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## WHAT IS ELDER LAW?

Elder Law is a combination of legal areas that focus on the special needs of aging persons.

According to the National Academy of Elder Law Attorneys (NAELA), Elder Law encompasses many different legal fields, including:

- Asset preservation and management when one spouse enters a nursing home.
- Medicaid.
- Medicare claims and appeals.
- Social Security and disability claims and appeals
- Health insurance issues.
- Disability planning, including powers of attorney for financial and medical decisions as well as living wills.
- Conservatorships and guardianships.
- Estate planning.
- Probate.
- Administration of trusts and estates.
- Long-term placement in nursing homes and life care communities.
- Elder abuse and fraud recovery.
- Housing issues.
- Age discrimination in employment.
- Retirement benefits.
- Health law.
- Mental health law.
- Veterans benefits planning and advocacy.

Source: "Questions and Answers When Looking for an Elder Law Attorney."

## WHAT IS PROBATE?

Probate is a legal court procedure in which the assets of a deceased person are passed to beneficiaries. The executor or personal representative of the estate gathers together the assets of the deceased person, pays creditors, and distributes the assets to the beneficiaries or heirs. This process typically takes at least one year to complete. Not all of a deceased person's assets are included in the probate estate. Assets which are titled jointly with a right of survivorship, life insurance policies with beneficiary designations, trust assets, et cetera, pass outside the probate estate.

## I WANT MY CHILD TO TAKE CARE OF MY AFFAIRS WHEN I AM NO LONGER ABLE. HOW CAN I MAKE SURE HE/SHE WILL BE PERMITTED TO ACT FOR ME?

A Durable Power of Attorney is the best way of doing this. Merely creating joint accounts is not always a good choice, as it may frustrate your long-range estate plan, create possible tax liabilities, or result in Medicaid planning problems.

## WHAT IS A DURABLE POWER OF ATTORNEY?

A Durable Power of Attorney is a legal document through which you give another person (called an "Agent" or "Attorney in Fact") the legal authority to manage your financial or medical affairs. A Durable Power of Attorney remains in effect even if you become disabled or cannot communicate.

## WHAT IS A CONSERVATOR?

A conservator is a person appointed by the court to assist a disabled adult person with his or her finances and/or personal and medical decisions. The court supervises the conservator's handling of finances through an annual accounting. The conservator also is required to post a bond.

## IF I GAVE SOMEONE A DURABLE POWER OF ATTORNEY, WILL IT BE NECESSARY TO HAVE A CONSERVATORSHIP PROCEEDING IF I BECOME INCAPACITATED?

Not usually. The purpose of a Durable Power of Attorney is to avoid a court proceeding which can be costly and time consuming.

## HOW DO I REVOKE A DURABLE POWER OF ATTORNEY?

It depends on the language contained in your documents. Often you can revoke a Durable Power of Attorney by giving written notice to your Agent or Attorney in Fact. You may also want to notify your financial institutions where your Agent or Attorney in Fact conducted normal business on your behalf and file the revocation with the Register's office.

## WHAT IS AN ESTATE OR INHERITANCE TAX?

Under federal law, taxes are generally due on estates over \$2,000,000 for years 2007-2008; and over \$3,500,000 for 2009. In Tennessee, an inheritance and estate tax is imposed on estates that exceed the maximum single exemption of one million dollars (\$1,000,000).

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## **WHAT IS A LIVING WILL, AND DO I NEED ONE?**

A living will is a document through which you declare your decisions about end of life medical treatment to your family and medical providers. A living will is an important way of communicating your wishes about your right to die naturally and free of pain.

## **WHAT IS AN INTER VIVOS OR LIVING TRUST?**

A living trust or inter vivos trust is a trust that exists or comes into being during the lifetime of the grantor (i.e. the maker of the trust).

## **WHAT IS A REVOCABLE TRUST?**

A revocable trust can be revoked or amended during the life of the Grantor or according to the provisions included in the Trust Document.

## **WHAT IS AN IRREVOCABLE TRUST?**

An irrevocable trust cannot be changed by the Grantor once the trust has been established. This type of trust is often used to avoid estate taxes because funds placed in the trust are generally not included in the Grantor's probate estate.

## **DOES A NURSING HOME RESIDENT HAVE TO SELL THE HOMEPLACE TO QUALIFY FOR MEDICAID?**

Not if the person has intent to return. And, typically a nursing home resident does not have to sell the home if it is occupied by a community spouse, a child under 21, a blind or disabled child, a caregiver child, or a sibling under certain circumstances. Sometimes homes can be transferred to children, but this depends upon the overall circumstances of each particular case.

You should consult an attorney with specific questions regarding the transfer of assets.

## **DO ATTORNEYS MAKE HOME VISITS?**

You should ask your attorney whether or not he or she makes home visits. Attorney Amelia Crotwell does schedule home visits and will also travel to a nursing home.

**McDonald Levy**  
**10805 Kingston Pike #200**  
**Knoxville, Tennessee 37934**

Telephone: (865) 966-7665

Fax: (865) 966-3519

<http://www.mtlaw.com>

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This pamphlet is for informational purposes only. It is not intended as a substitute for legal advice. If you have any questions regarding any of the topics listed above, you should obtain the advice of a licensed attorney.



## **ELDER LAW**

In the practice of Elder Law, we focus on helping people who are aging or have special needs and their families. Our planning and practice is designed to inform and guide our clients to a better understanding of the legal issues they face and to identify their options and benefits. We also strive to counsel and assist our clients in finding solutions to practical problems that are present in times of serious illness.

## **Frequently Asked Questions**

**Amelia G. Crotwell<sup>1</sup>**  
**Attorney**

<sup>1</sup>Ms. Crotwell is not certified as an Elder Law Specialist or Estate Planning Specialist by the Tennessee Commission on Continuing Legal Education and Specialization. Ms. Crotwell is a member of the National Academy of Elder Law Attorneys and an Accredited Attorney with the Veteran's Administration.

