics

Elder Law Defined

- ♦ Elder law is a legal term coined to cover an area of legal practice that places an emphasis on those issues that affect the growing aging population.

Four Major Categories

- ♦ Estate planning for seniors
- ♦ Estate and trust administration
- ♦ Guardianships of disabled adults
- ♦ Asset protection planning
- ♦ Obtaining eligibility for government long term care benefits

Costs of Long Term Care

Average Costs in Delaware

- ♦ In-Home Care - \$50,908/year (\$4,242/month for 44 hours/week)
- ♦ Assisted Living Care - \$72,180/year (\$6,015/month)
- ♦ Nursing Home Care - \$127,750/year (\$10,646/month)

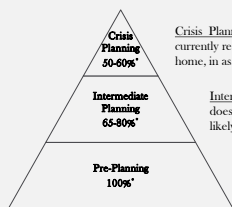
Genworth 2017 Cost of Care Survey conducted by CareScout®

Costs of Long Term Care

Payment Options

- ♦ Medicare (Maximum 100 Days)
- ♦ Long Term Care Insurance
- ♦ Liquidate assets and privately pay
- ♦ Medicaid/VA Pension with Aid and Attendance

Asset Protection Planning for Long Term Care



Crisis Planning is recommended for a senior who is currently receiving or eligible to receive long term care at home, in assisted living, or in a nursing home.

Intermediate Planning is recommended for a senior who does not currently need long term care, but who will likely need it within the next five years.

Pre-Planning is recommended for a healthy senior who does not expect to need long term care within the next five years.

*Percent of assets that can be protected with proper asset protection planning.

Goals of Asset Protection Planning



- ♦ Ensuring a payment for needed services
- ♦ Preserving a nest egg
- ♦ Providing a legacy

Case Study: Sam & Rose

Assets

- ♦ Residence worth \$250,000
- ♦ Checking, savings and CDs worth \$325,000
- ♦ Rose's retirement account worth \$50,000

Planning

- ♦ Medicaid Asset Protection Trust - Residence (\$250,000) + Savings (\$175,000)
- ♦ Revocable Living Trust - Savings (\$150,000)
- ♦ Retirement account stays as is with named beneficiaries

Asset Protection Trust

- ♦ An irrevocable pre-planning tool
- ♦ Designed to own some assets; not all
- ♦ Those assets are protected after 5 years
- ♦ Trustmakers appoint the Trustee
- ♦ Trustmakers retain the right to reside in the residence
- ♦ Transfers to Trust are less risky than outright transfers to children
- ♦ Trustmakers direct how assets are ultimately distributed at death
- ♦ Those assets avoid probate
- ♦ Trustmakers preserve multiple tax advantages

Case Study: Sam & Rose

Background

- ♦ Six years later, Sam has a stroke and needs nursing home care

What assets will be protected?

- ♦ All assets in the Medicaid Trust (Residence & \$175,000)
- ♦ Rose's retirement account
- ♦ One vehicle, household furnishings and other personal possessions
- ♦ One-half of the assets in the Revocable Living Trust (\$75,000)

General rule: Healthy spouse can keep one-half

Case Study: Sam & Rose

What assets will have to be spent down?

- ♦ Other assets in the Revocable Living Trust (\$75,000)

How will Rose spend down the remaining assets?

- ♦ Beware - timing of spend down is critical!
- ♦ Strategic spend down (permissible expenditures)
- ♦ "Medicaid compliant annuity" for well spouse

Alternate Scenario: Sam Receives Care at Home

- ♦ Instead of nursing home care, Sam is able to remain at home with the help of in-home caregivers
- ♦ Maximum amount of care through Medicaid = 72 hours per week
- ♦ For Medicaid purposes, the eligibility rules are exactly the same
- ♦ Gives Rose a break as Sam's primary caregiver

Case Study: Sam & Rose

Background

- ♦ Four years later Sam has passed away
- ♦ Rose has advanced dementia and is unable to remain at home alone

What assets will be protected?

- ♦ All assets in the Medicaid Trust

What assets will need to be spent down?

- ♦ All of her remaining assets
- ♦ Let's assume Rose has \$150,000 of remaining assets

Case Study: Sam & Rose

How will Rose spend the \$150,000?

- ♦ Rose's family chooses to engage in a gift and annuity strategy
 - ♦ Approximately one-half is gifted to Rose's family
 - ♦ The balance is spent to purchase a "Medicaid compliant annuity"
 - ♦ Rose will then immediately apply for Medicaid
- ♦ An expected Medicaid penalty will be imposed
- ♦ The annuity will be used to privately pay for care during the penalty period
- ♦ Penalty and annuity end at the same time and Medicaid will then begin paying

Case Study: Sam & Rose

Amount Spend on Care

Care Needed	With Plan
Sam Needs Care, Rose at Home	\$0
Sam Deceased, Rose Needs Care	\$75,000
Total	\$75,000
Protected Assets	\$550,000

The Takeaways



- ♦ It's never too early to plan.
- ♦ It's never too late to plan.

Common Planning Myths

- ♦ I will lose my home.
- ♦ Medicaid facilities provide subpar care.
- ♦ Gifting precludes Medicaid eligibility.
- ♦ Planning must be done at least 5 years in advance.
- ♦ A person must be destitute to qualify for Medicaid.
- ♦ Asset protection planning to qualify for Medicaid is unethical.
- ♦ All elder law attorneys are the same.

Questions?

"It was a complete pleasure working with your team of professionals. The decisions we had to make regarding our mother last summer were difficult for our family. Your group was sympathetic and understanding while at the same time, getting the job done with accuracy and in a timely fashion. Your team also demonstrated the highest standard of communicating with your clients and with that, moving the process along smoothly. I particularly appreciate the quick responses to our questions or concerns. Thank you so much for your kindness and professionalism."

-Anonymous Client (May 2017)

Procino-Wells & Woodland, LLC



Thank you for attending!



Planning today to protect your family's tomorrow.

Procino-Wells & Woodland, LLC

