

Ways an Elder Law Attorney Can Help Families | U.S. News

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Hiring an attorney who specializes in elder law could save a lot of money and stress down the road by ensuring your loved one's future care and assets are secure.

Let's get this out of the way first: You don't have to consider yourself elderly to hire an elder law attorney. In fact, most elder care lawyers recommend you hire one long before you reach old age.

So, how can an elder law attorney help you or your family? Let us count some of the ways.

An Elder Law Attorney Can Help Make The Future Easier

Generally speaking, an elder law attorney aims to make your future more predictable and prepare you for the time before, during and after one's end-of-life days.

"There is no bright line rule about when to see an elder law attorney, but you need to have all your ducks in a row before someone gets sick or hurt," says Kelsey Simasko, an elder law attorney with the firm Simasko Law in Mount Clements, Michigan.

She says the most common situation is a couple in their mid-50s who come to see her to do their estate planning.

"They are healthy today but want to make sure their assets will not be sucked up by the rising cost of nursing home care," Simasko says. She adds that often, the couple will have a kid in their 30s, who may have just had a kid themselves. They may want to ensure they also pass money to their grandchildren.

"An elder law attorney can help the whole family," Simasko says.



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An Elder Law Attorney Can Save You Money

How much do elderly law attorneys charge? That depends on what you want to do. Lawyers aren't cheap, of course. The cost of a lawyer can be a few hundred dollars – an hour. And you may have a lot of hours ahead of you, depending on what you want done. But, of course, the idea here is that you're going to spend hundreds of dollars to save thousands of dollars, or maybe you'll spend thousands to save hundreds of thousands or millions of dollars.

And what do elderly law attorneys do? Just a few examples of what an elder law attorney might help you with include:

- Design a will or a living will
- Plan for when you might be living in an assisted living center or receiving in-home care
- Draft advance directives
- Create your estate plan
- Represent clients alleging elder abuse
- Work with those who need to plan for family members with disabilities or special needs

Elder Law Attorneys Can Help With a Lot of Paperwork

An elder law attorney can help create a will, a living will and an estate plan, not to mention a health care or financial power of attorney. Taxes are also a big consideration when creating your estate plan, and elder law attorneys steer their clients through those paperwork thickets.

Elder Law Attorneys Can Help With Long-Term Care

This is one of the most common reasons to hire an elder law attorney. Paying for long-term care, especially if Medicaid is involved, can get very complicated, and you will want to work with someone who specializes in this sort of law.

"Elder law is not limited to wills and nursing home contracts," says Moti Gamburd, the CEO of Raya's Paradise, a senior living organization dedicated to providing assisted living, memory care, and hospice services, based in West Hollywood, California. Gamburd says an elder law attorney "ensures long-term care needs are covered without draining every dollar."

In other words, if you can envision a time when you might need long-term care and want to leave something behind, you'll want to work with an elder law attorney.

“Many people do not realize that Medicaid planning, asset protection, and long-term care insurance strategies must be in place years before they are needed. If you wait until a loved one already needs care, options become severely limited,” Gamburd says.

He adds that he has seen families struggle with the costs of assisted living because they assumed Medicare would cover long-term care.

“It does not,” Gamburd clarifies. He adds that families will sometimes wait too long to transfer assets in a way that would allow Medicaid eligibility, only to be hit with penalties.

“These are avoidable situations if an attorney is involved early,” he says. “Elder law attorneys help families make decisions that allow for flexibility and ensure that care options are available without sacrificing a lifetime of savings.”

Elder Law Attorneys Can Particularly Help with Medicaid

If you think you – or perhaps one of your parents – will need Medicaid to pay for their long-term care, you want to get that in place long before you need to.

“The magic time frame to engage in any planning would be at least five years before the client needs some form of long-term care, primarily because Medicaid currently has a five-year look back period for some types of benefits, and the types of asset transfers that we often do as part of elder law planning can result in penalties being imposed during the Medicaid application process if they occur within this five-year period,” says Dana Walsh Sivak, partner and chair of the elder law practice group at Falcon, Rappaport & Berkman, a full-service law firm in New York City.

In other words, if you have real estate or a lot of money in the bank that you’d like your loved ones to someday have, you need to have a plan as to how to transfer it to your heirs if you don’t want it all to be used to pay for your long-term care.

“Unfortunately, of course, none of us has a crystal ball, so we never know if or when we might need that type of care. If a person has a progressive illness of some kind, and there is a stronger likelihood of a future need for long-term care, it’s always advisable to meet with an elder law attorney as early as possible,” Sivak says.

Elder Law Attorneys Can Help You Protect Your Assets

This was just alluded to, but an elder law attorney can make sure you're able to pass down wealth to your family rather than having to sell it and then give it to a nursing home. This is sometimes referred to as asset protection planning.

If you haven't already done so, "reaching your mid-60s is a good time to start looking for an elder law attorney," says Christine Boutin, an elder law attorney at Mirick O'Connell's Trusts and Estates Group, based out of Boston.

"At this point in life, wealth has been achieved and retirement is close at hand, so the investment goals are changing from growing wealth to preserving it for future expenses and for the next generation," Boutin says.

She adds that if you have kids, they're probably grown, and maybe you have grandkids arriving.

"With these life changes comes the need to change the parents' estate plan," Boutin says, adding that the focus should be on "transferring real estate into an irrevocable trust to protect it should one or both of the parents need to apply for Medicaid to pay for long-term nursing home care."

She adds: "If there is a significant amount of liquid assets, a portion can be gifted and placed into an irrevocable gift trust."

This can be helpful if you want to maintain some control of your assets.

It's also necessary, according to Boutin.

"In some parts of the U.S., the monthly cost of nursing home care is between \$13,000 to \$18,000 per month. Few individuals can afford to pay privately at such a rate for the foreseeable future," she says. "Qualifying for Medicaid means meeting stringent asset limits for individuals and for spouses, which can be difficult to achieve if preplanning is not done."

The Bottom Line

Elder law attorneys specialize in making plans for your future so everything runs smoothly in your old age and the aftermath.

"My job as an elder law attorney is to put together a plan based on where someone is today, but also ensure that plan is effective in protecting assets when someone gets sick, hurt or passes away," Simasko says.

She adds that an estate planning attorney focuses on making sure assets avoid probate court, which is when the judicial system decides who gets what after someone dies. “However, an elder law attorney can do that and more,” Simasko says.

And if you’re on the fence, where you’ve been thinking you’ll hire an elder law attorney but you’ll just wait a little while longer, that’s probably a good sign you should find one.