

ELDER LAW ESSENTIALS

Release No. 8

Everything you need ...

Important Updates:

- VA Aid and Attendance & Housebound Benefits
- Achieving a Better Life Experience (ABLE) Act
- Spousal Rollovers for Same-Sex Couples
- Transfer of Assets
- Tenancy By the Entireties Trust (TBET) or Marital Asset Protection (MAP) Trusts
- Internet or Digital Assets
- Discrimination Against LGBT Elders

New Forms:

- Model Request for Medicare Prescription Drug Coverage Determination
- Sample Beneficiary Deed and Revocation Deed
- Sample Supported Decision-Making Agreement

Reverse Mortgages
Estate Recovery
Balance Billing
Death With Dignity Acts
Grandparent Visitation
Fiduciary Appointments

Invaluable Information:

Financial Exploitation & Scams
Transitioning Out of a Nursing Home
Representative Payees
Financial Eligibility for Medicaid
Rights of Wards
“Lady Bird” or Transfer on
Death Deeds



Research Taking Too Long?

Take advantage of our free software.

Fillable, interactive PDF forms
Access full text of cases and statutes in seconds
Direct links to helpful websites
Powerful search features
View entire contents of the book



ELDER LAW ESSENTIALS

What Every Lawyer Should Know About Representing the Elderly Client

by DONNA S. HARKNESS, CELA

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. Client Identification
- B. Potential Conflict of Interest
 - Fiduciary Representation
- C. Confidentiality
- D. Competent Legal Representation
- E. Client Capacity
- F. Communication and Advocacy
- G. Marketing



- H. Ancillary Services
- I. Public Service
- APPENDIX 3-A—Client Retainer
- APPENDIX 3-B1—Consent to Joint Representation
- APPENDIX 3-B2—Fiduciary Representation – Informed Consent
- APPENDIX 3-C—Capacity Continuum
- APPENDIX 3-D—Capacity Questionnaire
- ENDNOTES

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
- C. Veterans Affairs
 1. Description of Benefits



2. Eligibility
 - a. Pension
 - b. Service-Connected Disability
 - c. Medical Care
 - d. Burial
3. Appeals Process
4. Due Process
5. Internet Resources

APPENDIX 5-A—Social Security “Claiming Strategies” Elimination
ENDNOTES

CHAPTER 6

SUPPLEMENTAL SECURITY INCOME

- A. Eligibility for Benefits
 1. Citizenship
 2. Income
 3. Resources
- B. Special Needs Trusts
 1. What Is a Special Needs Trust?
 2. Grantor-Funded Trusts
 - a. Stand-Alone Trusts
 - b. Pooled Trusts
 3. Third-Party Grantor Funded Trusts
 4. ABLE Act
- C. Overpayments
- D. 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

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
- 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 7-A—request for Plan Documents

APPENDIX 7-B—Authorization to Release Privileged Information

APPENDIX 7-C—Sample Spousal Waiver Form

ENDNOTES

CHAPTER 8

MEDICARE/MEDIGAP

A. Patient Protection and Affordable Care Act

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 8-A—Enrolling in Medicare—Is Now the Right Time?

APPENDIX 8-B—Advance Beneficiary Notice of Noncoverage (ABN)

APPENDIX 8-C—CMS Brochure on Balance Billing Prohibition

APPENDIX 8-D—A Model Request for Medicare Prescription Drug Coverage Determination

ENDNOTES

CHAPTER 9

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 9-A—Information Resources for Medicaid

APPENDIX 9-B1—TennCare Nursing Facility Level of Care Acuity Scale

APPENDIX 9-B2—Texas Department of Aging and Disability Services
Preadmission Screening and Resident Review (PASRR)

APPENDIX 9-B3—Affordable Care Act’s Amendments to the
Spousal Impoverishment Statute



- APPENDIX 9-C—Qualified Income Trust
 - APPENDIX 9-D—State Estate Recovery Statutes
 - APPENDIX 9-E1—Montana Statutory Beneficiary Deed and Revocation Deed
(Mont. Stat. §§ 72-6-121(13) & (14))
 - APPENDIX 9-E2—California Statutory Revocable Transfer on Death Deed
(Cal. Prob. Code § 5642)
 - APPENDIX 9-F—Caregiver Exemption Forms
- ENDNOTES

CHAPTER 10

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

ENDNOTES

CHAPTER 11

LIFE INSURANCE

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

ENDNOTES



CHAPTER 12

DISABILITY

- 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 13-A—Financial Information Interview Sheet
APPENDIX 13-B—Sample Living Trust
APPENDIX 13-C—Durable Power of Attorney for Finances
APPENDIX 13-D—Revocation of Durable Power of Attorney For Finances
ENDNOTES

CHAPTER 13

ADVANCED FINANCIAL DIRECTIVES

- A. Joint Ownership
 - 1. Joint Tenancy
 - 2. Authorized Signatory
 - 3. Trust Accounts
 - 4. Payable-on-Death Accounts
 - B. Living Trusts
 - C. Durable Power of Attorney for Finances
- APPENDIX 13-A—Financial Information Interview Sheet
APPENDIX 13-B—Sample Living Trust
APPENDIX 13-C—Durable Power of Attorney for Finances
APPENDIX 13-D—Revocation of Durable Power of Attorney For Finances
ENDNOTES

CHAPTER 14

ADVANCED HEALTH CARE DECISIONMAKING

- A. Informed Consent
 - B. Advanced Health Care Planning
 - C. Surrogate Decision-Making
 - D. Psychiatric Advanced Directives
- APPENDIX 14-A1—Living Will (Tennessee)
APPENDIX 14-A2—Tennessee Advance Care Plan
APPENDIX 14-B—Warning to Person Executing This Document/Durable
Power of Attorney for Health Care
APPENDIX 14-C—Tennessee Declaration for Mental Health Treatment
ENDNOTES



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 15-A—Pre-Mortem Planning Questionnaire
 Appendix 15-B—Last Will and Testament
 Appendix 15-C—Sample Ethical Will
 Endnotes

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 16-A—Petition for Appointment of Guardian of the Person (California)
 APPENDIX 16-B—Petition for Appointment of Probate Conservator (California)
 APPENDIX 16-C—Petition for Conservator (Michigan)
 APPENDIX 16-D—Petition for Appointment of Guardian of Incapacitated Individual (Michigan)
 APPENDIX 16-E—Report of Physician or Mental Health Professional (Michigan)
 APPENDIX 16-F—Petition for Conservatorship (Tennessee)
 APPENDIX 16-G—Sworn Report of Medical, Physical, or Psychological Examination
 APPENDIX 16-H—Inventory and Proposed Property Management Plan (Tennessee)
 APPENDIX 16-I—Final Order Appointing Conservator of the Person and Property (Tennessee)
 APPENDIX 16-J1—Texas Bill of Rights for Wards (Tex. Est. Code § 1151.351)
 APPENDIX 16-J2—California Notice of Conservatee’s Rights
 APPENDIX 16-J3—Campbell/Falk Act (Tennessee Public Chapter No, 1062 (May 12, 2016))
 APPENDIX 16-K—Texas Supported Decision-Making Agreement (Tex. Est. Code § 1357.056)
- ENDNOTES

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 17-A—Sample Petition for Termination of Parental Rights and Adoption
ENDNOTES

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 18-A—A Consumer Financial Protection Bureau—Considering A Reverse Mortgage Brochure
ENDNOTES

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 20

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 20-A—Identity Theft Affidavit (IRS Form 14039)

APPENDIX 20-B—California Elder Abuse and Dependent Adult Civil Protection Act

ENDNOTES

CHAPTER 21

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 22

ELDERS AND RISKY BEHAVIOR

- A. DRIVING
- B. SUBSTANCE ABUSE
- C. CRIMINAL ACTIVITY

ENDNOTES



CHAPTER 23

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 23-A—Physician Orders for Scope of Treatment

APPENDIX 23-B—Request for Medication To End My Life In A Humane and Dignified Manner

APPENDIX 23-C—California Attending Physician Checklist & Compliance Form

ENDNOTES

CHAPTER 24

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 24-A—Appointment of Agent to Control Disposition of Remains (New York)

ENDNOTES

CHAPTER 25

GLOBAL ISSUES

- A. Financial Security in Retirement
- B. Age Discrimination
- C. Inheritance of Property
- D. Capacity Issues
- E. Health Care
- F. Elder Abuse

Appendix25-A—How to Answer Those Tough Questions About Elder Abuse (NCEA Factsheet)

Appendix25-B—NCEA 12 Things That Anyone Can Do To Prevent Elder Abuse (NCEA)

ENDNOTES