

Wethersfield

Planning for your golden years and beyond means more than making out a will

by Mark Jahne

Many senior citizens spend a lifetime saving their money, only to see it disappear in the last few years of their lives. Or they dictate a last will and testament and think that's all they need to leave behind for their children, grandchildren and other heirs.

There's more to living the golden years than that, and there are ways to protect yourself financially and physically. Just ask a certified elder law attorney.

"I look at two components. One is estate planning and the other is asset planning for long-term care," said Brendan Daly of Czepiga Daly Dillman, with offices in Wethersfield and Newington. "These are the day-to-day legal issues" affecting the elderly.

The process starts with a consultation.

"The average person is going to be dealing with long-term care issues. The cost of long-term care in Connecticut is the highest in the country," he added.

For example, it costs about \$11,000 a month for care provided by a skilled nursing facility (SNF). Most senior citizens believe that Medicare will take care of that for them, but the Medicare SNF benefit expires after 100 days.

"When you deplete your assets, you qualify for Medicaid," also known as Title XIX, said Mr. Daly.

But they key words in this equation are "deplete your assets." Medicaid is a form of government welfare and people do not qualify until they meet its financial requirements. "From the planning perspective, it's a matter of protecting assets for the children by making gifts," he said.

The general practice in the past was for senior citizens to transfer, or "gift," their assets to their children, but that's not as easy as it used to be. It's much harder for a wealthy or even middle class person to divest himself this way and then qualify for Medicaid.

"The rules changed in 2006," said Mr. Daly.

Now gifts must be made five years before application is made for Medicaid. The limit was three years.

Senior citizens can also place money in trusts. But these must be irrevocable; that is, the money can never revert back to the senior and his or her control.

The advice Mr. Daly gives his clients differs depending upon their age and circumstances. He might advise someone 65 to purchase long-term care insurance, but would not do so for someone 80 or older because the cost rises dramatically with age.

While many young adults are buying such insurance to protect their futures, he said "the average age is 58 for buying long-term care insurance."

Mr. Daly also emphasized that estate planning

involves much more than a will.

Also needed are documents that deal with the possibility of someone becoming incapacitated, such as power of attorney (which only pertains to financial matters) and designation of a health care representative.

"It's all health care decisions, including end-of-life decisions," he said. That's crucial because under the modern federal law called HIPAA, which involves privacy of health care records, physicians and health care facilities may not discuss a senior's health, even with the spouse or children, unless there is something in writing to absolve them of liability.

"The other document is a living will" that is intended to deal with issues of life support and what to do if someone becomes permanently unconscious. Do not resuscitate orders are a matter between a patient and his or her physician.

Mr. Daly advises senior citizens to give copies of their living will and designation of health care representative documents to their physician. That way they can be accessed quickly if needed.

"The power of attorney should be filed with the banks," he added. "The most important thing is having complete trust in the person you're appointing. I can't stress that enough."

"I always tell people it's like a three-legged stool," said John "Jay" Kearns, whose law office, Kearns & Kearns, is in the Elmwood section of West Hartford.

Those legs are power of attorney, health care instructions and a last will and testament. He noted that since a new state law was passed, power of attorney is limited to financial matters. For anyone who signed a combined power of attorney/health care agent document before that, "it's grandfathered in."

He warns people that there are pitfalls in trying to do these things by themselves. While the documents are readily available on the Internet, it's best to get your wishes down on paper with an attorney.

"The purpose of the documents is to avoid a lot of red tape and heartache later," Mr. Kearns said.

When it comes to health care, the law allows attorneys and their clients to merge many elements into one document.

"It's a combined document. The first paragraph is a living will," he said. There are also parts in which the senior can designate an official health care representative. That person's task is to "exercise substituted judgment" for someone who is incapacitated, so it's important that the representative knows and



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agrees with the senior's desires.

The form also makes provision for what is called the designation of the conservator of the person. This provides a mechanism for resolving family feuds or disagreements between family and a facility.

"It gets really dicey," especially with today's blended families or in families where siblings may not agree on what is best for their elderly mother or father.

The person who is designated as conservator "is required to act in the best interest of the person who appoints you," Mr. Kearns said.

He also emphasized that seniors should not expect Medicare to pay long-term nursing home costs. In addition, for the benefit to kick in, the patient must pre-qualify by spending at least three days as a hospital inpatient.

Mr. Kearns pointed out that for most people the most expensive part of Medicare expenditures comes in the final 18 months of their lives.

He reminds senior citizens that it can be dangerous to list the names of their children as joint owners on bank accounts or other assets. The law doesn't divide these assets into percentages, so a joint owner can use the entire balance in the account. Joint ownership can also cause problems with qualifying for Title XIX and with inheritance taxes.

He also advises pre-planning of funerals. **RHL**