

Trusts & Estates Special Feature

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Paradigm for estate planners, elder law attorneys changing



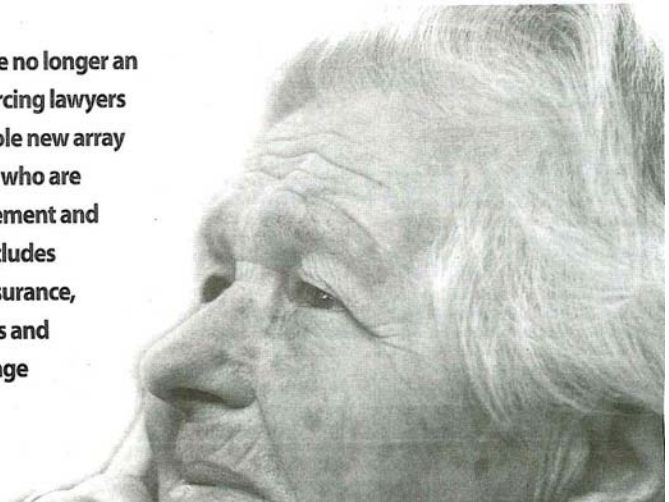
By John Paul Marosy

Older Americans today are choosing to live out their golden years in a much different way than previous generations, which means elder law attorneys and estate planners will have to change with them.

The shift is founded on two pillars: First, just as baby boomers revolutionized every stage of their life, they will revolutionize aging. Today's baby boomers are sophisticated, informed consumers who are aware of the growing long-term and end-of-life care options and demand knowledgeable support. Second, they are the largest and wealthiest demographic, providing unprecedented access to the costly services they desire.

These societal and economic shifts are changing how America ages — from gifting and reverse mortgages to advancements in how people pay for long-term care — and advisors must adapt.

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Staying home

Traditionally, attorneys helped their clients shelter assets so they could eventually become eligible for Medicaid-funded long-term nursing home care. However, according to the American Association of Retired Persons, nine out of 10 Americans prefer to stay in their home or community.

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Baby boomers are starting to think about aging now as they approach the traditional age of retirement. In 2002 the Robert Wood Johnson Foundation and the U.S. Census reported that approximately 80 million people will turn 50 over the next decade, and by the year 2030, approximately 70 million people will be over the age of 65.

Simultaneously, their parents are living longer than previous generations — people 85 and older are the fastest growing demographic in America — and the baby boomers are deeply involved in arranging their parents' care. Yet older adults have spent their lives living independently and do not want to burden their adult children. A study by the University of Massachusetts Gerontology Institute found that older residents preferred paid professionals to family-provided care by an 8-to-1 margin.

The home is the preferred locus of care today, and there are more in-home options than ever before. Home care is cost effective, but it isn't always the least expensive option depending on an individual's specific needs. The laws for qualifying for Medicaid assistance have changed, and individuals need to start planning ahead with the help of attorneys who understand the changes and the available options.

Medicaid

Medicaid, the single largest payer of nursing-home bills in the country, provides medical assistance to low-income individuals, including the elderly population. To qualify for the program, an individual's assets and income must fall below a certain level. But recent changes in legislation have made it an unattractive option for many people even if they qualify.

When the federal Deficit Reduction Act was signed into law in early 2006, it resulted in the following: The state look-back period on asset ownership increased from three to

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five years; annuities are no longer exempt; the gifting look-back clock changed, making sheltering virtually impossible; and the home (which was previously exempt) became exempt only to a certain value limit.

Timothy R. Loft, a practicing elder care attorney and the director of the Massachusetts Academy of Elder Law Attorneys, also points out that many complicated tax issues can arise when adult children help care for family members. Medicaid has specific restrictions on gifts versus income, so something as seemingly innocuous as money given to an adult child to help supplement grocery expenses could turn out to be a major tax headache. Without reviewing gifting in estate planning, the laws can be filled with traps for the elderly.

Long-term care insurance has become the first line of defense for individuals who can afford it. The insurance can help pay for daily activities such as bathing, eating, dressing and/or skilled nursing care or rehabilitation in a facility or at home. This has become a palatable option for many people, and with recent changes in the federal law policyholders can reap tax deductions and transfer some of the policy benefits to family members.

Reverse mortgages

Reverse mortgages are emerging as another viable option to pay for home renovations and long-term home care services. An individual who is 62 or older can borrow against the value of his home and receive cash payments, which are paid back when the home is sold or when the person leaves the residence permanently or passes away. Lawyers can give clients guidance on the many loan options available to determine if a reverse mortgage is appropriate for their unique situation.

With the changing sources of payment for long-term care and a preference for home care, legal advisors need to broaden their scope of advice to go beyond sheltering assets.

Lawyers who understand the changing needs of elderly clients and their adult children can help with a smooth transition to the next stage of life, which, when planned for carefully, can be years filled with quality care and peace of mind. 