

## **USE AN ELDER LAW ATTORNEY**

By Letha Sgritta McDowell, CELA

Providing guidance and support to the seniors in your congregation is a valuable and needed service. You are often the first person to learn of how families are struggling and the heartache families go through when individuals are faced with difficult decisions. This occasionally revolves around individuals who are aging and connecting your congregation to resources that can assist them during the aging process is invaluable. Within your community, an Elder Law attorney may be the first, and best, resource with which you can connect your aging congregation.

While many individuals need the assistance of an Elder Law attorney, very few people are actually familiar with the concept of elder law and what these specialized attorneys really do. Elder Law is the practice of working with individuals and families so that individuals may age successfully. Unlike a general practitioner, an Elder Law attorney has in depth experience and knowledge of laws, policies, and procedures which affect an aging population. Often, Elder Law attorneys assist individuals with situations that may not seem to be legal but take on a more social role. However, there are legal and financial aspects which may provide direction in these non-legal situations. Below are some areas which are within an Elder Law attorney's repertoire. Since Elder Law is an area of the law that is extremely personal, you will find most Elder Law attorneys have a genuine interest in assisting people and are often fantastic resources for individuals in the community.

### **Estate Planning**

Estate planning often invokes images of wealthy individuals leaving millions of dollars to charitable foundations or fancy "pet trusts." However, estate planning is important for all individuals regardless of wealth. Estate planning is simply the process by which an individual appoints one or more surrogate decision makers to make both financial and medical decisions in the event they are no longer able to do so. The individual will also provide instructions for what happens to their assets after their death. An Elder Law attorney will advise clients on the need or ability to utilize documents such as a general durable power of attorney, advance medical directive, living will, wills, and trusts. Beyond simply preparing documents, Elder Law attorneys will advise clients of the importance of the choice of decision makers and will guide them to the best person to act on their behalves. With estate planning, it is important to remember that not all legal documents are created equal. An Elder Law attorney will advise a client on the propriety of a document and will consider situations that arise as a person ages that is not often contemplated with a younger person. For example, the need and ability for spouses to make decisions for each other, the need for an agent to work with Medicare, health insurance companies, life insurance companies, and former employers.

### **Capacity (or lack thereof)**

Individuals who lack the ability to make decisions for themselves may not be able to execute estate planning documents. In this case, other representative forms must be contemplated like guardianship or representative payee status. The line between

capacity and lack of capacity can be blurry and requires an attorney to make the decision and recommend an appropriate course of action.

### **Long-term care**

Long-term care refers to care provided to individuals with chronic illnesses. Long-term care can take a variety of forms but is most commonly considered home health care, assisted living care, and nursing care. To the public, the type of care offered in all three of these settings may be similar but licensing may affect what types of payments and what types of patients may be accepted into any, or all, of these situations. For most individuals and families, the concern is how to pay for this type of care. Elder Law attorneys are familiar with care providers and care levels and common ways to pay for these types of care. In many instances, a client's ability to pay for care or the benefits available to an individual must be considered prior to choosing a care facility. Because very few people have the knowledge or expertise necessary to determine the best way for an individual to pay for care, consulting with an Elder Law attorney is beneficial as they are familiar with these concepts.

### **Asset Protection**

Similar (and related) to decision making surrounding the need and setting for long-term care, asset protection is often a concern of many aging individuals. Many times an individual may qualify for additional funds to pay for their care simply by executing an asset protection plan. Every individual's plan is different based on their financial position, care needs, and family circumstances. Many aging individuals are able to protect assets and qualify for additional benefits but they are unaware of the benefits they may be eligible to receive. This is due in part to the public's misunderstanding of available programs and not consulting with an Elder Law attorney.

### **Special Needs Planning**

Many laws which are created to assist and protect the elderly also assist and protect persons with disabilities. Therefore, a critical part of Elder Law is special needs planning. Special needs planning incorporates everything from locating and applying for public benefits (like Medicaid and Supplemental Security Income) to planning for inheritances or personal injury settlements. Terms like sole benefit trust, pooled trust, special needs trusts, etc. are an everyday part of an Elder Law attorney's practice and knowing when to recommend and put into place such a vehicle is critical.

As you can tell from the short descriptions above, Elder Law attorneys provide guidance and services which are important for older individuals and people with disabilities. Not only can they provide guidance on these subjects but they are often familiar with resources in the community which may benefit their clients such as transportation options, geriatric care management, location of support groups, good (and bad) gerontologists, etc. In addition, Elder Law attorneys stay actively engaged with news about new programs and changes to existing programs. This up to date knowledge gives them the best ability to plan for their clients and makes them valuable resources for you.

To learn more about Elder Law or to find an Elder Law attorney, visit the following websites:

- National Academy of Elder Law Attorneys: <http://www.naela.org/>
- National Elder Law Foundation: <http://www.nelf.org/>
- Special Needs Alliance: <http://www.specialneedsalliance.org/>
- Elder Law Answers: <http://www.elderlawanswers.com/>

**Letha Sgritta McDowell** is an attorney licensed to practice in Virginia and North Carolina. She is a Certified Elder Law Attorney and Board Certified as a specialist in Elder Law by the North Carolina State Bar. She is also accredited for preparation, presentation and prosecution of claims for Veterans' Benefits and approved to practice before the US Court of Appeals for Veterans' Claims. She is the current Treasurer of the North Carolina Bar Association Elder Law Section and is the former Editor in Chief of "Gray Matters", the newsletter for the Elder Law Section of the North Carolina Bar Association. She is active on the Elder Law Section Councils for both the North Carolina and the Virginia Bar Associations. She is an active mentor for the North Carolina Chapter of the National Academy of Elder Law Attorneys and is an active member of the National Academy of Elder Law Attorneys. She has taught numerous continuing education programs on Elder Law and Estate Planning in both Virginia and North Carolina and has actively assisted in developing software for use by elder law attorneys. Letha may be contacted by calling (919) 493-8411 or email: [LMcDowell@walkerlambe.com](mailto:LMcDowell@walkerlambe.com).