

INSIDE THE MINDS™

RECENT DEVELOPMENTS IN ELDER LAW

LEADING LAWYERS ON UNDERSTANDING THE LATEST
ELDER LAW TRENDS, NAVIGATING THE PLANNING
PROCESS, AND COUNSELING CLIENTS



ASPATORE

Bernard A. Krooks, Littman Krooks LLP
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I N S I D E T H E M I N D S

Recent Developments in Elder Law

*Leading Lawyers on Understanding the Latest
Elder Law Trends, Navigating the Planning Process,
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Elder Law Trends, Navigating the Planning Process,
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Helping Elder Law Clients During a Changing Environment and Struggling Economy

Bernard A. Krooks

Founding Partner

Littman Krooks LLP



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Current Growth and Trends in Elder Law

People are beginning to realize that they will be better off planning for the future sooner rather than later. When clients wait too long, the available options are more limited, so elder law has been getting a lot of press in the media in recent years. Through television, newspapers, and the Internet, people have become more aware of elder law issues and are more educated about the available options. The media has finally realized that elder law is important and when the new health care bill emerged, more people became aware of the potential implications it could have on their lives. Many people in the media are personally affected by elder law issues or are dealing with elder law issues with their parents or grandparents, so the general population is more exposed to elder law issues on a personal level. Once people begin to go down the elder law road with their own family members, they recognize that dealing with these issues causes significant challenges.

The Changing Environment of Elder Law

Many of the insurance companies that are involved in long-term care are modifying their policies and trying to make them more attractive to clients. Many insurance companies are even getting themselves out of the market because they are finding that it is not cost effective for them to stay in the market. Therefore, the companies that remain in the market are going to be offering what they believe to be more viable policies that will better meet the needs of consumers. This has been an ongoing process for the last twenty years, and ultimately, it will be in the best interests of consumers.

Some recent cases have expanded individual rights to Medicare. The government has taken the position that in order to be eligible for Medicare, applicants must improve their physical conditions, but recently, some cases have determined that maintaining present physical conditions is acceptable to become eligible for Medicare. This is a significant development for consumers because while Medicare coverage is extremely limited, it is better than no coverage at all. Medicare is taking the position that they do not want people to qualify for care unless they can physically improve their conditions. Many people have strokes or other illnesses later in life and are unable to improve their positions, but they are trying to maintain the use of

limbs. Hopefully, more jurisdictions will follow the lead of these recent cases and more people will be able to benefit from Medicare.

The Impact of the Economic Crisis

Due to the current economic climate, we are seeing a significant depletion of wealth for many seniors, so many of our clients who thought they would be leaving large inheritances to their children and grandchildren are now realizing that they do not have enough money to even care for themselves. Conversely, many children of elderly parents who were previously helping their parents financially have suffered from decreases in their 401ks and are dealing with temporary or permanent unemployment. These children are now relying on the fact that they will receive a large inheritance from their parents, but this is not always a possibility anymore. This has created an interesting social phenomenon because people are being forced to deal with significantly smaller amounts of money. Many parents are moving in with their children and young adults are moving back in with their parents. In general, many families are coming back together to try to deal with current economic issues.

Health Care Reform and Current Concerns for Elder Clients

Unfortunately, there was not much included in the health care reform bill that will affect elder law. There is a provision called the Community Living Assistance Services and Supports (CLASS) Act, which will go into effect in the next year or so. This Act is a voluntary insurance program where people who are working can participate and will voluntarily contribute money to the program. If they contribute for five years and then need long-term care assistance with daily living or activities and they have cognitive impairments, they will receive a daily benefit of anywhere from \$50 to \$75. This will act as a Band-Aid and will not stop the bleeding in terms of the economic expense that long-term care causes, but at least it will address the long-term care crisis bill in a small way.

These days, elder law clients are most concerned with the reduction and benefits that are available. Health care costs are the single fastest growing component of the state and federal budget. We all know that we are running a deficit now, so I believe that the biggest issue for elder law clients

is that they are concerned about a reduction of services. This makes the planning that elder law attorneys complete even more important because if we can help people access government services to help pay for much needed health care, it will go a long way toward helping clients live better, higher quality lives, especially in their golden years.

A Younger Clientele

We have seen younger clients in recent years. One in seven Americans has a disability, so historically, we would primarily be representing people in their seventies, eighties, and nineties. These days, we consistently work with people in their thirties and forties who are dealing with health issues such as multiple sclerosis or car accident injuries. These clients are now concerned about accessing health benefits and government benefits, so I believe that the biggest change in terms of clients is that our client base is expanding and including younger people. This will have a profound effect on the elder law practice because it will make the need for our services much greater than it already is. We have just reached the tip of the iceberg and as baby boomers begin to age, there will be an even more enhanced demand for our services. We are also seeing more multi-generational planning for parents, grandparents, and children, so our planning can reach across three or four generations. This is beneficial for clients because it can result in an integrated plan that everyone understands. Hopefully, this type of planning will help to prevent families from being adversarial in the future because they are more involved with the planning from the beginning of the process.

At the end of the day, the sooner people come in, the better. It is unfortunate that the impetus for many people is that they have a disability, but no matter why clients choose to seek the help of an elder law attorney, it is always a good idea.

Current Strategies in Elder Law

Many elder law clients are concerned about making health care decisions when they are no longer able to, who will make those decisions for them, how they are going to manage financial matters, and who will be able to pay for their bills and write their checks. Basically, they want to maintain their

quality of life, so elder law attorneys assist clients and families in reaching this goal.

Creating a Successful Elder Law Strategy

The first step in putting together an effective elder law strategy is making sure that all involved parties are aware that there is a problem or a potential problem down the road if nothing is done to address the issues. The family must talk with each other to discuss how to avoid these potential problems and then we begin to offer various alternatives to help them accomplish their goals. Each family has a different objective and we try to hear what their specific concerns are. The steps in creating a strategy depend upon each particular family because success is measured in different ways for each person. Some people believe success means protecting assets from a nursing home, others may believe that success means paying for a grandchild's college education, and others may believe that success means owning a vacation home and playing golf on a daily basis.

Common Complications

If people do not plan and become sick or suffer from some type of debilitating health issue, the courts may be forced to get involved in a legal proceeding known as a guardianship. This means that family members are required to go to court to petition the court to have someone appointed as a personal guardian to make medical and financial decisions. This is a time-consuming process and is an invasion of privacy, but it can be avoided by going to an elder law attorney and putting a plan in place. By appointing someone in advance to make medical and financial decisions for you, court involvement can be removed. Advance directives are a critical component of an elder law plan.

Elder law attorneys should make sure that the family of the client is involved and on board with the process. Sometimes, people will have a plan, but are not sure how it will be implemented, so it is our job to assist the family in making sure that it is properly implemented. The plan is not set in stone; it changes over time according to the flow of circumstances in the future, so we must be equipped to make the necessary changes so that the plan continues to meet the needs of the client. For example, if one