

# Elder Law: General Practice with a Niche

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# Elder Law: General Practice with a Niche

*The dynamic field of elder law embraces many aspects of the law, from health care to estate planning to guardianship. It also involves special client considerations, marketing practices, and resources for support.*

**By Jane Rupprecht Mulcahy**

**E**lder law is truly general practice with a niche—the aging client. When you consider that we are *all* aging, you begin to understand the vast client base that the elder law practice can serve. Along with this large client base comes a vast variety of legal problems. Thus, the elder law attorney needs to be well versed in nearly every area of practice.

## **An Overview of the Elder Law Practice**

### ***The Client and Lawyer***

We have all heard the statistics about the upcoming swell of seniors in our society. One report estimates that in the year 2025, 25 percent of the American population will be composed of senior citizens.<sup>1</sup> Another report points out that we typically live one-third of our lives *after* retirement.<sup>2</sup> But the

aging of America is not the only reason that elder law is increasing in importance. Rather, the experiences of midlifers, as they care for and struggle through the challenges facing their parents and grandparents, are awakening them to the importance of planning ahead and planning well. Although “elder law” sounds like law for the old, there is no age limit on the people benefiting from its practice. As one author suggests, the need to plan for retirement starts the day you become employed.<sup>3</sup>

Elder law is a dynamic field. Legislative changes in Medicare, growing options in products designed to meet the elder person’s housing needs, and emerging health care financing options (to name just a few) and their attendant legal consequences require an attorney to specialize in order to be effective in meeting the legal needs of the aging client.<sup>4</sup> As one practitioner points out with respect to the field, “You can’t just dabble in it. You need to deal with it every day to be effective.”<sup>5</sup>

The typical elder law practice is a relatively small boutique firm or a solo practitioner.<sup>6</sup> Most large firms shy away from elder law. Large fees are generally not forthcoming in the elder law practice, which makes it hard for a large firm to cover its overhead expenses. Additionally, health care facilities and HMOs are more likely to be represented by larger firms. Accordingly, in this era of mergers and consolidations of these types of health care providers, the chances of a conflict of interest between a health care provider and an elderly health care recipient are great.<sup>7</sup>

Elder law also gives attorneys who like being counselors the opportunity to show compassion for those in need while practicing a reputable profession that has traditionally avoided the “touchy-feely.” Some attorneys say, “If I wanted to hear

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people's problems, I would have become a psychologist." In fact, the elder law attorney must possess empathy. He or she is often faced with counseling clients who are experiencing depression, shock, or loneliness, providing not only legal counsel but moral support as well.<sup>8</sup>

The acceptance of the compassionate lawyer can be attributed, at least in part, to the increase of women in the profession. As natural and culturally prepared nurturers and negotiators, women bring an aspect to the practice of law that has long been overlooked. More than ever, men are beginning to realize that the empathetic character that women often bring to the table is a trait worth cultivating. Many clients respond to this. Often in an empathetic attorney-client relationship, clients will comment that they did not expect the comfort they experience with the attorney.

### **Marketing: Knowing, Reaching, and Keeping Your Target Client**

Marketing for the elder law practice is mainly carried out on a community outreach level.<sup>9</sup> Through contacts with associations that cater to the needs of elders and their families, such as the local Office on Aging or local senior living facilities, the elder law attorney can build a clientele for an elder law practice.<sup>10</sup> With increasing numbers of seniors surfing the Web, the Internet is also a valuable tool in marketing to this group.

When marketing to any niche, it is vital to know its buying characteristics. One study revealed that senior consumers: (1) do not like anyone to think of them as old; (2) prefer to be shown in a positive, attractive light; (3) prefer to purchase experiences rather than objects; (4) feel a strong psychological need to be comfortable; (5) use security and safety as key buying factors; and (6) believe that convenience and access are as important as the product itself.<sup>11</sup> The elder law practitioner can use these characteristics to tailor his or her firm to this market. For example, in writing the firm's literature, portray the senior client in a positive manner (happy, healthy, enjoying life, etc.). When describing the firm's products, emphasize how their benefits will help the client feel more secure in the future. Finally, when picking a location and setting up shop, be sure to provide easy access and safety.

An important aspect of capturing the senior client is knowing your market niche. An interesting

and intelligent idea for becoming knowledgeable about this market segment is suggested by Milton Zwicker, who recommends the appointment of a client board of directors for the elder law firm.<sup>12</sup> This board not only allows the practitioner to build relationships with seniors, it also enables him or her to pinpoint the clients' real needs.<sup>13</sup>

Lisa Stewart and her colleagues suggest several practical considerations for enhancing the attorney-client relationship with the elder individual.<sup>14</sup> First, older clients, like other clients, want to feel respected as individuals by their attorney.<sup>15</sup> Special considerations for the different needs of the elder person can enhance this respect immeasurably. Some suggestions include slowing down, allowing time for the client to express his or her thoughts, and sending written questions in advance of a scheduled meeting to allow the client time to comprehend and reflect upon the questions he or she will be asked.<sup>16</sup> Because an otherwise alert and mentally competent individual may appear confused and disoriented when being hurriedly presented with new information, the elder law attorney should do everything possible to avoid this scenario.<sup>17</sup>

Second, an elder client may never have had previous contact with an attorney and may not know what to expect. Accordingly, the elder law attorney should explain how the ensuing relationship will unfold.<sup>18</sup> For example, the attorney should tell the client how long a particular meeting will last, what will happen next, and if there will be a lapse of time before the next meeting.<sup>19</sup> The client should be as involved in the process as possible in order to build trust and understanding.

Third, to ensure that the client is completely candid about potentially sensitive topics, the elder law attorney should stress the confidential nature of the attorney-client relationship.<sup>20</sup> Because the elder client may fear the loss of independence, or because the client's adult children may be pressuring him or her to take a certain course, the elder client should be assured that the attorney will not divulge any information unless the client clearly authorizes it.

Fourth, the elder law attorney should be alert and sensitive to the elder client's physical needs, including possible hearing difficulties, sight problems, and physical ailments.<sup>21</sup> The attorney should enunciate clearly, but should not raise his or her voice unless the client requests this.<sup>22</sup> Background

music and noise should be kept at a minimum.<sup>23</sup> The office should be well lit, but glaring lights should be avoided.<sup>24</sup> Additionally, written material should be at least double-spaced, in a font that is large enough and clear enough for the client to read easily.<sup>25</sup> Finally, the furniture should be wood or some other firm material, with armrests to assist the elder client in getting up from sitting.

Fifth, the elder law attorney should be alert for, and sensitive to, confusion in the elder client.<sup>26</sup> This confusion may be a temporary state caused by the loss of a loved one, poor nutrition, or improper medication.<sup>27</sup> To be prepared for such circumstances, the elder law attorney should be familiar with these types of reactions and be well acquainted with professionals in complementary fields for advice or referral.<sup>28</sup> Lawyers who are not trained must not try to act as psychologists—major problems should be recognized and referred. If the client agrees to counseling, the attorney should give the client as much information about the professional as possible and contact the professional in advance of the client's meeting with the client's consent.<sup>29</sup>

A final suggestion for building a trusting relationship with the elder client is giving the client your undivided attention during your conversations. Listening carefully, maintaining eye contact, and paraphrasing what your client tells you in a respectful manner helps assure your elder client that you understand what he or she is trying to communicate to you.<sup>30</sup> These techniques can also allow clients to hear their problems in a new way, allowing them to gain insights into possible solutions that they had not contemplated.<sup>31</sup>

### **Support Resources**

The practice of elder law requires an interdisciplinary approach. Case managers, financial planners, senior associations, health care workers, and government agencies form a network that provides for the varied needs of the elder person. One legal treatise suggests that the elder law attorney is in the best position to coordinate these services.<sup>32</sup> Because the attorney is neither selling any particular product nor recommending any particular plan, it is suggested that he or she can act as the unbiased evaluator of the various proposals made by the members of the interdisciplinary team.<sup>33</sup>

Several particular groups can be important resources for the elder law attorney. The National Academy of Elder Law Attorneys (NAELA) was

founded in 1986 as a professional organization of lawyers dedicated to improving the quality of legal services to elder persons. The group provides elder law training to practitioners and is active in analyzing federal legislation and regulations that affect older clients.<sup>34</sup> The national character of the organization acts as a unifying voice of elder law attorneys across the country.

The American Bar Association (ABA) Commission on Legal Problems of the Elderly was established in 1979 as an interdisciplinary body with the purpose of educating the bar and conducting research on the legal needs of older clients.<sup>35</sup> The group is made up of lawyers, physicians, social workers, gerontologists, and other advocates for older persons. It is instrumental in formulating and implementing ABA policy regarding elder persons and is a valuable resource for exploring interdisciplinary issues.

The American Association of Retired Persons (AARP) is the foremost representative of older people in America.<sup>36</sup> This group is an invaluable resource for the elder law attorney. It tracks the pulse of the senior population, providing the elder law attorney with inside information about the needs of elder clients.

Finally, the American College of Trust and Estate Counsel (ACTEC)<sup>37</sup> and the ABA Section of Real Property, Probate, and Trust Law<sup>38</sup> provide the elder law attorney with legal resources for the property aspect of their senior clients' legal needs. The distribution of property both during life and after death is a predominant area of the elder law practice. Commonly referred to as estate planning, this is the reason that will bring most middle-aged and elderly clients into the lawyer's office.

### **Areas of Law**

The elder law attorney must be well versed in nearly every area of the law—a daunting but not impossible prospect. Rather, the elder law practice can be imagined as a horizontal cross section of the vertical fields of traditional legal curriculum—torts, property, contracts. Like other newer fields such as health law and intellectual property law, such a practice is client centered.

### **Property Law**

Property law is probably the area most practiced by elder law attorneys. Whether planning for the distribution of assets via a will or trust, planning for a

power of attorney to avoid the need for a guardianship later on, or exploring housing options with the elder client, the elder law attorney must be familiar with property law concepts.

### Estate Planning

Current statistics reveal that 70 percent of the total net worth of Americans is controlled by persons over age 50.<sup>39</sup> Additionally, according to 1995 Census Bureau statistics approximately 80 percent of persons between 65 and 75 own their own homes.<sup>40</sup> Because this amount of wealth will be transferred to the next generation in the coming decades, estate planning will be an important aspect of the elder law practice.<sup>41</sup>

To meet this need, the elder law attorney must be familiar with federal and state tax law and its implications for the transfer of property to the next generation(s). Although the elder client will have nontax objectives in planning the distribution of his or her estate, most estate planning will be done with the goal of minimizing taxes. Accordingly, the elder law attorney should be able to assist the elder client with preparing a will, considering alternative forms of holding title on accounts, choosing beneficiaries, planning for estate administration, and utilizing estate planning tools (such as trusts) where appropriate.<sup>42</sup>

### Life Planning

To put durable powers of attorney, living wills/advance directives, and living trusts in a perspective that conveys the positive aspects of these tools, the elder law attorney may consider referring to this area of the practice as "life planning."<sup>43</sup> (Living wills and durable health care powers of attorney are discussed in further detail under Health Care Law.) Life planning fulfills some important objectives of the elder client. First, as noted earlier, baby boomers are now going through the legal paces with their aging parents and are recognizing the importance of planning ahead. Through these "living" documents, these clients are able to plan for their possible future incapacity without being forced to rely upon the decisions of others. In addition, although life expectancy for Americans is increasing, the prospect of living a full life into old age free from disability is not keeping pace.<sup>44</sup> Accordingly, with the expectation that an individual is likely to suffer some disability during life, these documents allow the client to make

important choices and to avoid having these decisions made by others not of his or her choosing, if the client does indeed become disabled.

The durable power of attorney is a written instrument in which the client (the principal) gives a third party (the attorney in fact, or agent) the power to act on his or her behalf in stated situations (such as taking care of financial matters or signing certain documents). The principal must have sufficient mental capacity to execute a durable power of attorney, which means that he or she must be able to understand that he or she is giving this power to the agent. Being durable means that this power will continue even if the principal later becomes incapacitated. To be successfully durable, the instrument must state the principal's clear intention that the power will survive his or her incapacity.

There are two types of durable powers, immediate and springing. The immediate power goes into effect as soon as the document is signed. Conversely, the springing power goes into effect upon the occurrence of a stated event (the incapacity of the principal). A competent principal may revoke a durable power of attorney. However, upon incapacity, the principal is no longer able to revoke a previously executed power.<sup>45</sup> Additionally, if the principal regains capacity, the power will lapse if the instrument includes such a provision. It is important for the instrument to clearly define the standard for the principal's competency/incompetency and who is authorized to adjudge it. The power of attorney will terminate upon the death of the principal.

Certain powers are not delegable via a power of attorney, including the power to make, amend, or revoke a will; the power to change beneficiaries on insurance policies; the power to enter the principal into marriage; the power to take oaths; the power to vote on the principal's behalf; and the power to enter into a personal service contract.<sup>46</sup> Special consideration should be given where the agent is given the power to make gifts to himself or herself (including the agent's creditors, the agent's estate, or the creditors of the agent's estate) or to persons for which the agent has a legal obligation of support.<sup>47</sup> Such a power would be viewed by the Internal Revenue Service as a general power of appointment causing the *principal's* assets to be included in the *agent's* estate for estate tax purposes.

## Guardianship

Because the process is often costly and humiliating and disregards the wishes of the client, guardianship generally should be utilized as a last resort for the elder client. However, if the elder law attorney is contacted after the client has already become incapacitated and therefore other life planning tools such as the power of attorney are no longer available, guardianship may be the most appropriate option. A guardian is a person appointed by a court to serve as the court's agent with respect to a ward under a theory of *parens patriae*.<sup>48</sup> A spouse, child, or other family member often acts as guardian.<sup>49</sup> However, if there is no family, or the family is inappropriate, a social service agency may be appointed by the court in its stead.<sup>50</sup> The role of guardian is one of a fiduciary, meaning that the guardian must manage the ward's affairs in a prudent manner. The guardian is empowered to make health and/or financial decisions for an individual (the ward) who is not able to make these decisions for himself or herself.<sup>51</sup>

The guardian is responsible for making arrangements for the ward's housing and daily care, for protecting the ward's property (including collecting income and paying bills), and for making an annual accounting of the ward's circumstances to the court.<sup>52</sup>

## Housing and Care Options

If the elder person is no longer able to independently care for himself or herself, he or she faces a myriad of options, including continuing care, home health services, adult day care, board and care, assisted living, and nursing homes. When assisting a senior with the housing decision, it is incumbent upon the elder law attorney to evaluate the options and inform the client of all the implications of the decision: What effect will the decision have on continued ownership of a personal residence? What kind of contracts may be involved? Additionally, nearly every housing decision made by a senior will be based, at least in part, upon any medical or personal assistance he or she may require. Accordingly, this area of law overlaps many aspects of health law (discussed below).

Continuing care facilities offer seniors a graduated level of care—from independent living apartments to a nursing home—on the same premises. This option is very attractive to elder persons, because they view it as a way to keep their inde-

pendence as long as possible. However, it comes with a hefty price tag, and only the very well-off client will be able to afford continuing care.

Home health services provide limited health care services to seniors in the comfort of their own home. This option is also attractive to seniors because they can stay in their homes while receiving care (often their paramount objective). Although these services are often covered by government entitlements and private insurance, the covered services are very limited. Accordingly, this option may not provide the senior with the amount of care required. For example, if the elder person needs around-the-clock supervision or care, this option will not be appropriate unless the client is able to pay for the additional services out-of-pocket.

Adult day care is an option available for families who care for their elder family member in the home but need assistance during the day, especially if the caregivers work outside the home. The nature of this service necessarily requires that the elder person is mobile enough to travel back and forth between home and day care. Receiving funding to pay for adult day care varies; each case will need to be researched to identify the funding and services available in the area.

Board and care describes a variety of nonmedical, typically privately owned, residential facilities, including group homes, foster homes, personal care homes, and rest homes.<sup>53</sup> These homes predominantly house poor and disabled individuals who finance their care with Supplemental Security Income (SSI).<sup>54</sup> The elder person can receive assistance with shopping, housekeeping, preparing meals, bathing, dressing, eating, and taking medications.<sup>55</sup> Although these facilities meet the needs of an otherwise overlooked segment of the aging population (those who do not qualify for Medicare or Medicaid), they have historically been prone to problems due to inadequate regulation.

Like board and care facilities, assisted living facilities provide the elder person with a homelike atmosphere accompanied by assistance with activities of daily living including shopping, housekeeping, preparing meals, bathing, dressing, eating, and taking medications. Assisted living is regulated not only by the government but by more affluent consumers and their families. It often qualifies for funding from government entitlements other than SSI. Because the demand is so great for these facil-

ities, there may be a waiting list in some areas. This is a valuable option for the elder law attorney to keep in mind, but some planning may be required to avoid a wait.

Finally, nursing homes are generally utilized for the long-term care of the chronically ill and the posthospitalization of recovering acute-care patients.<sup>56</sup> Although nursing homes have a negative image as the last stop in the life of the frail elder, they do perform an important function in our society for families that are no longer willing or able to provide the necessary care for their aging loved ones. A nursing home is currently the most economical way to care for the chronically ill elderly because they are gathered into one location and one attendant is able to care for several patients.<sup>57</sup> If an elder person cannot afford to receive the care he or she needs at home and the aid of the family is not adequate or forthcoming, this may be the only alternative.

### **Health Care Law**

The elderly incur more health care costs than any other segment of the population. In 1987, the elderly made up only 12 percent of the population but used over 36 percent of all health care dollars spent that year.<sup>58</sup> Because the elderly are such substantial consumers of health care, the elder law attorney must be well versed in the health care options available, the programs available to help finance health care, and the tools available to plan for health care decisions. As discussed previously, the health care options available to the elder person are very closely tied to the housing options available.

#### **Health Care Financing**

The ability to finance health care fairly causes more trepidation than any other issue in the elder person's life. Additionally, the health care of the elderly in America is a substantial burden on our tax dollars and limited health care resources and promises to become more so as the population continues to age. Currently, government entitlement programs and private insurance finance nearly all health care expenditures by the elderly.

**Medicare.** Medicare is made up of three parts: Part A, Part B, and Part C.<sup>59</sup> Eligibility requirements for Medicare Parts A and B include being age 65 (with enough quarters of coverage to qualify for Social Security retirement benefits) or receiv-

ing Social Security disability insurance benefits for at least 24 months. Part A, which is available to most persons over age 65, is hospital insurance that covers hospital care subject to a deductible and copayments. The hospital costs are covered only if the stay was reasonable and necessary as determined by a peer review organization. If a hospital stay is deemed unreasonable or unnecessary and the patient disagrees, the patient may appeal the decision of the peer review organization to the Social Security Administration, and further to the Social Security Appeals Council and finally to the U.S. District Court.

Part A will cover nursing home care in only limited situations: the patient must need daily skilled care, the nursing home care must begin within 30 days after a hospitalization of at least 3 days, and the nursing home must be certified to provide skilled care. If the patient meets these requirements, Part A will pay for 20 days, with a large daily copayment thereafter. Additionally, 100 days per "spell of illness" is the maximum time for which Part A will pay. Part A will also pay for home health care in limited situations.

Medicare Part B is voluntary, and to benefit from its coverage monthly premiums must be paid, usually as a withholding from Social Security benefits. Part B covers the costs of physicians and other health care providers, ambulance services, and medical products and supplies, subject to a "determination of benefits payable." As with Part A, the beneficiary can appeal adverse decisions.

Medicare Part C (or Medicare+Choice) is an experimental program that is a hybrid of Medicare and health maintenance organizations (HMOs). The high cost of some elderly populations in plan participant pools has caused this scheme to be unprofitable for some HMOs. Nevertheless, Medicare+Choice is in development as the principal Medicare program after 2002.

**Medicaid.** Medicaid, which is Title XIX of the Social Security Act, is a program funded and regulated jointly by the federal and state governments, and therefore eligibility requirements vary from state to state.<sup>60</sup> The program is meant to help the poor pay for health care, including long-term nursing home care. Accordingly, common eligibility requirements include minimal income and minimal assets. Often, the elder person or his or her spouse or family member will seek the advice of an elder law attorney concerning Medicaid eligibility.

Spending down the assets of the elder person and restructuring income streams are common tactics for becoming eligible. Provisions can be made to provide limited assets and income for the community spouse (the one not requiring Medicaid eligibility). Because the rules vary from state to state, elder law attorneys should become familiar with the state in which they practice.

*Long-Term Care Insurance.* Long-term care insurance is a relatively new product used to finance the huge expense of long-term health care. This product market is changing at a rapid rate, with new products being introduced every year.<sup>61</sup> Long-term care insurance is a contractual product, so the elder law attorney should review the document and accompanying literature thoroughly and then fully inform the client of what the policy covers and its strengths and weaknesses.

*Reverse Mortgage.* With the ever increasing numbers of seniors requiring care at the cost of the public via government entitlements, proponents of reverse mortgages point out that the equity that so many American seniors have in their homes is an untapped resource that can help alleviate the financial pressures on our seniors and on our entitlement programs.<sup>62</sup>

A reverse mortgage is a nonrecourse loan that is secured by the residence of the borrower.<sup>63</sup> The borrower retains title to the house, but the mortgage attaches as a first lien against the title.<sup>64</sup> Funds are then distributed to the borrower in one of several ways, including a lump-sum payment, monthly payments, a line of credit with the lending institution, or other schedules as the parties may agree to.<sup>65</sup> The debt is then repaid, including interest and costs, when the home is ultimately sold, which may be some time in the future.<sup>66</sup>

The reverse mortgage receives beneficial tax treatment by the Internal Revenue Service (IRS). The IRS does not consider loan advances gross income to the borrower, and capital gain taxes are not imposed when the home is sold upon the death of the borrower.<sup>67</sup> Additionally, the proceeds from a reverse mortgage are not considered income in a government benefits analysis.<sup>68</sup> However, if the borrower retains the proceeds from the mortgage beyond one month, they may adversely affect SSI and Medicaid eligibility.<sup>69</sup>

Among all these benefits, there is a downside—the potential for abuse of the uninformed senior. Some reverse mortgages are structured to the dis-

advantage of borrowers who owe both substantial origination fees and interest, together with a cut of the appreciation of the home value over the life of the loan. Other scams are more complex. For example, one scam has unfolded in the Milwaukee area, where a reverse mortgage lender and construction contractor teamed up to rip off the poor elderly. In one case, an African-American couple went door-to-door in a poverty-stricken black neighborhood selling the reverse mortgage idea. When they came across an 88-year-old woman homeowner, they told her that the reverse mortgage offered her free money that she would never have to pay back. At the same time, they convinced her that she should fix up her house. After she signed up, the contractor did some patching on the house but did not do the repairs promised. He did, however, take 60 percent of the proceeds from her reverse mortgage at the closing done in the woman's kitchen. She then started receiving telephone calls from the reverse mortgage compliance department and learned that because the repairs were not completed appropriately, they would have to foreclose on her house. When she contacted the local legal aid office, the attorneys learned that the contractor had gone out of business and was nowhere to be found.

The elder law attorney who offers the reverse mortgage as an option, or is faced with a client who has been approached with this product, must fully inform the client of all the implications of executing a reverse mortgage.

### Health Care Planning

For the client who expresses the desire to plan for his or her end-of-life health care decisions, the elder law attorney has at least two tools to offer: the living will and the durable health care power of attorney.

*Living Wills/Advance Directives.* With current advances in medical technology, the body can be kept alive well after the brain is dead. For most people, being kept alive by artificial means when they are brain-dead is something they wish to avoid. However, when the time actually comes and the relatives must decide whether to stop life support, the decision is agonizing and often prolonged. A living will can help relatives and loved ones deal with this situation, as the decision has already been made by the ill individual, and take comfort in knowing that the person's wishes are being fulfilled.

A living will is a document that gives health care providers informed consent from the principal to refuse or discontinue certain medical treatments. Forty-six states and the District of Columbia currently have living will statutes, which generally provide a form in which the client simply fills in the blanks.<sup>70</sup> The principal must be competent in order to execute a living will, meaning he or she must be able to understand the implications of the document.

The elder law attorney should make sure that the client's primary physician has a copy of the living will, understands its contents, and shows a willingness to comply with its terms. A physician may be more willing to comply with the living will if the client discusses his or her wishes with the physician, although this may be difficult.

*Durable Health Care Power of Attorney.* It may be difficult for the client to reduce to writing his or her wishes about life and death decisions as required by the living will. In this situation, a durable health care power of attorney may be a better option. The durable health care power of attorney, while statutorily authorized, is simply a power of attorney (as discussed above) that names an agent who will make health care decisions for the principal if he or she becomes incapacitated.

## Conclusion

In order to meet the varied needs of the elder client, the elder law attorney must become proficient in many areas of the law. As the elders among us continue to increase in number, the elder law attorney will be in more demand than ever. And as the laws continue to change to keep up with the changing face of the population, the practice of elder law will continue to be a dynamic and exciting area of law.

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## Endnotes

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7. *See id.*
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25. *See id.*
26. *See id.* at 651.
27. *See id.*
28. *See id.*
29. *See id.*

30. *See id.*
31. *See id.*
32. Joan M. Krauskopf et al., *ELDERLAW: ADVOCACY FOR THE AGING* § 26.1 (2d ed. 1993).
33. *See id.*
34. For more information, contact the National Academy of Elder Law Attorneys at 1604 N. Country Club Road, Tucson, AZ 85716, or by telephone at (520) 881-4005, or via the Internet at [www.naela.com](http://www.naela.com).
35. For more information, contact the American Bar Association at 750 N. Lake Shore Drive, Chicago, IL 60611, or by telephone at (312) 988-5000, or via the Internet at [www.abanet.org](http://www.abanet.org).
36. For more information, contact the American Association of Retired Persons at 601 E Street NW, Washington, DC 20049, or by telephone at (800) 424-3410, or via the Internet at [www.aarp.org](http://www.aarp.org).
37. For more information, contact the American College of Trust and Estate Counsel at 3415 S. Sepulveda Boulevard, Suite 330, Los Angeles, CA 90034, or by telephone at (310) 398-1888, or via the Internet at [www.actec.org](http://www.actec.org).
38. For more information, contact the American Bar Association at 750 N. Lake Shore Drive, Chicago, IL 60611, or by telephone at (312) 988-5000, or via the Internet at [www.abanet.org](http://www.abanet.org).
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46. Michael N. Schmitt & Steven A. Hatfield, *The Durable Power of Attorney: Applications and Limitations*, 132 MIL. L. REV. 203, 204 (1991).
47. *See* I.R.C. § 2041 (1998).
48. *See* Stewart et al., *supra* note 14, at 661.
49. *See id.*
50. *See id.*
51. *See id.*
52. *See id.* at 662-64.
53. *See* Board and Care: A Failure in Public Policy: Joint Hearing before the Special Committee on Aging of the United States Senate and the Select Committee on Aging of the House of Representatives, 101st Cong., 1st Sess. (Mar. 9, 1989), *reprinted in* AGING AND THE LAW: AN INTERDISCIPLINARY READER at 426 (Lawrence A. Frolik ed. 1999).
54. *See id.* at 427.
55. *See id.* at 426.
56. *See* AGING AND THE LAW: AN INTERDISCIPLINARY READER 433 (Lawrence A. Frolik ed. 1999).
57. *See id.*
58. Nina J. Crimm, TAX PLANS FOR THE TWENTY-FIRST CENTURY: MEDICAL INCENTIVE VOUCHERS ADDRESS THE NEEDS OF ACADEMIC HEALTH CENTERS AND THE ELDERLY (1997), *reprinted in* AGING AND THE LAW: AN INTERDISCIPLINARY READER 464 n.1 (Lawrence A. Frolik ed. 1999).
59. *See* U.S.C. § 426 (1998).
60. *See* Alison Barnes et al., COUNSELING OLDER CLIENTS 17-1 (1997).
61. *See* Stewart et al., *supra* note 14, at 659.
62. *See* Carolyn H. Sawyer, *Reverse Mortgages: An Innovative Tool for Elder Law Attorneys*, 26 STETSON L. REV. 617, 618 (1996).
63. *See id.* at 623.
64. *See id.*
65. *See id.*
66. *See id.*
67. *See id.* at 625.

68. *See id.*

69. *See id.*

70. *See* Rains, *supra* note 44, at 611 (citing Susan J. Nanovic, *The Living Will: Preservation of the Right-to-Die Demands Clarity and Consistency*, 95 DICK. L. REV. 209, 210 (1990)).