

Planning for Future Protection

Protect your financial assets by choosing an elder law attorney with care

By Joyce Wiswell

Many of Arthur L. Malisow's clients regret not seeking his advice long ago.

"I get told all the time, 'I wish I knew you were here a year ago,'" says the certified elder law attorney (CELA).

Malisow, a partner at Mall Malisow & Cooney, P.C., of Farmington Hills, devotes his legal practice to issues facing seniors. He is one of fewer than 20 in Michigan who has received the CELA designation from the National Elder Law Foundation.

Elder law attorneys help seniors and their representatives navigate the legal aspects of health and long-term care planning, public benefits, surrogate decision-making and estate planning.

They offer advice that everyone needs, but, Malisow notes, "Most families are reactive instead of proactive."

Robert Fortunate, a Grosse Pointe Woods elder law attorney working toward his CELA, agrees.

"Many of my clients come in with a crisis situation – they have to get mom or dad in a nursing home, but they can't afford it," he says. "There are no good solutions – there are bad solutions and worse solutions. If they had come earlier, I could have done some things to protect their assets."

PROTECT WHAT YOU'VE EARNED
Protecting assets by planning for the future is the mantra of an elder law attorney.

"At the heart of elder law is estate

planning – trusts, wills, medical and financial power of attorney," says Malisow. "But on top of that, the elder law attorney has to know the aging issues; be familiar with government programs like Social Security, Medicare and Medicaid; have a general sense of the health-care system; and advocate for people running into problems. It's a concentration on top of a concentration. Someone who just does general estate planning doesn't focus on the government care aspects."

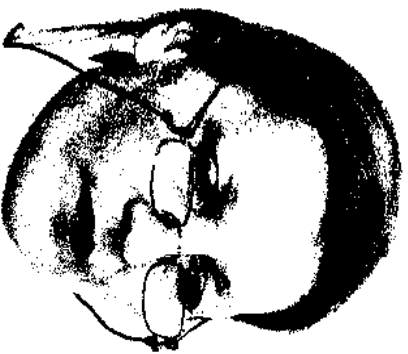
Navigating Medicaid, which does not take effect until countable assets are below \$2,000, can be particularly daunting.

"There is a 60-month look-back, meaning you have to declare any transfer of assets in the past 60 months,"

notes Michele P. Fuller, an elder law and special needs planning attorney and partner at Fuller & Stubbs, P.L.L.C. in Shelby Township. "Even a \$100 check to a grandchild can be problematic, so you must keep good financial records." The consequence is a waiting period until Medicaid benefits begin.

"Actions you took several years ago could have unintentional consequences," says Malisow. "The rules regarding government benefits can penalize innocent people for making ordinary gifts to family and charity. Further, most traditional estate planning is not designed to comply with these rules. This is why it is important to work with an elder law attorney."

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LOOK TO THE FUTURE

You can qualify for Medicaid and still protect your assets, including your home, if you plan ahead.

"Many people are spending their parents' money paying for a nursing home until it's all gone and they can qualify for Medicaid," says Fortunate.

"The government isn't going to tell you some of the techniques you can use to protect your house." The ways to protect your assets and pass them on to your children are different for everyone.

When choosing an attorney who practices elder law, question his or her qualifications and background, Fuller says, because the State Bar of Michigan does not recognize specialties or give a board certification in any given area. A lawyer can earn a certificate of completion in the areas of probate and estate planning issued by the Institute of Continued Legal Education and Probate and Estate Planning Section of the State Bar of Michigan.

The attorney should belong to organizations, such as the National Association of Estate Planners & Councils. And be careful of free seminars promising too much.

"I would be more careful of group- or corporate-sponsored seminars than ones given directly by lawyers," says Fuller, who is on the board of directors of the Macomb County Probate Bar Association

and is a council member of the State Bar of Michigan Elder Law and Disability Rights Section. "The biggest problems arise from people getting planning services, and they never actually see a lawyer."

YOU GET WHAT YOU PAY FOR

Hourly fees for elder law attorneys range from \$175 to \$300; those with CELA designation command a higher rate.

"A lot of work, like getting qualified for Medicaid, can be done on a flat-fee basis," says Fuller. "The average I've seen is \$7,500. It's expensive, but it ends up saving you money by sheltering as much of your assets as you can to help increase your quality of life and quality of care.

"Don't wait until a crisis occurs to seek professional advice," she says. "Most elder law attorneys do not just get someone qualified for nursing-home long-term-care assistance – it involves a coordination of all different sources of benefits, including private insurance and veterans' benefits or private assistance. The biggest source of pride is being able to coordinate all available resources to keep an individual out of a facility."

As the aging population grows, so does the elder law concentration.

"I like this, because I help people," says Fortunate. "I tell my clients: The more you learn in advance, the better off you'll be."

