



ADVISING AGING CLIENTS AND THEIR FAMILIES: HOW TO PLAN NOW TO AVOID CRISIS LATER



WELCOME TO THE WEBINAR

- Please submit your questions via the Q&A button, so they can be answered during time we have allotted at the end of the presentation
- Feel free to submit any questions to us via email as well, and we can respond back later
- Today's webinar is being recorded
- Please contact us at TrustEstate@mccandlaw.com for video replay information or for a copy of the slide presentation
- For more news and information about our firm, please visit our website at www.mccandlaw.com and follow us on LinkedIn and FaceBook

TODAY'S PRESENTERS



Melinda Merk, Esq.



Elizabeth Gray, Esq.



Nancy Fagan, CMC



Leah Nichaman, CDMM

AGING CLIENT SCENARIO #1

- Linda is age 91; widower and lives alone in older 2-story home in McLean
- 2 children – neither are local
- Fiercely independent - still drives!!
- Various bank and investment accounts – no primary financial advisor
- Owns various real estate and rental properties – net worth approx. \$10MM
- Recently fell and was in hospital, then nursing home/rehab
- Paperwork, mail and bills are in disarray – tax returns not yet filed because CPA could not get the necessary tax information
- Thankfully, she has financial and health care powers of attorney and a revocable trust in place – her son is her agent and co-trustee
- Very distrustful and resistant to home health care or allowing anyone (including her children) to help with the management of her finances
- Children are concerned about her falling again, and about bills and dividend and rent payment checks slipping through the cracks

AGING CLIENT SCENARIO #2

- Randy Sr. (74) and his wife Mary (77) live in Clifton, Virginia – married 52 years
- 2 children – Randy Jr. lives with them, and is a recovering alcoholic finishing up nursing school and getting his life together; their other son James works in the financial business lives in Nevada
- Mary suffers from Dementia of the Alzheimer's type
- Randy Sr and Mary own most assets jointly; no financial advisor
- Both have IRAs - Randy Sr was unable to take Mary's RMDs and Mary wouldn't do it herself
- Neither have a financial power of attorney or advance medical directives; no estate planning done
- Mary fell recently and told the doctor that Randy Sr hit her (did not happen) – case was referred to Adult Protective Services
- Randy Jr and Sr hired Elder Tree Care Management to provide care assessment
- Guardianship proceeding was commenced for Mary
 - Court removed Mary's right to vote, to drive a vehicle, and to possess firearms
 - Court required Randy Sr to remove his firearms at the home if Mary returns to the home from her Memory Care facility
 - Randy Sr has to divide all assets in half, prepare and file an inventory, and then an accounting on an annual basis keeping track of every expense paid on Mary's behalf and his behalf
 - Total legal and court fees after all is done were approximately \$40,000

CARE MANAGEMENT FOR AGING CLIENTS



WHAT OUR AGING CLIENTS WANT...

- To remain INDEPENDENT
- Most prefer to remain in their home
- Not to be a burden on their families
- To be treated with dignity and respect

POTENTIAL BARRIERS FOR AGING CLIENTS

- Not communicating concerns, problems or feelings for fear and/or embarrassment of losing independence
- Lack of understanding the impact of our decisions short and long term
- Not inviting close family or friends into the discussion at the appropriate time

GOALS OF CARE MANAGEMENT

- Assessment and Monitoring
- Planning and Problem Solving
- Education and Advocacy
- Life Care Planning
- Reaching Consensus
- Crisis Management
- Ongoing Support



WORKING WITH AN AGING LIFE CARE PROFESSIONAL

- Personalized and compassionate service — focusing on the individual's wants and needs
- Independent and objective advice — eases burden on family members or caregiver in objectively assessing level of care and living options
- Accessibility — care management is typically available 24/7
- Continuity of care – communications are coordinated between family members, doctors and other professionals, and service providers
- Cost projection and containment — inappropriate placements, duplication of services, and unnecessary hospitalizations are avoided
 - Development of a care plan is often essential as part of client's overall financial plan
- Quality control – aging life care services follow ALCA's Standards of Practice and Code of Ethics

PUTTING THE PUZZLE TOGETHER

- FINANCIAL ASSUMPTIONS
- PHYSICAL NEEDS
- COGNITIVE STATE
- QUALITY OF LIFE
- SAFETY



WHAT LIVING/CARE OPTION IS RIGHT FOR YOUR CLIENT?

- Home With Support
- Independent Living
- Assisted Living
- Long Term Care/Nursing Home
- Continuing Care Retirement Community (CCRC)

SITUATION/CARE ASSESSMENT

- Physical
 - Chronic conditions
 - Acute issues
 - Health professionals currently involved
- ADLs (activities of daily living)
 - Eating
 - Bathing
 - Dressing
 - Walking
 - Transferring
 - Toileting
 - Grooming
- IADLs (Instrumental ADLs)
 - Meal Prep
 - Shopping
 - Laundry
 - Medical Coordination
 - Money Management
 - Medication Management
 - Transportation/Driving
- Role of Cognition
 - Psychiatric History
 - Memory Concerns
 - Executive Function

WHAT IS A CCRC?

- A retirement community which includes independent living, assisted living and skilled nursing all on the same campus
- Continuum of care between levels with guaranteed access
- Includes a one-time entry fee and a monthly fee. Prices for these are tied to the size living unit chosen and the type of contract.
- Entry fees are either refundable or non-refundable
- Contracts vary depending on how the monthly fee, guaranteed days in each level of care and entry fee are spelled out
- 2-3 meals a day, all activities and use of facilities is included in cost

CONSIDER ENGAGING A CARE MANAGER, IF YOUR CLIENT OR THEIR FAMILY:

- Has multiple medical or psychological issues
- Is unable to live safely in their current environment
- Is not pleased with current care providers and requires advocacy
- Has limited or no family supports either “burned out” or confused about care solutions
- Has limited time and/or expertise in dealing with the individual’s chronic care needs and does not live close by
- Is at odds regarding care decisions
- Needs education and/or direction in dealing with behaviors associated with dementia

OTHER TYPES OF CLIENTS WHO MAY NEED CARE MANAGEMENT

- While the majority of Aging Life Care clients are older adults, many also assist younger adults who face the challenges of disability or serious illness
- Aging Life Care Professionals may help people who have:
 - Physical Disabilities
 - Developmental Disabilities, (e.g. Intellectual Disabilities, Down's Syndrome, Autism, or Asperger's Syndrome)
 - Brain Injury
 - Mental Health Problems
 - Chronic or Serious Illnesses of any type

IMPACT OF COVID-19 ON CARE MANAGEMENT

- Anxiety for the elderly client and their family
- More focus on aging in place
- Assisted living at home
- Decreased attention to chronic medical conditions
- Evolving situation
- Consider creating a “grab and go” binder that contains all of your important documents and other pertinent information

**DAILY MONEY
MANAGEMENT FOR
AGING CLIENTS**



EVERYDAY MONEY

MANAGEMENT

WARNING SIGNS PROFESSIONAL ADVISORS OR FAMILY MIGHT SEE

- Missing tax documents or none at all
- Lack of response to requests and instructions
- Inability or reluctance to report spending information
- Change in client behavior (e.g., repeated calls to advisor asking the same questions)
- Large, repeated or unusual withdrawals from investment accounts
- Family member appointed as POA or Trustee with little money experience or is too busy or disorganized
- Uncashed checks
- Piles of paper and unopened mail
- Unpaid bills, bills paid twice, late fees
- Mounting credit card debt
- Participation in sweepstakes, lotteries
- Calls from creditors
- New “friend” is helping out in the house and with finances

DAILY MONEY MANAGEMENT – VALUE ADDED SERVICES

- Liaison with CPA/Attorney/
Financial Advisor/Care
Manager/Family
- Budgeting and cash flow
management
- Organizing tax records & tax
payment facilitation
- Income & expense tracking
- Paper and digital file
maintenance
- Bill paying
- Household employee payroll
- Estate planning document
organization
- Account fraud protection
- Insurance policy management &
claim facilitation
- Document management for
recovery from identity theft
- Work in stressed, challenging
family situations
- Guardianship accounting
- Trust & Estate fiduciary services

DAILY MONEY MANAGER: DOCUMENTER AND CHANGE AGENT FOR TRANSPARENCY AND SAFETY



A Daily Money Manager documents a client's financial life and makes this information available (possibly for the first time) to family, legal agents and professional advisors.

WORKING WITH A DAILY MONEY MANAGER — INITIAL CONSULTATION/ASSESSMENT

Client/family motivation:

Does the client want a DMM? Why does client, family or advisor want a DMM?

Ability/willingness to participate in financial management:

Is participation from the client appropriate given his/her cognitive status?
Is the client willing to participate? Is the fiduciary willing to participate?

Location:

Does the client live in the DMV? If not, can they be served remotely? If not, refer to a DMM who is local for them.

Ability to pay:

Can the client afford DMM services at the appropriate level? If not, we work on alternative solutions.

WORKING WITH A DAILY MONEY MANAGER — STAGES OF AN ENGAGEMENT

Discovery

Whole Life List

- Assets and Liabilities
- Budget
- Income & Expense List
- Who's Who and What's Where

Paper/Email Cleanup

Mail management system at client's home

Identify and take care of overdue action items

Streamlining

Account retitling (after a death or for trust funding)

Account consolidation

Set up automated bill payment and paperless billing

Mail management through DMM office

Maintenance

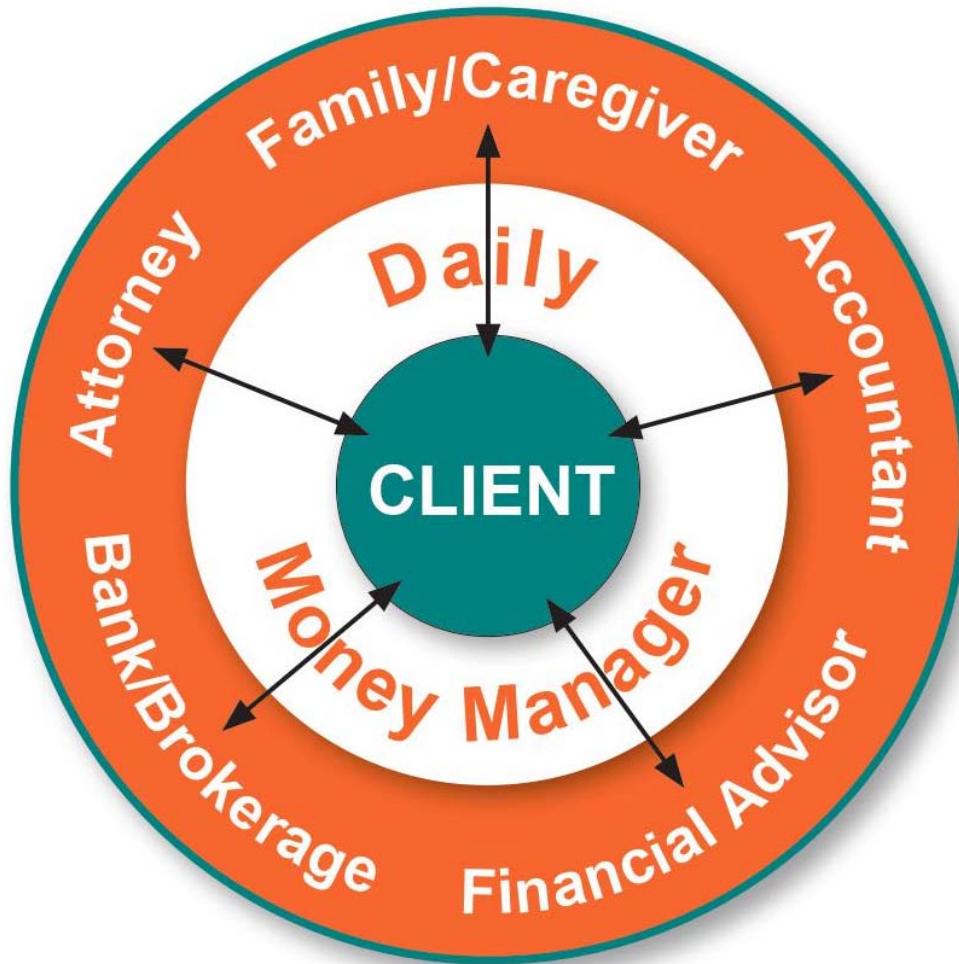
Mail management, bill payment, bookkeeping

Reporting to client/family

Tax data organization

Review/update Whole Life List

DAILY MONEY MANAGER: THE TIE THAT BINDS



A Daily Money Manager is a valuable liaison to legal and financial firms and can facilitate the implementation of estate and financial plans on behalf of their clients.

In other words...

We help you and your clients get things done.

DAILY MONEY MANAGEMENT: CLIENT PROFILES

- Older adults and their children
- People with disabilities
- Busy professionals
- Small business owners
- Young people learning to manage money
- Military personnel and veterans
- Frequent travelers
- High net worth individuals
- People in life transition due to death, divorce, chronic illness

AMERICAN ASSOCIATION OF DAILY MONEY MANAGERS

- 700 members in 47 states and DC
- All members background checked
- Professionalizing the industry – CDMM certification, annual conference, webinars, courses, mentor program
- CDMM
 - Requires 1500 hours of daily money management service
 - Comprehensive examination
 - Continuing education credits required for recertification
- Code of Ethics, Standards of Practice, Best Practices
- Professional Liability Insurance (Lloyds of London) exclusive for Daily Money Managers



*The professional
association for Daily
Money Managers,
established 1998*

DAILY MONEY MANAGER: THREE TAKE-AWAYS

- DMMs do more than pay bills
- Anyone could use a DMM
- DMMs support and facilitate the work of other professionals

Leah with one of her first clients, over a decade ago!



ESTATE PLANNING FOR AGING CLIENTS



CRISIS PLANNING (NO ESTATE PLAN IN PLACE)

- Court-appointed guardian will be required to make personal and medical decisions in the event of incapacity
- Court-appointed conservator will be required to manage financial affairs in the event of incapacity
- Involuntary commitment hearing may be required for client with dementia or mental illness
- Court-supervised probate will be required in order to access, sell and/or transfer assets that become frozen at death (i.e., assets that do not otherwise pass by right of survivorship or beneficiary designation, and that are not in revocable trust)

OVERVIEW OF THE GUARDIANSHIP PROCESS

- Primary factors considered by the Court in guardianship proceeding
 - Nature of the condition impairing capacity
 - Extent of an individual's capacity to make and communicate decisions
 - Necessity of a guardian and/or conservator, in light of the availability of LESSER RESTRICTIVE ALTERNATIVES like powers of attorney, advance medical directives, and trusts
- Procedures for guardianship proceeding in Virginia
 - Preparation of evaluation report
 - Prepare and file petition
 - Appointment of Guardian ad Litem (GAL)
 - Investigation by GAL, including service of process on alleged incapacitated person
 - Report by GAL to judge
 - Hearing before judge
 - Qualification appointment and posting of bond
 - Annual guardianship reports and annual conservatorship accountings

Considerations for Use

Guardianship	Advance Medical Directive	Conservatorship	Durable General Power of Attorney
Principal does NOT get to choose who acts on his/her behalf	Principal gets to choose who acts on his/her behalf	Principal does NOT get to choose who acts on his/her behalf	Principal gets to choose who acts on his/her behalf
Restrictions on Principal's Ability to Act Apply	Lesser Restrictive Alternative	Restrictions on Principal's Ability to Act Apply	Lesser Restrictive Alternative
Expensive	Less Expensive	Very Expensive	Less Expensive
Is NOT revocable	Is revocable	Is NOT revocable	Is revocable
Principal can NO longer act for him or herself	Principal can still act! Designed for time when principal can no longer act	Principal can NO longer act for him or herself	Principal can still act for him or herself

CORE ESTATE PLANNING DOCUMENTS FOR AGING CLIENTS

- Advance Medical Directive (Living Will)
- Physician's Order for Life-Sustaining Treatment (POLST)
- Durable Health Care Power of Attorney (with HIPAA Authorization)
 - Consider also designating Health Care Agent as having authority to make arrangements for funeral and disposition of remains, which can be helpful in 2nd marriage situations or when next of kin may not otherwise agree
- Durable General (Financial) Power of Attorney
- Revocable Trust
- Last Will and Testament (Pour-Over Will)

BENEFITS OF REVOCABLE TRUSTS FOR INCAPACITY PLANNING

- Better tool to plan for incapacity and continuity of financial management than a durable financial power of attorney because the trust/trustee actually owns legal title to the property
- Adult child, trusted individual and/or corporate trustee can be appointed as a co-trustee to serve as 2nd set of eyes for management and oversight of the client's financial affairs, while still allowing the client to maintain control and independence as a co-trustee
- Detailed direction to trustee can be provided in the trust document with regard to management and distribution of trust assets, preference for home health care, hiring of care manager, etc.
- Trust must be properly funded to achieve objectives of avoiding court-supervised guardianship upon incapacity and probate at death

OTHER ESTATE PLANNING CONSIDERATIONS FOR AGING CLIENTS

- Consolidation of assets and retitling into revocable trust
- Review/confirm beneficiary designations
- Importance of storing and sharing information for digital assets
 - LastPass, Norton and other online password management apps
- Coordination with financial plan and evaluation of insurance options related to long-term care planning (may include Medicaid planning)
 - Essential to PLAN for long-term care and PLAN EARLY
 - Advocacy may be needed to help clients get past LTC gatekeepers
- Encourage inclusion of adult children or other trusted individuals in the planning process, particularly if designated to serve in a fiduciary role
 - Conversation toolkits (including “The Five Wishes”) are available to help clients express their wishes with regard to health care decisions and end of life treatment
 - “Grab and Go” binder for important documents and other pertinent information

WHAT TO DO IF YOU SUSPECT AGING CLIENT IS AT RISK FOR ELDER FRAUD OR ABUSE

- New legislation in VA permits financial institution to refuse to execute a transaction, delay a transaction, or refuse to disburse funds for a period no longer than 30 business days based on a good faith belief that the transaction or disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult (VA Code § 63.2-1606)
 - May also report such suspected exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline
- FINRA Rule 4512 - “trusted contact person” can be added to brokerage to be contacted to:
 - Discuss possible financial exploitation or fraud in the account
 - Confirm aging client’s current health status, if brokerage firm suspects the aging client is sick or suffering from diminished capacity
 - Confirm the identity of any legal guardian, executor, trustee or agent under a power of attorney on the account
- FINRA Rule 2165 - temporary hold of up to 15 days can be put on disbursements from a brokerage account if firm reasonably believes financial exploitation is occurring
 - Applies to investors age 65 and older or to those with mental or physical impairments that the firm reasonably believes makes it difficult for them to protect their own financial interests
- Local/County Adult Protective Services should also be contacted to report elder fraud
- Local/County Mobile Crisis Unit should be contacted for dementia or mental health emergencies

WORKING WITH A TEAM OF ADVISORS IS KEY FOR PEACE OF MIND

- Provides continuity and management of information for family members and trusted individuals, particularly in times of crisis
- Allows aging clients and their families to have a coordinated plan to avoid crisis situations
- Allows each advisor to stay in their “lane” of expertise and bring in additional resources when needed
- Potential cognitive decline and other warning signs can be more easily detected among the client’s advisory team
- Annual meetings with the advisory team can uncover changes in the client’s situation and provide coordinated implementation of necessary updates to the client’s financial, estate and/or care plan

QUESTIONS?



THANK YOU!



Elizabeth focuses her practice in the areas of estate planning, elder law, special needs planning, guardianships and conservatorships, and estate administration. She has developed a reputation among her peers in the legal community as the “go to” person in the areas of elder law and special needs planning.

She is a Past-President of the Virginia Chapter of the National Academy of Elder Law Attorneys (“VAELA”), and a Certified Elder Law Attorney. She is also a member of the Special Needs Alliance.

For consecutive years, Elizabeth has been listed among the Best Lawyers of America, Super Lawyer® in Elder Law, *Washingtonian’s* Top Lawyers in Elder Law, *Northern Virginia Magazine* top elder law attorneys, and “Legal Elite” by *Virginia Business Magazine*.

A little-known fact: Elizabeth is a former professional violinist, having played with the Binghamton Symphony Orchestra and the Binghamton Pops.

ELIZABETH GRAY, ESQ.
703-934-1104
EGRAY@MCCANDLAW.COM



Melinda focuses on providing holistic multi-generational income and wealth transfer tax planning advice and estate and trust services to high net worth individuals, families, and business owners.

She brings a unique and diverse perspective from her work in private law practice, Big Four accounting firms, and private banking/trust services.

Melinda is listed among the *Washingtonian's* Top Trusts and Estates Lawyers, and is a frequent speaker and writer on estate and trust planning. She recently attained the Accredited Estate Planner® (AEP®) designation by the National Association of Estate Planners & Councils.

On a personal level, Melinda is a strong supporter of local philanthropy and the arts in Northern Virginia, and is a current Board member of the Community Foundation for Northern Virginia.

MELINDA MERK, ESQ.
703-934-1126
MMERK@MCCANDLAW.COM



Nancy Fagan is the Executive Director of ElderTree Care Management Services. A certified care manager with the Aging Life Care Association, Nancy has over 25 years of long-term care business experience spanning every aspect of aging services including advocacy, research, facilities management and accreditation.

Nancy has a passion for challenging cases, which often involve litigation or significant interpersonal discord. Having a strong financial background, she enjoys developing short and long range plans, Medicaid cases and making the most of limited resources.

Nancy is active in the ALS National Association and the organization's National Policy Roundtable and is a member of the MDC Advocacy Committee. Committed to this organization following her own father's death from the disease, Nancy appreciates the intersection of ALS with military service and is particularly drawn to this population in need.

NANCY FAGAN, CMC
703-424-7575
NANCY@ELDERTREECARE.COM



Leah Nichaman has been a Daily Money Manager for over 13 years and is a Certified Daily Money Manager (CDMM). She established Everyday Money Management in 2007, and built it into the premier daily money management firm in the Washington DC area, primarily serving older adults and people with disabilities.

Ms. Nichaman is the immediate Past President of the American Association of Daily Money Managers, the professional association serving over 700 daily money managers throughout the US and Canada.

Ms. Nichaman is a volunteer payee for an individual living with mental illness and taught parenting classes for ten years with the Parent Encouragement Program. She currently serves on the Board of Directors of The Senior Connection, a non-profit that provides free transportation and grocery shopping for seniors in Montgomery County, MD.

LEAH NICHAMAN, CDMM
301-325-2680
LEAH@EVERYDAYMM.COM