

## **TOP TEN LEGAL ISSUES FOR AGING PARENTS**

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The nature and importance of the legal issues you and your aging parents will face depend on many factors: whether both of your parents are alive; how much money (income, assets) they have; whether they need or are likely to need a significant level of long-term care, and for how long; family dynamics; siblings with special issues (disabilities, addictions, ne'er do well tendencies). Never underestimate the role of family dynamics. Ancient sibling rivalries will rear their heads as parents become less independent. Be cognizant of ethical issues that are likely to arise if you take on representation of your parent(s) in legal matters that have an impact on you financially or have a strong emotional component (e.g. health care decision-making, putting a parent into a nursing home).

Most of the issues that your parents are likely to face as they age relate to

### **Income security:**

- Social security and related benefits
- Private pensions
- Savings, investments
- Consumer fraud: telemarketers, home equity stripping, Internet fraud
- Financial exploitation (by family members, neighbors, caregivers)

### **Health security**

- Medicare and prescription drugs
- Private insurance (including employer sponsored retiree insurance)
- Self-neglect
- Abuse (physical, emotional, by family members or caregivers)

### **Paying for long term care**

- Getting care at home
- Moving to assisted living
- Moving to a nursing home

### **Distributing assets after death**

The list of “top ten” legal issues set out below is in the nature of an guide to issue spotting—the “solutions” listed aren’t intended to be a complete and “correct” legal answer, nor legal advice on how to resolve your parents’ problems, but to point you and your parents in the right direction when a particular issue arises in your own family.

	What parents want to know	What you want to know	Solutions
ONE:  DOCUMENTS	Where are my documents? What do my documents mean? What documents matter?	How do I find out about my parents' finances? What documents don't my parents have that they should? What happens if my parents aren't able to manage their own finances?	<p>Both papers/records (e.g., bank statements, brokerage accounts, insurance policies) and legal documents are important.</p> <p>Have a central location with original documents and another location with copies. If documents are in a safety deposit box, someone in addition to parent should have a key and be authorized to open the box.</p> <p>Tools that will allow you to have access to and manage your parents' financial affairs if they can't do so themselves (or even if they can) include DPOA; joint accounts; limited [voluntary] conservatorship.</p> <p>Your parents need:</p> <ul style="list-style-type: none"> <li>--One sheet of paper that tells you where their financial records and documents are located</li> <li>--Durable power of attorney</li> <li>--Health care directive</li> <li>--[Will]</li> <li>--[special forms for bank, brokerage accts, SS]</li> </ul>

<p>TWO:</p> <p>CARING FOR AGING PARENTS</p>	<p>We don't want to be a burden to our children.</p> <p>Can we hire our niece, who is in nursing school, to help us with some of our personal needs?</p> <p>We don't think we should have to pay our children to help us in our old age—they owe us that.</p>	<p>Can I get paid for helping my parents?</p> <p>Can I get tax credits for helping my parents?</p>	<p>Parents (and children) don't really like the idea of commercializing family caregiving arrangements. But changes in Medicaid asset transfer rules over the past fifteen years have made personal care contracts an attractive alternative to leaving everything to one's children in a will.</p> <p>Personal care contracts must, as a general rule, be in writing, and involve the provision of services that are necessary, on reasonable terms.</p> <p>Because personal services contracts involve payment for services, income paid to a family caregiver pursuant to such a contract is subject to payroll and income taxes.</p> <p>Tax credits aren't available for parent-caregiving unless the parent is your legal dependent.</p>
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<p>THREE: NURSING HOMES</p>	<p>I would rather die than go live in a nursing home.</p>	<p>Can I have any say in where my parents live?</p>	<p>Never promise a parent that you will not put him/her in a nursing home. The time may come when that is the only option. Such cases are rare, but they do occur.</p> <p>Many long term care services can be provided to your parents in their own home, or in an assisted living facility. But when parents move to a ALF, read the fine print in the contract: these facilities are basically unregulated, and providers usually retain a unilateral right to discharge residents who need too much care.</p> <p>You can best help your parent decide what living options are available to him or her by talking frankly with an elder law attorney and gerontology/geriatric specialists about your parent's limitations and needs.</p>
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<p>FOUR: PAYING THE NURSING HOME</p>	<p>What do you mean, Medicare won't pay for the nursing home?</p>	<p>I've heard that even millionaires can get Medicare to pay for the nursing home.</p> <p>Can I get stuck with paying for my parents' nursing home bills?</p>	<p>Medicare covers short stays (maximum 100 days, but in reality only 20 days) in a long term care or skilled nursing facility, and only when the stay in the care facility follows a three-day period of hospitalization.</p> <p>Private sources, including private long term care insurance, are the main payment sources for long term care. But if your parents don't have long term care insurance, it's unlikely that they will be able to buy it once they have a condition that might result in a need for long term care. [The same goes for you!]</p> <p>Medicaid will help pay for long term care, but your parents must qualify. Income and asset restrictions make qualifying for Medicaid quite difficult. Consult with a qualified elder or disability law attorney.</p> <p>Federal law prohibits nursing homes from requiring a "guarantor" on a nursing home admissions contract. Many nursing homes ask children or other relatives to sign a guarantee when a parent is admitted.. Payment guarantee clauses are enforceable in Minnesota if they comply with state law.</p>
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<p>FIVE: PROTECTING REAL ESTATE AND OTHER ASSETS</p>	<p>If I go into a nursing home, what happens to the real estate: house, farm, cabin?</p> <p>I've heard the state will take my house if I need to go into a nursing home.</p> <p>I want to make sure that the cabin my father built up north is never sold to pay my nursing home bills.</p>	<p>If mom/dad goes into a nursing home, what happens to the real estate: house, farm, cabin?</p> <p>Will they have to sell everything they own to pay for the nursing home?</p> <p>How can I prevent the state from taking my parents' property if one of them needs to go into a nursing home?</p>	<p>Different kinds of real estate and assets are treated differently by the Medicaid program. You can't necessarily save the family cabin by putting it into a trust. Instead, siblings may need to buy it from parents to protect it in the long run.</p> <p>In Minnesota, current law provides that any assets held in a trust created by a Medicaid applicant are considered "available" to the applicant—even if they aren't!</p> <p>If your parents apply for public benefits to help pay for the cost of long term care, Medicaid eligibility rules combined with estate recovery makes almost everything your parents own (or, in some cases, ever owned) available to the state once they die.</p> <p>Don't even think about trying to MA planning yourself if you are not an experienced elder law attorney. The potential to commit malpractice is enormous!</p>
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<p>SIX: REVERSE MORTGAGES</p>	<p>We've been told we should get a reverse mortgage.</p>	<p>How would a reverse mortgage affect my inheritance?</p>	<p>A reverse mortgage allows seniors to turn the equity in their home into an income stream. Reverse mortgages make sense for some lower-income seniors and those who have significant equity in their homes due to increases in the value of residential real estate.</p> <p>Be sure that any reverse mortgage your parents take out meets Fannie Mae requirements.</p> <p>Every dollar taken out of equity, along with fees charged by the holder of the reverse mortgage, will have to be repaid when the home is sold or changes title. So if your parents leave the house to you, you'll have to pay off any amounts owed to the lender resulting from the reverse mortgage payments to your parents.</p>
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<p>SEVEN: SOCIAL SECURITY</p>	<p>I've heard I can start getting my Social Security early. Should I do that?</p> <p>I've heard that if I take a part time job, I'll stop getting Social Security payments.</p>	<p>I don't know anything about Social Security.</p>	<p>There are a few aspects of Social Security that everyone should understand:</p> <ol style="list-style-type: none"> <li>1) "Eligibility" begins at age 62 for everyone who has enough work history to qualify for benefits (and that is most of us).</li> <li>2) The longer you wait after age 62 to draw benefits, the more the monthly benefit will be—permanently. Those who begin taking benefits before their "full retirement age" will see a permanent reduction of up to 2/3 in the amount of the monthly benefit.</li> <li>3) Persons who were married for at least ten years and are not currently married can get benefits based on an ex-spouse's lifetime earnings. For many divorced persons (particularly women), these spousal benefits far exceed what they can get based on their own work history.</li> <li>4) There is an "earnings limit" above which Social Security payments will be reduced by a certain percentage. This limit changes every year.</li> </ol>
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<p>EIGHT: YOU CAN AVOID PROBATE!!!</p>	<p>I want (or have) a living trust so I can avoid probate.</p> <p>I don't need a will; I have a living trust.</p>	<p>We don't want our inheritance going to pay for an expensive probate proceeding.</p>	<p>Probate need not be expensive. If an estate is small (less than \$20,000) it need not go through probate at all. If bank accounts and real estate ownership are structured properly, and beneficiary designations are made, many assets don't become part of the probate estate.</p> <p>For most middle class individuals, the bulk of their estate consists of the equity in their house, the value of insurance policies and investments (including retirement accounts) and personal property that is not worth much to anyone outside the family. Trusts aren't usually necessary when these are the main or only assets.</p> <p>Many people think they have set up a "living trust" but they have never funded it—meaning that ownership of the property they think is "in trust" has never been transferred. Such a "trust" is meaningless for probate purposes.</p>
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<p>NINE: PLANNING FOR A DISABLED CHILD</p>	<p>What will happen to our disabled son when we die or we can no longer take care of him?</p>	<p>I don't think I can step in and take care of my disabled [addicted, spendthrift] brother when mom and dad pass.</p>	<p>Planning for a child (including an adult child) with a disability is complicated and extremely important.</p> <p>Through use of trusts, particularly supplemental needs trusts, and by working with financial institutions, professional fiduciaries, and advocacy organizations that specialize in life care planning, parents can provide for disabled children [or other children who have special needs or issues] and ensure that assets left to benefit the child aren't available to pay for public benefits such as Medical Assistance.</p> <p>Elder/disability law attorneys should be consulted.</p>
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<p>TEN:  MEDICARE</p>	<p>Medicare issues:</p> <p>What is a Medicare Supplement?</p> <p>What about “Medicare Advantage”?</p> <p>What do we do about Medicare Part D?</p>	<p>I don’t know anything about Medicare.</p>	<p>The Minnesota Senior Federation is the best source of reliable and accessible information about Medicare. The website is located at <a href="http://www.mnseniors.org">www.mnseniors.org</a></p> <p>Medicare supplements are privately-marketed insurance policies that offer coverage of things not included in Medicare. The cost off these policies depends on the breadth of their coverage of things like deductibles, co-payments, and preventive services. No one can be turned down for health reasons.</p> <p>Medicare Advantage plans are basically HMOs for Medicare beneficiaries. Although MA plans sometimes seem attractive, remember that the HMO gets to decide what services are covered by the plan and what physicians are available to the beneficiary. With regular Medicare, there is a standard array of covered services and beneficiaries choose their own physicians.</p> <p>The Senior Linkage Line, can help seniors with questions about Medicare Part D.</p>
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## Resources-National

Social Security Administration

[www.ssa.gov](http://www.ssa.gov)

Center for Medicare and Medicaid Services

[www.cms.gov](http://www.cms.gov)

Medicare.gov—official site for consumer oriented Medicare information

[www.medicare.gov](http://www.medicare.gov)

Administration on Aging

[www.aoa.gov](http://www.aoa.gov)

Elder Rights and Resources Area

[http://www.aoa.dhhs.gov/eldfam/Elder\\_Rights/Elder\\_Rights.asp](http://www.aoa.dhhs.gov/eldfam/Elder_Rights/Elder_Rights.asp)

Eldercare Locator

<http://www.eldercare.gov/Eldercare/Public/Home.asp>

National Elder Law Network

[www.neln.org](http://www.neln.org)

## Resources–State

Minnesota Attorney General’s Office–Senior Issues

[www.ag.state.mn.us/Consumer/Seniors/Default.asp](http://www.ag.state.mn.us/Consumer/Seniors/Default.asp)

Minnesota Department of Human Services--Aging Issues

<http://tinyurl.com/yp5n94>

Minnesota Association of Area Agencies on Aging

<http://www.minnesota-aaa.org/>

Minnesota Senior Federation

<http://mnseniors.org/>

Minnesota Help for Seniors

<http://www.minnesotahelp.info/Public/default.aspx?se=senior>

Caregiver Minnesota

<http://www.caregivermn.org/HomePage.asp>