


Taking the Bull By the Horns: A No Frills Guide to Planning for Tomorrow




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Elder Law of East Tennessee: Compassionate Guidance and Advocacy




ELDER LAW OF EAST TENNESSEE IS AN ELDER LAW AND ESTATE PLANNING LAW FIRM THAT HELPS FAMILIES RESPOND WITH CONFIDENCE TO THE CHALLENGES OF AGING, CHRONIC ILLNESS, AND DISABILITY.




WE HELP PROTECT WHAT MATTERS MOST TO OUR CLIENTS: QUALITY OF LIFE FOR LOVED ONES, CHERISHED RELATIONSHIPS, FAMILY WEALTH, AND PEACE OF MIND.




WE ARE NOT YOUR TYPICAL LAW FIRM.




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Elder Care Coordinators






- ✓ The Care Coordinator functions as the point of contact for the family and assists in coordinating services to help take care of the client.
- ✓ Answer questions, provide support, and clarify numerous issues.
- ✓ Help identify care problems and assist in solving them.
- ✓ Coordinate with medical and health providers.




Our Agenda Today

What does a **comprehensive plan for the future** look like?


Benefits 101- Medicaid and VA Benefits




Comprehensive View of Planning



PLANNING DURING LIFE



PLANNING FOR ONE'S INCAPACITY



PLANNING FOR A MEDICAL CRISIS



PLANNING FOR LONG TERM CARE



PLANNING FOR DISTRIBUTION OF ASSETS AT DEATH



The Five Documents every Person 55 Years or Older Should Have

1. **Power of Attorney for Financial**- A document that nominates the person who may manage your financial and legal affairs when you become incapacitated.

2. **Power of Attorney for Healthcare**- Nominates the person who may make healthcare decisions for you if you are unable to speak for yourself.

3. **Living Will**- A legal document that indicates basic medical treatment preferences.



The Five Documents every Person 55 Years or Older Should Have

4. **Advanced Care Directive**- A more thorough legal document outlining medical treatment preferences.

5. **Last Will and Testament or Trust**- A legal document that disposes of your property at death.



Power of Attorney Documents

- These documents are primarily interpreted by nonlawyer third parties at banks and medical facilities so they should be written clearly.
- The person nominated in your document is called an "Attorney In Fact" or "Agent."
- These documents are customizable to your needs and wants. If the document doesn't grant a specific power, then Attorney In Fact cannot act in regard to that specific power.
- Power of Attorney Documents become ineffective upon death.
- A Tennessee POA is legal in all states.



Medical Directives

- If the patient can communicate his or her wishes to the medical provider, his or her choice will be honored.
- But many patients find themselves in situations where they cannot communicate their wishes, and medical directives help family and medical providers understand what to do in those difficult situations.
- By completing medical directives, you are doing a great service for your family.



What is the difference between a Will and Trust?

- A **Last Will and Testament** is a legal document that directs who has authority to collect your property, pay your debts, and distribute the remaining property to your beneficiaries.
- Probate Administration may be necessary to collect assets if the deceased person has a Will only. Probate Administration is a court proceeding.



Trusts- Multipurpose Tools

- A **Trust** governs the management and distribution of your property during your life, during incapacity, and after your death.
- **Trusts** can also be used to achieve additional goals like:
 - Becoming eligible for Medicaid or VA benefits;
 - Protecting Assets from Estate recovery
 - Minimizing tax liabilities
 - Avoid Probate



Medicaid CHOICES Program


- This program offers Seniors assistance with paying for care in the home by providing caregivers (limit on amount) assistance paying for care at an Assisted Living Facility or Nursing Home.
- Medicaid, TennCare, CHOICES are terms often used interchangeably. Don't let this confuse you- for a person in long-term care, it means the same thing.



Medicaid CHOICES Program

- There are multiple sources of law, regulations, and procedures for this program- which is why it is so confusing. One way to organize the information is to think about the program in 3 Phases:

| Phase 1: ELIGIBILITY | Phase 2: ENROLLMENT | Phase 3: ESTATE RECOVERY |
|--------------------------|--|--------------------------------------|
| Application | Once enrolled, what are my benefits? | What can the state seek recovery of? |
| Eligibility Requirements | Once enrolled, what are my responsibilities? | |




Medicaid CHOICES Program

PHASE 1- Eligibility

Application Process- Becomes harder to complete each year. Must submit financial records for applicant and applicant's spouse if married.

Eligibility Requirements

- 1. Medical (Acuity Score based on need for assistance)
- 2. Income- Applicant's income (Spouse's income not counted) \$2,349/cap
- 3. Resource limit: Non-exempt assets \$2,000




Medicaid CHOICES Program

Phase 2- Enrollment

Benefits- Assistance paying for care, TennCare health insurance (in addition to Medicare coverage).

Responsibilities- Enrollees pay what is called a "patient liability" which is based on the enrollee's income.




Medicaid CHOICES Program

Phase 3- Estate Recovery

Tennessee can recover assets belonging to a person that received CHOICES benefits as reimbursement for benefits given to the person. The most common asset recovered by the state is the home.


Tennessee does not put liens on property unless the applicant has committed fraud or acted in bad faith. In most cases, the state's claim lays dormant until the family attempts to probate the estate or sell the real property.

Probate Administration and real estate transfers both require TennCare Releases- and this is how estate recovery is typically initiated in Tennessee.





How to Protect Assets

- The earlier you begin a plan to protect assets, the better.
- Trusts can be used to protect assets if the person plans far enough in advance and other facts exist.
- Before you transfer property to another person or add someone to the deed of your house, you should consult an attorney familiar with these programs to ensure you aren't making yourself ineligible in the future.





The Risks of Gifting Property

- There are safer methods for conveying your house to your children at your death.
- Adding child to deed is risky and is not appropriate in every situation.
- Transferring property for less than fair market value could create unintended tax consequences and make the previous owner ineligible for Medicaid or VA benefits.

Veterans Aid & Attendance



- A&A pension benefit to help pay for care
- VA Benefits** – for wartime veterans with spouse, approx. \$2,230/month; for surviving spouse of wartime veteran, approx. \$1,209/month
- Ideal for home care or ALF care where care needs are less complex
- Not ideal for NH care unless resident can receive care in a VA NH (discount); typically not enough money for NH care costs

VA Aid and Attendance Eligibility Requirements

REQUIREMENTS:


- 90 consecutive days of active duty service, at least 1 day during wartime period
- Other than dishonorable discharge
- Less than \$127,061 in countable assets
- Need help with ADLs or have cognitive impairment
- Some assets (home, vehicle) are exempt
- 3-year lookback and penalties for gifts or transfers for less than fair market value

Veterans Aid & Attendance

VA Wartime Periods

WWII December 7, 1941 through December 31, 1946
 Korean Conflict- June 27, 1950 through January 31, 1955
 Vietnam- Veterans served in Vietnam or Territorial Waters- February 28, 1961 through May 7, 1975
 Vietnam- Veterans served in or outside of Vietnam- August 5, 1964 through May 7, 1975





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