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ELDER LAW ELEMENTS

Are you a *mature American* (i.e., age 65 or older), do you care about someone who is, or do you anticipate becoming a mature American yourself one day? If so, then, according to the U.S. Census Bureau, you are in good company. In 1960, there were nearly 17 million mature Americans. Today, there are some 40 million mature Americans.

INSIDE

Good news, bad news. The good news: Americans are living longer than ever. The bad news: we eventually wear out physically, mentally or both. In this issue we review two challenges: becoming incapacitated and going broke due to long-term care.

On page three we examine important considerations when selecting a Long-Term Care Insurance policy. In addition to policy benefits, be sure to check the health of the insurance company standing behind the policy itself!

Due to the graying of the Baby-Boom generation, we will witness that figure jump to 53 million in 2020, and to 70 million in 2030! As this mature population increases, so will the need for Elder Law services.

What is Elder Law?

Generally speaking, Elder Law can be defined as the holistic application of general legal principles to the specific emotional, logistical and financial needs of mature Americans. Many mature Americans are concerned with two fundamental threats to their dignity: (1) becoming incapacitated, and thereby losing control to the court system over their personal, health care and financial decision; and then (2) running out of money due to the catastrophic costs of long-term care. Fortunately, these threats may be minimized, or even avoided, through properly coordinated legal and financial planning.

Incapacity Planning

As the number of birthday candles increases on your birthday cake, so do the odds that you will become incapacitated due to an injury or illness. Whether incapacity strikes suddenly, as with an accident or acute illness, or gradually, as with Alzheimer's, the consequences are the same. Either you will have appointed the back-up decision-makers of your own selection through proper legal plans or, by default, the court system must step in to appoint them for you ... under the ongoing supervision of the court. Note: This default approach will employ at least three lawyers and can be rather expensive and invasive of your privacy. Accordingly, consider this default the *lawyer full-employment* program.

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Long-Term Scare

According to commonly cited statistics, if you are single, odds are about 50 percent that you will need long-term care. If you are age 65 and married, odds are about 75 percent that you or your spouse will need long-term care. The average nursing home stay is 2.5 years.

Long-term care is expensive. Nationally speaking, a year in a nursing home is estimated to cost an average of $90,000. Is it any wonder that 50 percent of mature couples become impoverished within a year after either spouse enters a nursing home? The number jumps to 70 percent for widowed or single persons.

By the way, forget about Medicare paying for your *chronic* long-term care needs. Medicare only pays for acute nursing home care for up to 100 days, and even then your eligibility and payments are subject to very strict requirements. Remember, too, Medigap (i.e., Medicare Supplement) policies typically will not pay for your chronic long-term care needs either.

What about giving away your assets to your loved ones to qualify for Medicaid (i.e., welfare)? Legally speaking, any transfer of assets for *less than fair market value* (i.e., a gift) may subject you to a lengthy period of ineligibility under the complex and confusing web of Medicaid Regulations. And transferring assets can be hazardous for other reasons. Consider this: What would happen if your transfer of assets to loved ones rendered you ineligible for Medicaid assistance, AND then those loved ones subsequently lost the assets through squandering, divorces, lawsuits or bankruptcies? Not good.

Long-Term Solutions

The key to proper long-term care planning is to *plan now* rather than to *react later*. There are numerous legitimate strategies to preserve more of your assets, but only if do not procrastinate until it is too late.

One of the best strategies may be to insure your financial security through proper Long-Term Care Insurance. Again, don't wait too late to apply, because your health actually *purchases* Long-Term Care Insurance, your money just *pays* the premiums.

Ask Yourself ...

These Questions Regarding "Elder Law Elements."

1. I have made proper legal plans to avoid losing control over my personal, health care, and financial decisions should I (or my spouse) ever become incapacitated. Yes No Not Sure
2. I am aware of the likelihood that I (or my spouse) may end up needing long-term care in the future. Yes No Not Sure
3. I am aware of the financially catastrophic consequences of failing to properly coordinate my legal and financial planning should I (or my spouse) ever need long-term care in the future. Yes No Not Sure
4. I understand that Medicare and Medicare Supplemental Insurance will not pay for my *chronic* long-term care needs (or those of my spouse). Yes No Not Sure
5. I understand that Medicaid Eligibility Regulations are designed to prevent me (and my spouse) from qualifying for Medicaid Assistance (i.e., welfare) to pay for my chronic long-term care needs (or those of my spouse). Yes No Not Sure
6. I understand that there are long-term care solutions, but that one must *plan now* rather than *react later*. Yes No Not Sure

LONG-TERM CARING

No one relishes the notion of paying insurance premiums of any kind. After all, you can pay and pay and pay ... and never collect on a claim. If you are fortunate.

The purpose of insurance is to transfer a risk that you can afford (i.e., the payment of a premium with no guarantee of its return) to cover a risk you cannot afford. For example, what homeowner does not insure their personal residence from damage due to a fire? Or, what automobile owner does not insure their auto from damage due to a collision? Consider this: The odds of a major fire insurance claim are about one in 88, with an average claim of $2,000. The odds of an auto insurance claim are about one in 47, with an average claim of $8,000.

Against this backdrop, why would any responsible, mature American (i.e., age 65 or older) not insure against the financial risk of requiring long-term care at some point? Consider this: The odds are nearly one in two that a *seasoned citizen* will need long-term care for about 2.5 years at an average cost of $90,000 in 2010, making the average claim in excess of $225,000.

Long-Term Care Insurance

Fortunately, an appropriate Long-Term Care insurance (LTCi) policy can be designed to fit almost any budget. Most LTCi policies share some common features you should know, to include the following:

- Benefit Amount: How much and how long will the policy pay?
- Benefit Triggers: When will the policy pay benefits?
- Inflation Protection: Will the purchasing power of the Benefit Amount increase?
- Level of Care: Are Home, Custodial and Intermediate Care covered, along with Skilled Nursing Care?

Caveat Emptor

Caveat Emptor! is Latin for *Let the Buyer Beware*. With all of the companies selling LTCi, this is an appropriate warning. When shopping for an appropriate LTCi policy, remember that financial strength is the key consideration. As with any form of insurance, the policy is only as solid as the ability of the insurance company to pay your claim. Check on the financial strength and reputation of the insurance company before you sign on the dotted line.

There are several established insurer rating services, such as A.M. Best Company (www.ambest.com), Fitch, Inc. (www.fitchratings.com), Moody's Investors Service, Inc. (www.moodys.com), Standard & Poor's Insurance Rating Services (www.standardandpoors.com), and Weiss Ratings, LLC. (www.weissratings.com).

Visit these services online or at your local public library.

Reputation also is important. Contact your state's Insurance

Commissioner regarding the status and history of complaints by policyholders of any insurance company you are evaluating.

Finally, contact the National Association of Insurance Commissioners for a copy of *The Shopper's Guide to Long-Term Care Insurance*, and other valuable resources, by phone (816) 842-3600 or online at www.naic.org. Given all that is at stake, doing your homework is a must.

POCKET PROTECTORS

Tips to help you protect your pocket!

Reverse Mortgages: Understand the Fine Print

Reverse mortgages allow seniors to tap into their home equity for cash or a line of credit, often with the claim that the money needn't be paid back until the borrower dies. Like most financial tools, reverse mortgages may be a viable solution for seniors who want to stay in their homes but lack the liquidity to do so based on their income alone.

For other seniors reverse mortgages may be too-good-to-be true. Bottom line: Caveat emptor! (Buyer beware!)

Some of the most egregious sales tactics include various unadvertised fees – including charges, fees, closing costs, and compounding interest on the loan principal – and the often underhanded way that seniors are tricked into buying other programs, such as long-term care insurance or annuities, to secure the reverse mortgage. Seniors can actually end up losing their homes should they default on some of those hidden fees or additional programs. To learn more, visit www.consumersunion.org and www.reversemortgage.org.

"Age is an issue of mind over matter. If you don't mind, it doesn't matter."

— Mark Twain

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This Newsletter is my way of staying in touch with you and highlighting issues that may affect you personally and financially, now or in the future. As always, feel free to give me a call anytime at the office. I never charge for these calls, and enjoy hearing from you.

Thank you for the many referrals to family and friends. I appreciate the confidence and trust placed in me. If you feel someone would like to receive this newsletter, just give me a call and I will add them to the mailing. If you would prefer not to receive my Newsletter, let me know, and I will remove you immediately from my mailing list.

Member: Massachusetts Bar Association; National and Massachusetts Chapters of National Academy of Elder Law Attorneys; National Association of Consumer Bankruptcy Attorneys.
Charter Member: Elder Care Matters Alliance.

For even more resources, visit **www.NoreenMurphyLaw.com**.