CHAPTER 1

INTRODUCTION TO ELDER LAW

APPENDIX 1-A—Aging Resources
ENDNOTES

CHAPTER 2

THE ELDER FRIENDLY LAW OFFICE

A. Physical Barriers
   1. Mobility
   2. Décor
   3. Home Visits
B. Psychological Barriers
   1. Atmosphere
   2. Staff Demeanor
   3. Assistive Devices
C. Models of Representation
   1. Traditional Representation
   2. Holistic Representation
   3. Therapeutic Representation
   4. Life Care Representation
   5. LGBTQ Elders
   6. Family Representation
   7. Ancillary Services
D. Marketing
   1. Seminars/Public Speaking
   2. Brochures/Pamphlets
   3. Websites
   4. Newsletters
   5. Consumer Protection
ENDNOTES

CHAPTER 3

ETHICAL ISSUES

A. Holistic Approach
B. Client Identification
   1. Description of Benefits
C. Engagement Agreements and Document Drafting
D. Conflicts of Interest
   1. Third Party Payment of Fees
   2. Representation of Fiduciaries and Acceptance of Appointment as Fiduciary
E. Confidentiality
F. Competent and Diligent Representation
CHAPTER 4

AGE DISCRIMINATION

A. Statutory Purpose
B. Coverage Issues
C. Prima Facie Case
   1. Plaintiff is a member of the protected class
   2. Plaintiff has suffered adverse employment action
   3. Plaintiff is otherwise qualified for the position at issue
   4. Plaintiff was replaced by someone outside the protected class
D. Burden of Proof
E. Defenses
   1. Bona Fide Occupational Qualification
   2. Reasonable Factors Other Than Age
F. Complaint Process
   1. Arbitration
G. Separation Agreements
H. Retaliation
I. Conclusion

APPENDIX 4-A—State Age Discrimination in Employment Laws and Recent Cases
APPENDIX 4-B—Resources for Terminated, Laid Off, or Displaced Older Workers

ENDNOTES

CHAPTER 5

SOCIAL SECURITY/RAILROAD RETIREMENT/VA BENEFITS

A. Social Security
   1. Description of Benefits
   2. Eligibility Issues
      a. Spousal Status
      b. Dependent’s Benefits for Grandchildren
   3. Disability
   4. Appeals Process
B. Railroad Retirement Benefits
   1. Description of Benefits
   2. Eligibility Issues
   3. Disability
   4. Appeals Process
CHAPTER 6

SUPPLEMENTAL SECURITY INCOME

A. Eligibility for Benefits
   1. Citizenship
   2. Income
   3. Resources
B. Overpayments
C. Correlation With Social Security Benefits
   1. Representative Payees

APPENDIX 6-A—Sample Shelter Rental Agreement
APPENDIX 6-B—Social Security Administration—Request to Be Selected as Payee

ENDNOTES

CHAPTER 7

SPECIAL NEEDS TRUSTS

A. Types of Special Needs Trusts
   1. First Party SNTs
   2. Third Party SNTs
B. Tax Consequences and Benefit Preservation
   1. Trust Administration Issues
   2. Tax Issues
C. Allowable Expenses
D. SNTs v. ABLE Act Accounts
E. Ethical Challenges of SNT Representation

ENDNOTES

CHAPTER 8

PENSIONS, 401(k)s, IRAs, AND ROTH RETIREMENT PLANS

A. Qualified Plans
B. Individual Retirement Accounts
C. Distribution and Availability of Retirement Funds
   1. Penalties for Failure to Make Minimum Required Distribution
   2. Survivor Annuity

KNOWLES PUBLISHING • PAGE 3
D. Beneficiary Designation  
E. Distribution to Designated Beneficiaries  
F. Planning Issues  
   1. The Reality Check  
   2. Spousal Rights  
   3. Spousal Rollovers for Same-Sex Couples  
   4. Plan Review  
   5. Penalty Considerations—Premature Distribution  
   6. Income Tax Issues  
   7. Transfer Taxes  
G. Counseling for Retirement Asset Management  
   1. Income Tax Consequences  
   2. Tax Penalty—Required Beginning Date  
H. Post-Mortem Counseling  

APPENDIX 8-A—Request for Plan Documents  
APPENDIX 8-B—Authorization to Release Privileged Information  
APPENDIX 8-C—Sample Spousal Waiver Form  

ENDNOTES

CHAPTER 9

MEDICARE/MEDIGAP

A. Patient Protection and Affordable Care Act: Repealed and Replaced?  
B. Part A—Hospital Coverage  
C. Part B—Physician Coverage  
   1. Dual Eligibles  
D. Medicare “Part C” or Medicare Advantage Plans  
E. Medicare Part D  
F. Medigap or Medicare Supplement Insurance  
G. Appeals  
   1. Expedited Appeals  

APPENDIX 9-A—Enrolling in Medicare—Is Now the Right Time?  
APPENDIX 9-B—Advance Beneficiary Notice of Noncoverage (ABN)  
APPENDIX 9-C—CMS Brochure on Balance Billing Prohibition  
APPENDIX 9-D—A Model Request for Medicare Prescription Drug Coverage Determination  

ENDNOTES

CHAPTER 10

MEDICAID

A. Eligibility Criteria  
   1. Citizenship  
   2. Medical  
   3. Financial Eligibility  
B. Transfer of Assets  
   1. Transfer for Less Than Fair Market Value  
   2. Effect of Disqualifying Transfer  
C. Estate Recovery  
D. Fair Hearing Process  
E. Medicaid Planning  
   1. “Lady Bird” or Transfer on Death Deeds  
   2. Transfer Exemptions
3. Loan or Promissory Note Devices
4. Annuities
5. Grantor Funded Trusts
6. Personal Care Contracts

APPENDIX 10-A—Information Resources for Medicaid
APPENDIX 10-B1—TennCare Nursing Facility Level of Care Acuity Scale
APPENDIX 10-B2—Texas Department of Health and Human Services Preadmission Screening and Resident Review (PASRR)
APPENDIX 10-B3—Affordable Care Act’s Amendments to the Spousal Impoverishment Statute
APPENDIX 10-C—Qualified Income Trust
APPENDIX 10-D—State Estate Recovery Statutes
APPENDIX 10-E1—Montana Statutory Beneficiary Deed and Revocation Deed (Mont. Stat. §§ 72-6-121(13) & (14))
APPENDIX 10-F—Caregiver Exemption Forms

ENDNOTES

CHAPTER 11

LONG TERM CARE INSURANCE

A. Introduction
B. Qualified Plans
   1. Benefit Triggers
   2. Unitary Coverage
   3. Guaranteed Renewable
   4. Cash Surrender Value
   5. Premium Refunds
   6. Consumer Protection
C. Other Policy Provisions
   1. Benefit Payments
   2. Covered Services
   3. Exclusions
   4. Inflation Protection
   5. Nonforfeiture Benefits
   6. Third-Party Notice
   7. Waiver of Premium
   8. Benefit Restoration
D. The Final Decision
   1. Per Diem Cost
   2. Length of Coverage
   3. Elimination Period
   4. Age
   5. Health Status
E. Claims Issues

APPENDIX 11-A—List of Rating Agencies for Long Term Care Insurers

ENDNOTES
CHAPTER 12

LIFE INSURANCE

A. Viatical Settlements
B. Senior Settlements
C. Investment Issues
D. Problem Areas
E. Accelerated Death Benefits

ENDNOTES

CHAPTER 13

DISABILITY

A. Disability Among the Elderly
B. Americans With Disabilities Act
C. Application of ADA
   1. Title I—Employment
   2. Title II—State and Local Government Benefits
D. Public Accommodations
E. Fair Housing Act
F. Statute of Limitations
APPENDIX 13-A—ADA Discrimination Complaint Form
ENDNOTES

CHAPTER 14

ADVANCED FINANCIAL DIRECTIVES

A. Joint Ownership
   1. Joint Tenancy
   2. Authorized Signatory
   3. Trust Accounts
   4. Payable-on-Death Accounts
B. Living Trusts
   1. Tenancy By the Entireties Trusts (TBET) or Marital Asset Protection (MAP) Trusts
C. Durable Power of Attorney for Finances
APPENDIX 14-A—Financial Information Interview Sheet
APPENDIX 14-B—Sample Living Trust
APPENDIX 14-C—Durable Power of Attorney for Finances
APPENDIX 14-D—Revocation of Durable Power of Attorney For Finances
ENDNOTES

CHAPTER 15

ADVANCED HEALTH CARE DECISIONMAKING

A. Informed Consent
B. Advanced Health Care Planning
C. Surrogate Decisionmaking
D. Psychiatric Advanced Directives
APPENDIX 15-A1—Living Will (Tennessee)
CHAPTER 16

WILLS AND INHERITANCE

A. Overview
   1. Internet or Digital Assets
   2. Use of Forfeiture Clause
B. Grounds for Will Challenges
   1. Failure of Proper Execution
   2. Forgery
   3. Lack of Capacity
   4. Duress
   5. Undue Influence
   6. Unjust Enrichment
C. “Ethical” Wills
D. Intentional Interference with an Expected Inheritance

Appendix 16-A—Pre-Mortem Planning Questionnaire
Appendix 16-B—Last Will and Testament
Appendix 16-C—Sample Ethical Will
Endnotes

CHAPTER 17

GUARDIANSHIP AND CONSERVATORSHIP

A. Grounds for Guardianship/Conservatorship
   1. Pre-Need Appointment of Guardian/Conservator
   2. Preliminary Definitions
B. Petition or Complaint
C. Guardian Ad Litem
D. Respondent’s Rights
E. Fiduciary Appointment
F. Monitoring of Guardianships/Conservatorships
G. Uniform Veterans’ Guardianship Act
H. Public Guardianships
I. Ward’s Rights Following Appointment of Guardian or Conservator
J. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
K. Supported Decision-Making: Guardianship/Conservatorship as a “Last Resort”

Appendix 17-A—Petition for Appointment of Guardian of the Person (California)
Appendix 17-B—Petition for Appointment of Probate Conservator (California)
Appendix 17-C—Petition for Conservator (Michigan)
Appendix 17-D—Petition for Appointment of Guardian of Incapacitated Individual (Michigan)
Appendix 17-E—Report of Physician or Mental Health Professional (Michigan)
Appendix 17-F—Petition for Conservatorship (Tennessee)
Appendix 17-G—Sworn Report of Medical, Physical, or Psychological Examination
Appendix 17-H—Inventory and Proposed Property Management Plan (Tennessee)
CHAPTER 18

LEGAL ISSUES FOR GRANDPARENTS

A. Resources for Grandparents
   1. Financial
   2. Health Benefits
   3. Tax Credits
B. Grandparent Visitation
C. Grandparent Custody
D. Grandparent Adoption

APPENDIX 18-A—State Grandparent Visitation Statutes and Selected Case Law
APPENDIX 18-B—Sample Petition for Termination of Parental Rights and Adoption

ENDNOTES

CHAPTER 19

HOUSING OPTIONS AND THE CONTINUUM OF CARE

A. Home Ownership
   1. Reverse Mortgage
   2. Traditional Home Equity Loan
   3. Life Estate
   4. Family Support
   5. Programs of Assistance and Support
   6. Sale of Home
   7. Mobile Home
B. Rental Properties
   1. Senior Community Rental Property
   2. Senior Subsidized Housing
C. Entering the Continuum of Care
   1. Home and Community-Based Services
   2. Assisted Living and Residential Long Term Care Facilities
   3. Continuing Care Retirement Community
   4. Nursing Home
      a. Responsible Parties Under Nursing Home Admission Agreements
   5. Residential Hospice

APPENDIX 19-A—A Consumer Financial Protection Bureau—Considering A Reverse Mortgage Brochure

ENDNOTES
CHAPTER 20

NURSING HOME QUALITY OF CARE

A. Choosing a Nursing Home
   1. Explore All Options
   2. Evaluate Quality
   3. Investigate Ownership
   4. Check With the Long Term Care Ombudsman
   5. Visit Home Unannounced
   6. Second Visit
   7. Staffing Issues
   8. Interview the Nursing Home Administrator

B. Quality Issues
   1. Discrimination Against Medicare and Medicaid Residents
   2. Plan of Care
   3. Physical Restraints
   4. Chemical Restraints
   5. Feeding Tubes
   6. Provision of Rehabilitative Therapy

C. Eviction From the Nursing Home
D. Tort Remedies
E. Resident’s Rights

ENDNOTES

CHAPTER 21

CONSUMER FRAUD AND FINANCIAL EXPLOITATION

A. Consumer Fraud
B. Financial Exploitation
C. Identity Theft
D. Predatory Lending
E. Internet Fraud
F. Solutions to Elder Financial Exploitation

APPENDIX 21-A—Identity Theft Affidavit (IRS Form 14039)
APPENDIX 21-B—California Elder Abuse and Dependent Adult Civil Protection Act

ENDNOTES

CHAPTER 22

ELDER ABUSE, NEGLECT, AND DOMESTIC VIOLENCE

A. Adult/Elder Abuse
B. Recognizing Elder Abuse and Neglect
   1. Evidence or Signs of Abuse or Neglect
   2. Self-Neglect
   3. Reporting Requirements
   4. Proof of Elder Abuse and Neglect
C. Adult Protective Services
D. Domestic Violence
E. Solutions to Elder Abuse

ENDNOTES
CHAPTER 23
ELDERS AND RISKY BEHAVIOR
A. Driving
B. Substance Abuse
C. Criminal Activity
ENDNOTES

CHAPTER 24
END-OF-LIFE PLANNING AND ASSISTED SUICIDE
A. A. Euthanasia
B. Palliative Care
C. Assisted Suicide
D. Death With Dignity Act: The List is Growing
APPENDIX 24-A—Physician Orders for Scope of Treatment
APPENDIX 24-B—Request for Medication To End My Life In A Humane and Dignified Manner
APPENDIX 24-C—California Attending Physician Checklist & Compliance Form
ENDNOTES

CHAPTER 25
FUNERAL PLANNING
A. Introduction
B. Pre-need Funeral Contracts
C. Pre-planning
   1. Disposition of Remains
   2. Funeral Services
   3. Caskets
   4. Place
   5. Headstones or Burial Markers
D. Ensuring Compliance
E. Uniform Anatomical Gift Act
Appendix 25-A—Appointment of Agent to Control Disposition of Remains (New York)
ENDNOTES

CHAPTER 26
GLOBAL ISSUES
A. Financial Security in Retirement
B. Age Discrimination
C. Inheritance of Property
D. Capacity Issues
E. Health Care
F. Elder Abuse
Appendix26-A—How to Answer Those Tough Questions About Elder Abuse (NCEA Factsheet)
Appendix26-B—NCEA 12 Things That Anyone Can Do To Prevent Elder Abuse (NCEA)
ENDNOTES