

## THIS RISKS OF LONG-TERM CARE AND PROBATE

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You have worked hard to build your nest egg, now lets plan to protect it. Morningstar, Christine Benz, published an article entitled "75 Must-Know Statistics about Long-Term Care," that highlighted the sad fact that 52% of people turning 65 or older will require some type of long-term care in their lifetimes, for an average of 2.5 years for woman and 1.5 years for men. If you have over 2.5 million you can probably cover the monthly cost of long-term care, which averages between \$7,000-\$10,000 per month. For everyone else it is important to do some asset protection planning with your elder care lawyer to avoid your lifetime savings being lost to long-term care.

Long-term care has been exacerbated by Alzheimer's dementia. Studies have shown that 10% of those persons over age 65 have Alzheimer's and 33% of those persons over age 85. This raises the importance of early planning while you are vertical and mentally capable of proper planning. Without proper planning there is a greater chance of being involved in costly probate litigation matters, including guardianships, conservatorships, or trust and will contests. I should know as I make a living handling these disputes in probate court around the entire state of Michigan.

Probate court handles the legal affairs for persons that are incompetent or deceased. A guardianship is a proceeding that is started in probate court to appoint a guardian to make medical and health care decisions for you when you are incompetent or incapable of handling your affairs. For example, I had a client who went into the hospital and needed an emergency operation while they were in a coma. Since the patient did not have proper durable power of attorney for health care, an emergency guardianship was needed to appoint a guardian to authorize the procedure and make further medical decisions. Contrary to popular belief, the state's rules, including HIPPA, does not allow your spouse to automatically make medical decisions for you.

The probate court also handles the finances of an incapacitated person or a person incapable of handling their affairs, called a conservatorship. This is something you want to avoid with proper planning, because you do not want the court to decide what you can do with your

money when your spouse enters a nursing home, assisted living facility, or is incapable of handling their affairs.

Probate court is also used for proceedings after your death, called a decedent's estate, for the probate of a will, if you have one. If you do not have a will, the state's rule book, called EPIC, decides who your heirs are and what they are to receive. Did you know that your spouse is not automatically entitled to your entire estate? I have had several clients who were upset when they found out that they needed to sell their assets and share them with their children who wanted their share of dad or mom's estate. Do not let the state decide for you who gets your nest egg and when they should receive it. This can be done by the drafting of a will or a trust.

Finally, probate court handles litigation matters involving trust and will contests. These proceeding usually begin when I am contacted by a relative who believes that a will or trust was wrongfully changed to exclude them when the person preparing the trust or will was incompetent or in a diminished competency due to dementia and/or was changed due to the undue influence of relatives, friends, or caregivers. This is becoming all too common in America today due to dementia and its unusual effects. I won a trial when the facts demonstrated that a caregiver/friend was giving an 80 plus year old man with dementia "special treatment" and took him to a lawyer to change his will and trust to in her favor and told him that his prior beneficiaries were stealing from him. The brain changes from dementia can cause hallucinations, delusions, and paranoia. I have had cases where a parent who had a will or trust loved and trusted a single child their whole life with their assets and planning but due to dementia in the later stages of life, the ousted child becomes beloved and takes control of the parent to change their estate planning and control their money. How do you prove what that child told his parent to make them change all their lifetime planning? That is for a jury to decide.

As such, when you are looking at your nest egg, remember that proper asset protection planning requires the use of an elder care lawyer to protect your family from court and other predators.

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