



## ELDER LAW

The legal practice area known as “elder law” has grown to meet the legal needs of the burgeoning number of seniors in our society. Elder law attorneys typically have their roots in estate planning and estate administration, but they have built and maintained the specialized knowledge required to address the increasingly complex legal issues facing senior clients and their families. Legal representation provided by our attorneys includes matters such as protecting vulnerable seniors from financial exploitation, obtaining court appointments as conservators and guardians for incapacitated adults, and planning for Medicaid eligibility for payment of the costs of long-term health care.

## MEDICAID ELIGIBILITY PLANNING

Elder law attorneys routinely provide legal advice regarding the preservation of assets in the face of impending long-term health care expenses for a loved one. Attorney involvement can range from an office consultation on the available options under Medicaid asset transfer rules to active representation before an administrative hearing officer or a court to rectify an erroneous denial of Medicaid benefits. Our goal is to explore the applicant’s family and financial circumstances and develop optional strategies for preserving assets and income while establishing or maintaining eligibility for applicable government benefits.

## SPECIAL NEEDS TRUST PLANNING

A special needs trust is an asset management trust designed to provide for the quality of life of a beneficiary who is or will be receiving government aid, while preserving those trust funds from the typical “spend-down” requirements. Federal and state laws require compliance with very technical rules if such a trust is to achieve the purpose intended, so the planning process requires careful analysis in order to prevent the inadvertent loss of eligibility for benefits. Special needs trusts may be created by a third party (such as a parent or grandparent) or by the disabled person (usually through a legal representative), and the permissible distribution terms for each will vary significantly.

## GUARDIANSHIP AND CONSERVATORSHIP

A guardian is a person appointed by the court to manage the personal affairs of an incapacitated person, while a conservator is an individual (who may be the same person as the guardian) appointed to manage financial af-

fairs for the person adjudged to be incapacitated. The Virginia General Assembly recently reformed the statutory framework for this process in order to protect better the rights of persons alleged to be incapacitated. These procedural changes included improvements in the required content of the pleadings, the notice of hearing, and the report from the guardian ad litem to the court. The most significant change involved a new “limited” fiduciary appointment, in which the court order reflects that certain rights are to be retained by the person under a disability.

### **FINANCIAL EXPLOITATION (PREVENTION AND RESOLUTION)**

Unfortunately, the elderly are vulnerable targets of financial exploitation. The elder law attorney is equipped to address most legal problems whenever they arise in the context of senior clients and their families, including the abuse of powers of attorney, the exertion of undue influence in the execution of estate planning documents, the unauthorized access to the often limited resources of the elderly individual. In some instances, the matter is best resolved with a report to an agency such as Adult Protective Services or to law enforcement; however, circumstances often require legal counsel to investigate the extent of the financial abuse and to employ civil procedures to recover the funds.