

ELDER LAW

Proven Solutions for the Legal Issues of Aging

Talking about your own or a loved one's declining health or death is never a pleasant conversation. So then, many of us never have the conversation at all.

But you've worked hard all your life. Paved your own way. What if you suddenly become unable to make decisions on your own behalf? Who will make them for you... the state? A grieving family? Will the decisions they make be legally sound? What you would have chosen? And will your life savings be at risk?

After watching her own father become incapacitated – and eventually pass – with no end-of life plans in place, Bradenton attorney Donna Sobel experienced first-hand just how complex are the laws and regulations affecting the elderly and disabled. As a corporate attorney at the time, she was able to navigate the elaborate legal landscape herself. But not without difficulty. It was then that she realized how challenging it would be for those without a legal background to do the same.

This personal understanding motivated Donna to start her own elder and disability law practice. Today, she is the only attorney based in Manatee County who is certified by the Florida Bar as a specialist in Elder Law.

Much more than simply practicing law, Donna delicately guides clients in making critical legal decisions in an emotional time of crisis - or better yet, when no one is ill at all. And she gets results by knowing what to look for regarding senior-specific laws and government programs while addressing all aspects of the legal issues of aging:

- Medicaid Eligibility for Skilled Nursing Home Care
- Asset Protection
- Revocable and Irrevocable Trusts
- Planning for VA Eligibility
- Trust and Probate Administration
- Durable Powers of Attorney
- Advanced Directives
- Wills
- Special Needs Trusts
- Life Care Planning



MEDICAID ELIGIBILITY

“Medicaid isn’t ‘just for poor people.’ It’s for people who have followed the rules.”

Statistics show that one-third of today’s American seniors will require care in a nursing home. The average length of stay is 835 days. And two-thirds of those requiring a long-term stay will run out of money to pay for it within the first year.

Of course, the reasons for needing nursing home care vary – from rehab after an injury, to those who can’t rehab because of cognitive impairment, to a caregiver’s sudden or long-coming inability to provide the care their loved one deserves.

But once you find your spouse or aging parent in one of these or countless other situations, one thing is certain: it’s not a matter of choice. They need long-term care. But how exactly will you pay for it?

Your Options

Of course, you can pay out of pocket with your own savings and assets. But with an average annual cost of \$73,000 – or monthly bills upwards of \$7,500 – very few people can afford to pay for a long-term nursing home stay on their own.

Then there’s long-term care insurance, an excellent coverage option. Yet few people who actually need nursing home care have long-term care insurance to help them.

Or you can opt to take advantage of Medicare, the federally funded and administered health insurance program designed primarily for older individuals.

However, an AARP study found that Medicare only covers about 3% of long-term care costs. Plus, it’s a short-term option that often falls short of its outlined 100-day maximum. And that’s even if you qualify to begin with.

So with these payment options questionable at best, what’s the solution? Perhaps the most feasible option for your family is Medicaid - but only if planned for properly.

Funded mainly by the federal government and administered independently by each state, Medicaid is a medical benefit program that can pay for long-term nursing home care once you’ve qualified for the coverage.

Qualifying, however, is no easy task because Medicaid rules are confusing and complicated to navigate. And ultimately, several factors - from your current income to your type of assets - can significantly affect your Medicaid eligibility. *So call our office before attempting to obtain eligibility on your own.* By allowing us to evaluate the many facets of your unique circumstances prior to submission, we can not only legally position your money so it is not accountable for Medicaid purposes but also prevent needless delays and frustration for you.

Medicaid Pre-Planning

Of course, early planning for a potential nursing home stay will afford you more opportunities. Individual needs can be better considered. Provisions can be put in place for beneficiaries. And most importantly, your or your loved one’s wishes can be clearly documented - while everyone is healthy and emotions are in check. And without the worry of depleting your life savings.



“Your judgment is better when you’re standing up than when you’re laying on your back.”

It’s easy to put off planning for your own or a loved one’s death. There are certainly happier things to think about, especially when it seems so far away or superstition gets the best of you.

But in addition to pre-planning for Medicaid, several other factors should be evaluated well before your ability to make your own decisions is compromised. This advanced assessment in elder law is estate planning.

Estate planning is more than saving or protecting your money. It puts you in control – even if you have already passed or are incapacitated – over who gets your assets in death and who can make final decisions on your behalf. And in the end, this preserves those precious family relationships that go on after your passing.

Comprehensive Life Planning

There are many options to utilize in this area of life planning, including revocable trusts, wills, pour-over wills, living will healthcare surrogates (applicable for all ages); and durable powers of attorney. And for an estate plan to be complete, it must be personalized for your unique needs and wishes.

To determine your unique circumstances, Donna Sobel’s comprehensive estate planning process will delve into details such as whether it’s appropriate to create a trust or will based on the worth of your assets, as well as who you trust the most to make crucial financial and healthcare decisions for you. By outlining your wishes now, your family can avoid unnecessary litigation later.



“A time of legal issues at every turn.”

Even with all your wishes outlined in a complete estate plan, there are still several final details to address within your estate after death, including:

- Your beneficiaries must be contacted.
- Creditors should be notified, as well.
- Debts, including those for medical purposes, must be paid.
- Tax returns must be filed, and associated fees should be paid.
- Assets and income should be distributed – but not too soon!
- Your property should be properly secured and insured.

Donna frequently attends to these notoriously lengthy and complex tasks on behalf of her clients and their families. Whether your estate requires Probate Administration or Trust Administration, however, is determined by the documentation you have in place.

Probate Administration is required if you have a Last Will. In this court-supervised legal process, your assets are distributed according to the terms of your Will, as well as Florida law. Only assets titled in the deceased’s name alone are probated, however. Jointly held assets, those named in a trust, or accounts that name a beneficiary are not included in the probate process.

On the other hand, Trust Administration is necessary if you have a properly drafted and funded trust in place. Because a trust is a private document – unlike a Will – it doesn’t have to be filed with Probate Court. Instead, your designated successor trustee must administer the trust as outlined.

However, since successor trustees are often trusted friends or family members – and not professionals – their personal grief, time constraints, and lack of knowledge and resources can make administering a trust quite a challenge. Donna can be of assistance in this scenario, too. Along with her experienced professional partners, she can guide those you’ve entrusted with your final matters through the complexities of this process.

VA ELIGIBILITY, LIFE CARE PLANNING, SPECIAL NEEDS TRUSTS



VA ELIGIBILITY

“Common sense doesn’t always work. You have to navigate carefully.”

If you were in the military in a time of war and were other than dishonorably discharged, you or your surviving spouse may qualify for Veterans Administration (VA) Assistance. Helpful in many ways, a VA pension most notably can offer financial assistance to help with the inevitable unreimbursed medical expenses that can quickly deplete your income. This is true whether or not your medical care is related to your time of service.

Your VA assistance is limited, however. For example, once eligible, it covers enough for limited home care or assisted living facility costs. But it never covers enough for nursing home care. In that case, you can also apply for Medicaid eligibility.

Yes, you can qualify for both, but careful planning is crucial. If not strategically planned and implemented, your VA eligibility can greatly affect - or even negate - your ability to qualify for other programs like Medicaid. With detailed knowledge of the process, Donna can help you obtain your VA eligibility by structuring your assets to qualify.

LIFE CARE PLANNING

“End-of-life care is expensive.”

None of us has a crystal ball, but sometimes it’s in our best interest to try to anticipate the future. Like when it comes to making healthcare decisions – and provisions – for when you may not be quite as young, healthy or of sound mind. The fact is you may survive for a long time even if your health is severely compromised or you’re no longer able to care for yourself.



Although you can never anticipate everything, Life Care Planning helps you prepare for a variety of scenarios by addressing the many relevant legal, financial and personal decisions that will arise, including:

- What legal documents should you have in place? It may not be as simple as drafting a will.
- How long might you be able to stay home? With Alzheimer’s, dementia, diabetes or other such afflictions, home-based care eventually won’t be possible.
- Who will make medical and financial decisions on your behalf if you’re unable to do so?
- What medical care and procedures do you want – or not want – at this stage of your life?
- How will you pay for care?

As with many aspects of elder law, Life Care Planning is best handled sooner than later. Knowing your family and physicians are well informed now about your wishes for then will bring you peace of mind in the years ahead.

SPECIAL NEEDS TRUSTS

“Sometimes it’s not only about what you leave behind, but also whom.”

Maybe the most challenging thing to plan for in the event you become incapacitated or die is the future well being of your special needs child or loved one. Whether a minor or adult, physically or mentally disabled individuals need special provisions in place to ensure quality of life and care after you’re no longer able to care for them.

A Special Needs Trust protects these disabled beneficiaries. And in fact they are quite different than a traditional trust, which is normally considered an asset with regard to government assistance programs. Instead, a Special Needs Trust is designed specifically to shield any inheritance, settlement and other property or assets intended for the beneficiary’s use.

Like VA Planning, though, careful planning is necessary to address the administrative challenges presented by a Special Needs Trust. Only when properly drafted will your loved one’s eligibility be preserved for public assistance programs like Medicaid and Supplement Security Income.

DONNA IRVIN SOBEL, P.A., BOARD CERTIFIED ELDER LAW ATTORNEY

From Personal Experience to Trusted Expertise

Originally from Cleveland, Georgia, Donna and her husband, fellow attorney Edward Sobel, relocated to Manatee County in 1983. Donna served as attorney for a local bank until 1991 when her father suffered a debilitating stroke. After experiencing the challenges of locating and paying for his care, even as an attorney herself, Donna then established her Elder Law practice in Bradenton. Since then she has been assisting clients and their families to navigate the complex and ever-changing legal issues of aging with competence and compassion.

Professional Experience

Donna holds the following professional degrees and affiliations:

- BS in Education – University of Georgia
- Masters in Rehabilitative Counseling – University of Georgia
- Juris Doctorate – Emory University School of Law
- Elder Law Specialist – Florida Bar



Donna is also a member of the Florida Bar, the Elder Law Section of the Florida Bar, the State Bar of Georgia, the Academy of Florida Elder Law Attorneys, and the National Academy of Elder Law Attorneys. In addition, she is accredited by the Department of Veterans Administration.

When not working with her clients, Donna enjoys reading, boating and attending Tampa Bay Buccaneers and Tampa Bay Rays games. She is also an animal lover, as owner of 3 large dogs and 3 cats, as well as caretaker of a feral cat colony.