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## **What an elder lawyer can do for you**

Eartha Webster was in trouble.

Her husband of 34 years had had a massive stroke in February 1999, and, after three months in the hospital, ended up in a nursing home in Smithtown. With few assets other than their Brentwood home, Webster was certain Medicaid would pick up the costs of her husband's care, and she filled out the necessary forms.

But after seven months of unsuccessfully waiting for Medicaid, the government's health care program for the poor, to come through, Webster pulled her husband out of the nursing home. In late 1999, Webster said she was presented with an unpaid bill of \$260,000. There was no way the couple could afford that amount.

That wasn't all. By August 2002, the nursing home notified Webster that it was placing a lien on her home and that, to satisfy the lien, Webster would have to sell it.

### **A devastating experience**

"I was shaken," said Webster, now 66. After years of hard work, paying taxes and taking care of a family, the thought that she and her husband could be thrown onto the streets was shocking. "I was not going to sit there," she said.

She needed a lawyer, but not just any lawyer. Within a few weeks she found two practitioners of one of the fastest-growing branches of the bar, elder law. They were George L. Roach and Laurette D. Mulry of the Legal Aid Society of Suffolk County's senior citizen division in Bay Shore.

The attorneys found a problem with the Medicaid application and that Webster's husband was indeed eligible. By last April, the nursing home had gotten its money, mostly from Medicaid, and the matter was settled.

"It was like a yoke lifted from my shoulders," recalled Webster. "If it weren't for them doing the legal legwork, I'd be out on the streets."

### **More elder attorneys now**

More attorneys nationwide are specializing in legal issues affecting the growing population of senior citizens. While some elder law attorneys have strong records in trusts and estates, others come from a social services and family law background.

"It's not so much the particular services you provide, but your clientele," said Steven Stern, a partner at Davidow Davidow Siegel & Stern in Islandia and Mattituck.

Aside from dealing with wills, trusts, housing and probate, elder law attorneys must be up on all nuances of asset protection, Medicaid planning, Social Security claims and appeals, long-term health care insurance and advance directives such as durable powers of attorney and health-care proxies.

One indicator of how their specialty has skyrocketed is that, in the past 10 years, membership in the National Academy of Elder Law Attorneys has nearly doubled, to 4,450 lawyers across the

United States. The field is particularly hot in the metropolitan area, said Stephen J. Silverberg, a national academy board member and partner at Certilman Balin Adler & Hyman in East Meadow. And there's a market: More than 820,000 people who are older than 60 live in Nassau, Suffolk and Queens, according to 2000 Census figures.

### **Medicaid difficulties**

Stern said elder law is best known for dealing with the complex Medicaid process. Medicaid covers nursing home costs for those who qualify financially - unlike Medicare, which is available to anyone 65 or older.

"Medicaid is the biggest issue in protecting assets," Stern said. "The issue is: If you get sick and need long-term care, how can you afford \$100,000 a year for nursing home care without impoverishing your spouse and spending down everything you've worked so hard for?"

What makes elder law attorneys a bit different from other lawyers who may focus on real estate, for example, or criminal law, is that elder law touches on many different areas, including trusts and estates, social services, tax law and family law. Because of the constant changes in these statutes, codes and regulations, elder law attorneys argue that clients are better served coming to them than going to a generalist.

Jennifer Cona, elder law attorney at Genser Dubow Genser & Cona in Jericho, said that a general practitioner may not be aware that, as of April 2004, the federal Healthcare Privacy and Portability Act affected health care proxies. She said families won't be able to get access to their relative's medical records unless the proxies have been revised.

Another example: Stern said one of his cases involved a Bayport man with dementia being cared for by his son and daughter. In October 1999, Stern wrote a personal care services contract allowing this man to transfer assets to his children. In return, they agreed to provide room and board, personal assistance, financial management and access to health care services for the rest of his life.

In November 2000, the man had to go into an Alzheimer's unit at a nursing home near Lake Luzerne, N.Y., where his daughter lived. Initially, Medicaid refused to pay for his care, saying the asset transfer to his kids was simply a "gift." He was deemed ineligible for Medicaid for two years, which would have completely depleted his assets.

However, in February 2003, an administrative court judge agreed with Stern that the contract between the children and their father was valid and that the money given to the children was appropriate compensation.

As a result, the man's assets were preserved and Medicaid paid for his final 13 months in a nursing home.

"We're most proud of this case because it provided validity for a personal services contract," said Stern. "It was the first such case in New York State. "A general practitioner is not going to come up with that. You need someone who knows the law and is willing to be aggressive."

### **Important to plan**

Stern's case also highlights the benefits of planning. Most elder lawyers are hired in a crisis, said Bernie Krooks, founding partner of Littman Krooks LLP in Manhattan and White Plains. Planning ahead is not only less stressful but it helps attorneys do a better job for their clients, Krooks said.

When Eastport resident Stephen Hession first approached Krooks in January 1994, Hession's father was already in a health care facility, and the family had spent a substantial amount of

money on his care. Krooks was able to get Medicaid to pick up the nursing home expenses for Hession's father by arguing that Hession's mother needed a minimum amount of assets for her livelihood. Krooks also created a trust designed to pass the parents' home to Hession and his two sisters. When Hession's mother went to a nursing home last year, the house was protected from being sold to pay her health care expenses.

### **What does it cost?**

Elder care attorneys are paid in three ways: by the hour, by flat fee, or on a contingency basis, which depends on how much is recovered for a client. (The last method is common in personal injury cases.)

Rates for elder law attorneys in Nassau, Suffolk and Queens generally range from \$200 to \$350 an hour, according to attorneys. Flat fees, which are common in this area of the law, depend on the documents being prepared:

Total fees for preparing a package of basic documents such as a will, power of attorney and healthcare proxy can range from \$500 to \$1,000.

To set up special trusts for Medicaid planning can cost from \$1,500 to \$3,000.

Fees for preparing Medicaid applications with all their supporting documents range from \$2,500 to \$9,000, depending on how complex the person's situation is, attorneys say.

Generally, elder care attorneys charge between \$200 and \$650 for an initial 1 1/2- to 2-hour consultation, during which the client is asked to describe his situation and goals. At that meeting, the attorney should be able to describe a plan as well as estimate all fees.

### **Finding elder law attorneys**

The first and often best place to go for referrals is to friends and neighbors. Other attorneys also are good sources for referrals.

But there are plenty of other sources as well. Among them are the National Academy of Elder Law Attorneys; the New York State Bar Association Elder Law Section; and the Bar Associations of Nassau, Suffolk and Queens counties.

Some elder law attorneys have Certified Elder Law Attorney after their names, often abbreviated as CELA. This designation means the attorney has gone through a certification process sponsored by the National Elder Law Foundation that requires the attorney to have practiced law for a minimum of five years, to provide documented evidence of handling at least 60 elder law cases, to have five references from other attorneys and to pass an exam.

New York is one of the few states requiring attorneys who have gotten that credential to publish a complicated disclaimer, noting that their certification doesn't necessarily make them more qualified than an attorney without the credential. Once you have a list of names of attorneys, call their offices and ask questions about their background and credentials.

It's also important that you feel comfortable with the attorney. "You have to be willing to reveal personal information about your relationships with family members," said Sharon Kovacs Gruer, who heads a Great Neck elder law practice.

### **Feeling comfortable**

Style and approach can be very important. Cindy Gold realized that when her husband, a Great Neck Village judge at the time, slipped on ice in February 2003 and ended up in a coma. One

attorney she contacted sent her six pages of forms to fill out before even setting up a meeting. But when she called Kovacs Gruer's office, Gold said, "She said, 'Come on in.'"

The lawyer helped Gold update her will and fix a problem regarding transferring assets from her husband's retirement plan. "Besides being a competent attorney, she was very compassionate and understanding," recalled Gold. "The empathy and compassion were most important - I wasn't just a client."

Elder law attorneys argue they are different from their colleagues. While many lawyers deal with adversarial relationships, elder law attorneys say they help people plan and manage their lives.

"I love it," said Krooks. "I'm making a difference in people's lives."

Back in the high-flying '80s, when he was a corporate lawyer in the big city, Krooks said he could save his clients millions of dollars and get nothing more than, "Thanks, Bernie. See 'ya next year."

Now that he's dealing with seniors and their legal issues, the payoff's a bit better: "I get hugs. I never got that as a corporate lawyer." *Virginia Munger Kahn is a freelance writer.*

'My goal is to preserve assets and make sure the best care is provided. I'm not here to protect the children's inheritance.' - Stephen J. Silverberg, partner Certilman Balin Adler & Hyman in East Meadow

A general practitioner may not be aware that families can no longer get access to their relative's medical records unless their health care proxies have been revised.

- Jennifer Cona, partner, Genser Dubow Genser & Cona in Jericho

'Medicaid is the biggest issue in protecting assets ... How can you afford \$100,000 a year for nursing home care without impoverishing your spouse?' - Steven Stern, partner, Davidow Davidow Siegel & Stern in Islandia and Mattituck

### **Sources for help**

Useful organizations, Web sites and phone numbers:

National Academy of Elder Law Attorneys, [www.naela.com](http://www.naela.com) (for attorney listings);

520-881-4005 (for general information, no referrals)

Suffolk County Bar Association, lawyer referral and information service, 631- 234-5577 or [www.scba.org](http://www.scba.org)

Nassau County Bar Association, lawyer referral and information service, 516- 747-4832 or [www.nassau-bar.org/lawyer\\_referral.cfm](http://www.nassau-bar.org/lawyer_referral.cfm)

Queens County Bar Association, lawyer referral and information service, 718-291-4500

Legal Aid Society of Suffolk County, Senior Citizens Division, 631-854-0401

Nassau Suffolk Law Services, 516-292-8088

Queens Legal Services for the Elderly, 718-286-1500

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