

LEGAL SURVIVAL KIT FOR SENIOR CITIZENS

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YOUR ESTATE MATTERS

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Aging—we're all doing it. It's not for Assies. Traditional estate planning focuses on what happens after death. The new Elder Law expands on this to provide a holistic approach when a client lacks capacity or has a medical crisis, providing an effective legal safety net.

These facts on aging may surprise you. The average 65 year-old American will have 18 years of retirement before death. The average 75 year-old has 3 chronic health conditions and takes 5 prescription drugs. For married couples over 70, there is an 80% chance one spouse will enter a nursing home.



*Standing (left to right): Stewart R. Hakola,
Leonard A. Kaanta, Lyle Trombly
Seated: Jodi Dix, Robert C. Anderson, Mary Stiles*

~ THE 7 TOOLS YOU NEED IN YOUR SURVIVAL KIT ~

- 1. Your Power of Attorney for Health Care.** In this legal document, you can name who will take charge of your medical and other care if you ever become incapacitated. Select people with whom you can easily communicate, and who will stand up for you and for what you want. Make sure this power of attorney covers dementia situations and is recognized in states other than Michigan. The form we use is recognized in 26 states.
- 2. Your Living Will.** The people you name in your Power of Attorney for Health Care need to know what you want and care about, so they'll know what to do for you with regard to life support issues at end-of-life. No one wants to be a Terry Schiavo. You may receive a free Living Will which satisfies recent court decision specificity requirements from our office by calling (906) 228-6212. We call this the *Your Wishes Guide*.
- 3. Your Financial Power of Attorney.** In this separate legal document, you can name who will take charge of your financial affairs if you ever become incapacitated. Select people who have good financial skills and, most importantly, who you can trust to manage your finances for your benefit (not theirs). This form should be updated every four years.

A good Financial Power of Attorney should include gifting and other powers to qualify you for government benefits to pay long-term care costs. Use an experienced Elder Law Attorney to prepare this important document.
- 4. Your HIPAA Authorizations.** In case you haven't heard, there is a new federal medical records privacy law known as the Health Insurance Portability and Accountability Act (HIPAA). This new law puts your medical records in a privacy lock box. You need to sign special HIPAA authorizations which will

allow your loved ones to speak with your health care providers about your medical condition.

5. **Your Estate Plan.** This is the way you spell out what will happen to your assets when you die. Approaches can involve a will, beneficiary naming, joint ownership, and a Living Trust. You can also work to minimize or avoid estate and income tax. The best estate plan is a Living Trust which will avoid the frustrations and expense of probate with a Will and provide privacy when settled.
6. **Your Plan for Long-Term Care and Asset-Protection.** In creating this plan, you answer these questions: If I need care, where do I want to receive it? Who will provide it? How will I pay for it? Consider whether your home will be a good long-term location for you. These questions are more fully discussed below in Life Care Planning. Study the cost of care in relation to your income and savings. Consider whether long-term care insurance might make sense. Get a clear understanding of the help the government might provide, such as Medicaid and Veterans Benefits discussed below. Consider asset-protection strategies which are also more fully discussed below.
7. **Retain an Experienced Elder Law Attorney.** Elder Law has become a separate and distinct practice area for attorneys. The National Academy of Elder Law Attorneys (NAELA) has over 5,000 members nationally; and of these, 320 have successfully completed Certified Elder Law Attorney (CELA) status. In Michigan, there are 8 Certified Elder Law Attorneys; three in the Upper Peninsula, including Robert C. Anderson, James Steward and Paul Stugul. The CELA designation is given by the National Elder Law Foundation which is accredited by the ABA.

An experienced Elder Law Attorney will help you with the first 6 tools described above.

While most attorneys do wills, simplistic powers of attorney and living wills, these documents may prove ineffective when capacity declines or a medical crisis occurs. Ineffective documents can lead to unnecessary and expensive court intervention, unexpected taxation and impoverishment of a healthy spouse. Also, keep in mind that even the best documents need to be revised and updated about every four years (or whenever you experience major life changes).

Unfortunately, many people overlook appropriate legal planning for their older years. Many die without a will to direct the disposition of their estate. Others become ill or frail without health care documents to express their wishes for medical treatment. Many more go straight from the hospital to a nursing home never having seen their new living quarters. With the proper documents in place and the help of an Elder Law Attorney, the unpleasant and sometimes costly scenarios listed above may be avoided.

Specifically, an Elder Law Attorney can help with:

- Property disposition (wills, trusts, life insurance and powers of attorney)
 - Tax issues (effective use of income, gift and estate tax deductions, credits and exclusions)
 - Employee benefits (IRAs, 401(k)s, pension), public benefits and life insurance)
 - Residence issues (advice on personal care homes, assisted living residences, and nursing homes)
 - Medical issues (advance directives for health care and living wills)
 - Elder abuse and neglect issues
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Update on the New Federal Medicaid Law

The new federal Medicaid law, called the Deficit Reduction Act (DRA), introduces a 60-month look-back period, a delayed penalty starting date, a \$500,000 cap on the homestead exemption and other measures. Neither Michigan nor Wisconsin has issued its rules implementing these new federal standards. Therefore, the new federal rules are not yet applicable, although they could be applied retroactively back to February 8, 2006, when the federal law was adopted.

Present Medicaid law has a 36-month look-back reporting period and the starting date for the Medicaid disqualification penalty period is the date of the gift. Under the new DRA, the look-back period will be 60 months and the starting date of this Medicaid disqualifying divestments will hang over your head until after a nursing home admission and assets have been spent down.

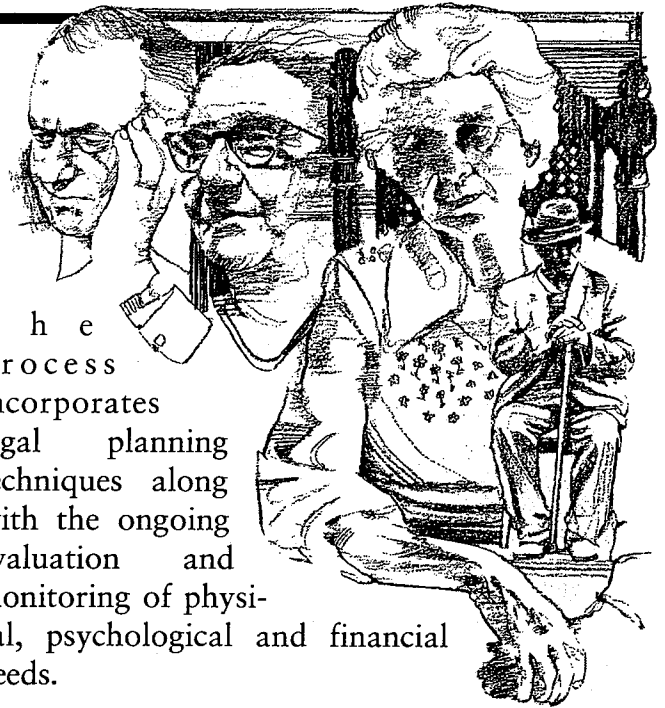
When will these new rules go into effect in Michigan and Wisconsin? We believe Michigan may implement DRA in either January or March 2007. We believe Wisconsin may implement in spring or summer of 2007.

Introducing Life Care Planning

Life Care Planning is a relatively new service offered by Elder Law firms which employ nurses or social workers as Care Coordinators for their clients. At Anderson Associates, Jodi Dix, RN, a Certified Geriatric Care Manager, serves as care coordinator for our clients experiencing long-term care crises.

How Does Life Care Planning Work?

Life Care Planning is a practical approach to filling your family's current and future needs in a timely fashion. With a Life Care Plan, you can avoid frantic action should a family crisis arise.



The process incorporates legal planning techniques along with the ongoing evaluation and monitoring of physical, psychological and financial needs.

Anderson Associates works with you to design a customized legal plan that serves as a road map to help you meet the inevitable challenges of caring for an aging family member, while taking into consideration the legal needs of all other family members involved.

Our Care Coordinator assesses your situation, researches possible solutions and answers your questions about the type, amount and quality of care that is necessary. Then we explore all available sources of financial help. Additionally, our Care Coordinator also works with the family to provide ongoing monitoring and assessment of your loved one's situation, and facilitates any move that may be required from the home setting to a more secure environment.

The Three Principal Goals of Your Customized Life Care Plan Include:

1. **Appropriate Care:** Whether at home or in a residential facility, ensuring that your loved one receives the care that best fits their current and future needs is the most important of all goals as it goes to the very heart of your loved one's long-term quality of life.
 2. **Asset Protection Solutions:** Finding the best solutions to the asset protection problem that
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is created by the high cost of quality long-term care while helping you find sources to pay for it by working through the confusing maze of choices and programs ensures that all of your loved one's needs are met throughout their lifetime.

3. **Peace of Mind:** Providing the entire family with the peace of mind that comes from knowing that their loved one is well cared for and safe.

In order to successfully achieve the previous goals, we at The Elder Law Firm of Anderson Associates, PC strive to reduce the financial burden of the high cost of care through a variety of outlets and research. Among the activities that we conduct as part of this process are:

- ◆ Locating and affiliating with community agencies that offer assistance in a variety of areas
- ◆ Determining what government benefits may be available to your loved one and working with you to obtain those benefits - from application through qualification
- ◆ Continued monitoring of the Life Care Plan to make sure all legal documents are current and all assets are protected

While no one can halt the aging process, an experienced elder law attorney can help plan and prepare for the legal issues many face as they grow older.

This article is offered for informational purposes only and should not be construed as legal advice upon which specific action is taken.

Robert C. Anderson is a Certified Elder Law Attorney by the National Elder Law Foundation, and an active member of the National Academy of Elder Law Attorneys. He has 24 years of service and is managing attorney of The Elder Law Firm of Anderson Associates, P.C., a full service firm with four attorneys, a Geriatric Care Manager, and three Benefits Specialists who are former case workers at the Marquette County Family Independence Agency.

If you would like to schedule an appointment with an attorney at The Elder Law Firm of Anderson Associates to discuss your estate planning options, please call 906-228-6212.
