

ELDER LAW ESTATE PLANNING SEMINAR

“Four Major Reasons Why Trusts are Preferred Over Wills for Seniors”



Ettinger Law Firm

ELDER LAW ESTATE PLANNING

Protecting your future





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WHAT IS ELDER LAW ESTATE PLANNING?

“Elder Law Estate Planning” is a niche area of law which combines the features of elder law and estate planning that pertain most to the needs of the middle class. In 1991, AARP published a “Consumer Report on Probate” concluding that probate was a process to be avoided. That marked the end of traditional will planning and started the “living trust revolution”. Since then, millions of people have set up trusts to:

- Save time and money in settling the estate
- Avoid legal guardianship if they become disabled
- Avoid having their personal and financial matters made public
- Reduce the chance of a “will contest”
- Keep control in the family and out of the court system



By 1990, the field of elder law also emerged to help people navigate the increased complexity of state Medicaid rules and regulations, the soaring costs of nursing home stays, and the fact that people were living considerably longer. Elder law and estate planning continue to grow independently of each other, sometimes to the detriment of clients. Estate planning lawyers are of little value when the estate plan to avoid probate fails to prevent a nursing home stay consuming all of the assets, because the lawyer is unfamiliar with elder law. On the other hand, elder law attorneys often protect assets but overlook basic estate planning issues such as saving taxes and keeping assets in the blood. The practice of Elder Law Estate Planning means:

- Getting your assets to your heirs, when you want, in the way you want, with the least amount of taxes and legal fees
- Keeping those assets in the blood for your grandchildren
- Protecting your assets from the costs of long-term care and qualifying for government benefits available to pay for care.

Middle class clients today need an “elder law estate planning attorney” to address their estate planning needs as well as to help with long-term care, disability and Medicaid issues as they arise.

FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #1: Wills Do Not Provide for Disability

LIFETIME PLANNING

- ❖ A will is exclusively a plan for after you pass away
- ❖ No plan for what happens if you're sick, home bound or disabled
- ❖ A trust is a plan for all 3 phases of your life
 - ◆ While you're healthy and competent
 - ◆ When you're sick or disabled
 - ◆ After you pass away

FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #1: Wills Do Not Provide for Disability

RISK OF GUARDIANSHIP PROCEEDINGS

- ❖ Chance of becoming disabled about fifty percent
- ❖ Without your own plan, state has written a plan for you
- ❖ Court chooses who your legal guardian will be -- may be a stranger



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RISK OF GUARDIANSHIP PROCEEDINGS

- ❖ Cannot get back control without court order
- ❖ Court can override your Power of Attorney and appoint someone else as guardian



FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #1: Wills Do Not Provide for Disability

RISK OF GUARDIANSHIP PROCEEDINGS

- ❖ Proceedings may be expensive, time-consuming and stressful
- ❖ Legal guardian has limited options to protect your assets from nursing home costs
- ❖ Conflicts may arise between your family's wants and the guardian's wants



FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #1: Wills Do Not Provide for Disability

REVOCABLE LIVING TRUST AVOIDS GUARDIANSHIP

- ❖ Unlike a will, takes effect while you are living and stays in effect when you are disabled
- ❖ Trust is in your name, appoint yourself as “trustee” or manager of the trust
- ❖ Retitle assets to your trust:
“Mary Jones,
Trustee of The Mary Jones Trust,
dated 12/1/15”



FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #1: Wills Do Not Provide for Disability

REVOCABLE LIVING TRUST AVOIDS GUARDIANSHIP

- ❖ Allows you to name back-up trustee(s), if you become disabled
- ❖ Persons you know and trust are in control instead of legal guardian
- ❖ You may take back control when you recover
- ❖ Court cannot override your trust -- guarantees you get the people you choose in the event of disability

FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #1: Wills Do Not Provide for Disability

ELDER LAW POWER OF ATTORNEY

- ❖ Stronger than standard form
- ❖ Used to transfer and protect assets in the event of disability
- ❖ “Unlimited gifting power” is key to allowing half of the assets to be protected on the nursing home doorstep

FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #2 - Wills Have to be Probated

DRAWBACKS OF WILLS

- ❖ Court has control over the estate
- ❖ Executor may not act until approved by a Judge -- may cause lengthy delays in getting access to money and other assets
- ❖ Probate court proceeding may be costly, time-consuming and stressful
- ❖ Wills are public records -- anyone may see what you had and who you left it to



FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #2 - Wills Have to be Probated

BENEFITS OF REVOCABLE LIVING TRUSTS

- ❖ Avoids probate proceedings entirely for trust assets -- saves time, legal fees and court costs
- ❖ Avoids court control of your estate
- ❖ Upon death, back-up trustee may act immediately, without need for court appointment
- ❖ Trusts are private -- only your named heirs may see it
- ❖ Trusts are much harder to contest

FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #2 - Wills Have to be Probated

A TRUST AVOIDS THE “MULTIPLE PROBATE” PROBLEM

- ❖ Wills must be probated in every state where you own real estate
- ❖ May deed your property from any state into your trust and avoid “multiple probates”



FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #3 - Wills Do Not Keep Assets in the Family

REVOCABLE LIVING TRUST -- PROTECTING ASSETS FROM SPOUSE'S REMARRIAGE

- ❖ People are living much longer
- ❖ Many more elderly women than men
- ❖ Spouses are remarrying later in life and assets may end up going to a new spouse
- ❖ Trust allows you to name your children as Co-Trustee with your spouse after your death



FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #3 - Wills Do Not Keep Assets in the Family

THE INHERITANCE TRUST (After Both Spouses Die)

- ❖ Leave it to trust for son or daughter instead of directly
- ❖ Affords protection from children's divorces
- ❖ Affords protection from lawsuits and creditors
- ❖ Son or daughter may be trustee of their trust, can spend whatever they want so you're not "ruling from the grave"
- ❖ May afford protection against the beneficiaries themselves, by having another party as Trustee or Co-Trustee

FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #3 - Wills Do Not Keep Assets in the Family

THE INHERITANCE TRUST

- ❖ Passes inheritance on their death by blood to their children (your grandchildren)
- ❖ If no children, goes back to brothers and sisters, then nieces and nephews, etc.
- ❖ May choose to leave percentage to your son-in-law or daughter-in-law, in an “income only” trust and then on to your grandchildren
- ❖ Your careful planning continues for decades after your lifetime



FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #4 - Wills Do Not Protect Assets from Nursing Home Costs

PLAN A – LONG-TERM CARE INSURANCE

- ❖ Protects assets from nursing home costs
- ❖ Helps you “age in place” at home with homecare options
- ❖ Pays for someone to help disabled spouse, so caregiver spouse does not wear himself or herself out
- ❖ Get a proposal
 - ◆ The sooner you get it, the less expensive it is
 - ◆ You may become uninsurable in the future

FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #4 - Wills Do Not Protect Assets from Nursing Home Costs

PLAN B: The Medicaid Asset Protection Trust ("MAPT")

- ❖ Place your home and certain other assets into the MAPT and qualify for Medicaid benefits
- ❖ Sets up three roadblocks that Medicaid cannot break through:
 1. Irrevocable (but may be revoked by agreement of all the parties).
 2. Must name someone else as Trustee -- usually one or more adult children
 3. Must limit yourself to "income only", such as interest on CD's, dividends on stocks, etc.

FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #4 - Wills Do Not Protect Assets from Nursing Home Costs

PLAN B: The Medicaid Asset Protection Trust ("MAPT")

- ❖ Doesn't affect your lifestyle since you still receive all income, Social Security checks, IRA distributions, pensions, etc.
- ❖ Makes sense for assets you're not going to spend, like your home, and investments you're only taking income from (or are reinvesting)
- ❖ You have exclusive right to use and enjoy your home
- ❖ You have control over your trust by retaining the right to change trustees at any time
- ❖ Nursing home can only get income from the trust -- protects nest egg for your children

FOUR MAJOR REASONS WHY TRUSTS ARE PREFERRED OVER WILLS: Reason #4 - Wills Do Not Protect Assets from Nursing Home Costs

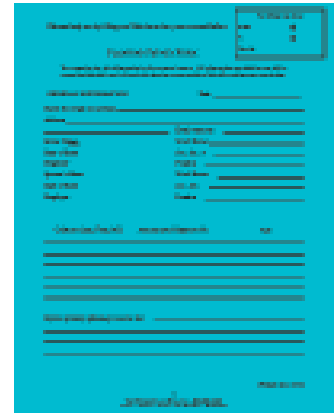
PLAN B: The Medicaid Asset Protection Trust (“MAPT”)

- ❖ Trust can sell home and trade stock
- ❖ There is a 5-year “look back” period
- ❖ You may gift principal to children and grandchildren
- ❖ Always pays to get started
 - ◆ If you don’t make five years, you only have to pay for the time left



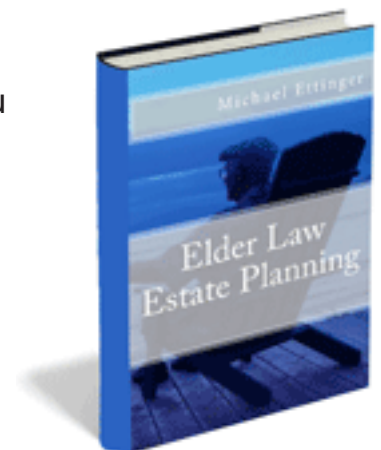
OUR LAW FIRM'S UNIQUE PLANNING PROCESS

- ❖ Already begun with today's seminar
- ❖ Free initial consultation
 - ◆ Bring the completed **Blue Form** with you
 - ◆ You will receive a fixed fee quote
 - ◆ You can decide then to go ahead or you can set up a second free follow-up consultation
 - ◆ You will receive a complimentary copy of our book “Elder Law Estate Planning”
 - ◆ We will do a free review of your existing plan, if you have one

A blue form titled "PLANNING/ESTATE BLUE FORM" with various fields for client information and a signature line. The form includes sections for "PERSONAL INFORMATION", "CONTACT INFORMATION", and "SIGNATURE".

OUR LAW FIRM'S UNIQUE PLANNING PROCESS

- ❖ Second free consultation(if needed)
 - ◆ We ask you to read chapters that apply to you before you come in
 - ◆ You will receive a more detailed, written proposal for the fees quoted
 - ◆ The choice to go ahead is yours
- ❖ Final meeting to review and sign documents
- ❖ No fees due until after documents are signed



OUR LAW FIRM'S UNIQUE PLANNING PROCESS AFTER YOUR SIGN YOUR DOCUMENTS

- ❖ Computerized tracking of your plan for law changes
- ❖ Weekly copy of our Elder “Eler”
- ❖ Special “Client Only” breakfasts every two years to review changes in the law and allow us the opportunity to meet your beneficiaries and Trustees
- ❖ Never charge for phone calls, emails or questions
- ❖ Free review of your estate plan every three years for changes in your health, assets and family (births, deaths, marriages, divorces, etc.)
 - ◆ By using this program, your plan is never more than three years old
 - ◆ Works when you need it, not when you signed it.

BEFORE WE ANSWER YOUR QUESTIONS

- ❖ Please fill out and hand in the **Pink Form**
 - ◆ We will call you tomorrow and schedule an appointment time convenient for you
- ❖ Thank you for coming and we look forward to seeing you soon

REQUEST FOR CONSULTATION FORM

Please help us to assist you by filling out the form below.

Name _____ Spouse's Name _____
Street Address _____
City, State & Zip _____
Daytime Phone Number _____
Email Address (please print) _____

FREE CONSULTATIONS - please check the following:

Elder Law Estate Planning Consultation
_____ YES I would like an elder law estate planning consultation

Financial and Investment Consultation
_____ YES I would like a financial and investment consultation

Long-Term Care Insurance Consultation
_____ YES I would like a long-term care insurance consultation

Comments?

Thank you for taking the time to complete this form.

YOUR PLANNING OPTIONS AT A GLANCE

1. All estate plans include a power of attorney and health care proxy/living will

2.



Takes effect on death



Takes effect now

- You are trustee(s)
- You have access to income and principal

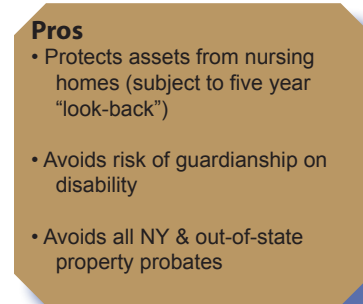
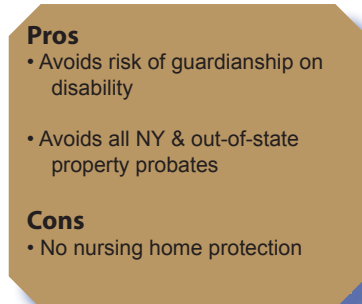
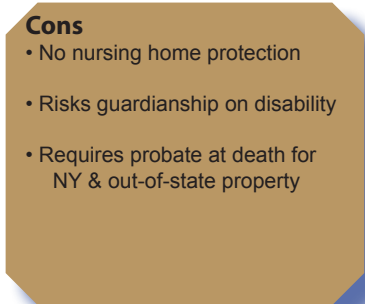


Takes effect now

- Children are trustee(s)
- You have access to income only



3.



OPTIONAL BENEFICIARY

INHERITANCE TRUST

- Protects inheritance from children's divorces, lawsuits, creditors
- Passes inheritance by blood to grandchildren, instead of to in-laws or strangers

- 4.
- Free review of your plan every three years for changes in health, assets and family (births, deaths, marriages, divorces, etc.)
 - Weekly Ettinger Elder Elert keeps you updated
 - Free computer monitoring of your plan for law changes
 - Bi-annual client breakfast to review changes in the law and invite next-of-kin to "meet the lawyers"

Ettinger Law Firm
ELDER LAW ESTATE PLANNING

Protecting your future



trustlaw.com
800-500-2525

Capital District

125 Wolf Road
Albany, NY 12205
518-459-2700

340 Broadway
Saratoga, NY 12866
518-581-9200

Hudson Valley

6369 Mill Street
Rhinebeck, NY 12572
845-876-6266

200 Westage Center
Fishkill, NY 12524
845-897-4700

75 Crystal Run Road
Middletown, NY 10941
845-692-8700

Long Island

3000 Marcus Avenue
Lake Success, NY 11042
516-327-8880

1 Huntington Quadrangle
Melville, NY 11747
631-673-3777

80 Orville Drive
Bohemia, NY 11716
631-589-3333

50 Route 111
Smithtown, NY 11787
631-257-0100

200 North Sea Road
Southampton, NY 11968
631-204-0880



Westchester/Rockland

150 Grand Street
White Plains, NY 10601
914-684-6100

99 Main Street
Nyack, NY 10960
845-353-9555

New York City

5 Penn Plaza
New York, NY 10001
212-810-1120

1 Pierrepont Plaza
Brooklyn, NY 11201
718-625-5100

900 South Avenue
Staten Island, NY 10314
718-477-2700