



Southern Caregiver Resource Center

Caring for those who care for others

Fact Sheet: Finding an Attorney to Help with Estate Planning

Before you or a loved one is faced with a life limiting illness or cognitive impairment, it is important to have completed the legal paperwork necessary for estate planning. Unfortunately, this is often not the case, and families are trying to get the necessary legal documents completed under difficult circumstances, such as cognitive impairment, where someone is no longer able to manage his/her affairs or a medical crisis. (See fact sheet, End-Of-Life Decision Making.)

When seeking legal advice, finding a knowledgeable, competent attorney is extremely important. You want someone with whom you feel comfortable and who has the expertise to advise you on these matters. Consult an attorney as early as possible – the maximum number of planning options will be available while you or your loved one still has the legal capacity to make your own decisions. The question of capacity is a gray area and is determined on a case-by-case basis by the attorney.

Why Do You Need an Attorney?

There are several legal issues to consider when a person is or may become incapacitated:

- Options for paying for long term care
- Arranging for payment of long term health care: private insurance, Medicare

- Medicaid (Medi-Cal in California), Supplemental Security Income (SSI)
- Management of financial affairs during lifetime, ability to pay bills for another
- Preserving family assets—ensuring spouse or disabled family members are protected (see fact sheet, *Legal Issues and Consultation*)
- Wills, revocable living trusts, joint tenancy accounts, payable on death accounts, transfers with a retained life estate
- Management of personal care and medical decisions
- Housing options—staying at home, can it be done physically and financially? Out of home placement choices, e.g. assisted living or nursing home
- Distribution of assets upon death

Locating an Attorney

- Personal recommendation from friend, relative, co-worker, others in a support group or disease specific organization, another attorney whom you trust
- Senior legal services, provided by your local Area Agency on Aging

- Legal Aid in your county
- Attorney Referral Service in your area or your local Bar Association
- CANHR Legal Referral Service

Check qualifications and experience; compare fees; ask about familiarity with laws in your state for issues you are dealing with.

Types of Attorneys

Most attorneys concentrate on one or two areas of law. In planning for incapacity, you would ask for an “elder law” attorney or an “estate planning” attorney. It is important for the family caregiver to find an attorney who has the appropriate expertise. Attorneys advising caregivers on planning for long-term care should have knowledge of the following areas of law:

- Medicaid (Medi-Cal in California), SSI (Supplemental Security Income), IHSS (In Home Supportive Services) attorneys, who specialize in Medicaid eligibility for nursing home care, can help with converting non-exempt assets into exempt assets, transfer of the family residence to a spouse, transfer of the principal residence with the retention of a life estate, use of court orders to increase the amount of resources and/or income the spouse of a nursing home resident can retain.
- Social Security, designation of a representative payee
- Trusts (including revocable and irrevocable living trusts and special needs trusts)
- Conservatorship of estate or person
- Durable power of attorney for health care and asset management (finances)
- Tax planning - income tax, estate tax, gifting, and probate
- Housing and health care contracts/ long- term care insurance
- Wills
- Elder law
- Veteran’s benefits

What to Bring to a Consultation

- List of major assets - real estate, stocks, cash, jewelry, insurance
- Any documents of title - copies of deeds, stock certificates, loan papers
- Contracts or other legally binding documents.
- Lists of all major debts.
- Existing wills or durable powers of attorney for health care or finance
- Bank statements, passbooks, CDs
- Income – social security, pensions, IRAs, etc.

Resources

Southern Caregiver Resource Center
 3675 Ruffin Road, Suite 230
 San Diego, CA 92123
 (858) 268-4432; (800) 827-1008 (in CA)
 Fax: (858) 268-7816
 E-mail: scrc@caregivercenter.org
 Web site: www.caregivercenter.org

The Southern Caregiver Resource Center offers services to family caregivers of adults with chronic and disabling health conditions, and is for residents of San Diego and Imperial counties. Services include information and referral, counseling, family consultation and case management, legal and financial consultation, respite care, education and training, and support groups.

Family Caregiver Alliance

235 Montgomery Street, Suite 950
San Francisco, CA 94104
(415) 434-3388; (800) 445-8106
Web site: www.caregiver.org
E-mail: info@caregiver.org

Family Caregiver Alliance (FCA) seeks to improve the quality of life for caregivers through education, services, research and advocacy. Through its National Center on Caregiving, FCA offers information on current social, public policy and caregiving issues and provides assistance in the development of public and private programs for caregivers.

American Bar Association (ABA)

Commission on Legal Problems of the Elderly
(800) 285-2221
www.americanbar.org

The general public may contact the ABA to obtain information on county bar associations. County bar associations provide attorney referrals through local attorney referral offices throughout the U.S.

CANHR (California Advocates for Nursing Home Reform)

(800) 474-1116
www.canhr.org

CANHR provides advocacy, consumer education, and legal information to residents of California.

National Academy of Elder Law Attorneys

www.naela.org

National Association of Area Agencies on Aging

(202) 872-0888
www.n4a.org

Provides information on local Area Agencies on Aging, which coordinates a variety of community-based services for senior citizens, including legal services.

National Senior Citizens Law Center

(202) 289-6976; (213) 639-0930
www.justiceinaging.com

NSCLC closely monitors court rulings, legislation and regulatory changes, which affect older persons. They also publish a weekly newsletter.

Compassion & Choices

(800) 247-7421
www.compassionandchoices.org

National Hospice and Palliative Care Organization

(703) 837-1500
www.nhpco.org

Recommended Reading

Fact Sheets

Legal Issues and Consultation

Legal Planning for Incapacity

Making End-of-Life Decisions: What are Your Important Papers

Reviewed by Harriet Prensky, Attorney at Law, Prensky & Tobin, Mill Valley, California, March 1996. Prepared by Family Caregiver Alliance in cooperation with California's Caregiver's Resource Centers, a statewide system of resource centers serving families and caregivers of brain-impaired adults. Revised July 1996. Funded by the California Department of Mental Health. © All rights reserved.

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