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## Elder Law Attorneys

### **Elder Law**

The practice of law has become increasingly complex and therefore it is impossible for any lawyer to be knowledgeable about every area of the law. Many lawyers now concentrate their practice in certain fields of the law. Some lawyers concentrate on elder law, those areas of the law which most frequently impact older Americans.

Some of those areas of the law include:

- Medicaid eligibility issues
- Medicare claims and appeals
- Social security and disability claims and appeals
- Supplemental and long term health insurance issues
- Disability planning, including use of durable powers of attorney, advance medical directives and trusts for financial management and health care decisions, and other means of delegating management and decision-making to another in case of incapacity.
- Guardianships
- Preparation of wills and estate planning
- Administration and management of trusts and estates
- Nursing home issues, including questions of patients' rights and nursing home quality, and
- Retirement, including public and private retirement benefits, survivor benefits and pension benefits.

Most elder law attorneys do not specialize in every one of these areas. So, you may want to hire an attorney who regularly handles matters of particular concern to you and who will know enough about the other issues to question and advise you about how certain actions may affect other areas of the law. For example, if you are going to rewrite your will and your spouse is ill, the estate planner needs to know enough about Medicaid to determine whether it is an issue to be considered.

## Training & Credentials

Attorneys must be licensed members of the Virginia State Bar in order to practice law in Virginia. There are no certification requirements constituting an elder law specialty for Virginia lawyers; however, some Virginia lawyers are members of the National Academy of Elder Law Attorneys (NAELA), [www.naela.com](http://www.naela.com). Some members of NAELA have earned the designation of a certified elder law attorney.

## When to Use a Lawyer

It's not always clear whether you have a legal problem that requires the services of a lawyer. One way to determine whether you need legal assistance is to ask a lawyer. Lawyers frequently do not charge for an initial consultation or for answering simple questions prior to undertaking the representation of a client. Lawyers are trained to recognize and analyze legal issues and can be expected to tell you if your problem warrants legal action. The sooner you ask, the better. The longer you wait to determine whether you have a legal problem, the more likely it is that you will have fewer options or that your situation will have worsened by the time the legal issue is addressed.

## Finding an Elder Law Attorney

There are many places to find an attorney who specializes in problems of the elderly including:

- **Legal Aid:** Many legal aid offices have an elder law attorney who can assist you if you are eligible for their services. You will find the legal aid office nearest you by searching the SeniorNavigator database by typing the keywords *legal aid* in the Topic box and your zip code. You can also go to [www.valegalaid.org](http://www.valegalaid.org) to find your local legal aid office and to read more basic information on elder law.
- **Virginia Lawyer Referral Service (VLRS)** is sponsored by the [Virginia State Bar](#) and can be contacted through the [VLRS website](#) or by phone at 1-800-552-7977 statewide, or 804-775-0808 if dialing from Richmond or TDD 804-775-0502). You may call this service in order to be referred to a lawyer in your region of the state who handles problems in the specific area of your needs. Some local bar associations also offer similar referral services.

- **National Academy of Elder Law Attorneys (NAELA)** has many members in Virginia. You can obtain the names and addresses of attorney members by contacting NAELA. Visit the NAELA website at [www.naela.org](http://www.naela.org), and click on the box "Find an Attorney." You will be directed to a webpage that allows you to input your city or zip code and find a listing of elder law attorneys nearby.
- Your local Area Agency on Aging
- Support Groups for specific diseases
- Hospital or Nursing Home Social Service Department
- Word of Mouth: If you know any attorneys ask them for a referral to an elder law attorney. An attorney is in a good position to know who handles such issues and whether that person is a good attorney.

## Selecting an Attorney

Ask a lot of questions before selecting an elder law attorney. You don't want to end up in the office of an attorney who can't help you. Start with the initial phone call. You probably will only be able to speak to a secretary, receptionist or office manager during an initial call or before actually meeting with the attorney. If so, ask this person your questions.

Good questions to start with are:

- What percentage of the attorney's practice is devoted to the area of law in which you need assistance?
- How long has the attorney been specializing in this area?
- Is there a fee for the first consultation and if so, how much is it?
- What information should you bring with you to the initial consultation?

The answers to your questions will assist you in determining whether that particular attorney has those qualifications important to you for a successful attorney/client relationship. If you have a specific legal issue that requires immediate attention, be sure to inform the office of this during the initial telephone conversation.

Use the answers to these questions as a guide not only to the attorney's qualifications but also as a way of determining whether you can comfortably work with this person. If your concerns are given short shrift, if you don't like the answers to these questions, if you don't like the attorney's reaction to being asked all those questions, or if you simply do not feel relaxed with this particular person, DO NOT

HIRE THAT ATTORNEY.

## **Working with Your Attorney**

At the initial consultation, be sure to bring all the information you think the attorney may need. Papers, letters and correspondence, documentation, notes, and records will help your lawyer understand your situation.

A positive and open relationship between your attorney and you benefits everyone. The key to a good working relationship is communication. Good communication starts with asking questions. Some of the questions to ask at the first consultation include:

- What will it take to resolve this problem?
- Are there any alternative courses of action?
- If another attorney in the office will be handling your case, has that attorney handled matters of this kind in the past?
- If a trial may be involved, does your attorney do trial work? If so, discuss your attorney's trial experience. If not, who does the trial work?
- How are fees computed?
- What is an estimate of the cost to resolve your problem and how long will it take?

Only if you are satisfied with the attorney you have hired from the very start will you trust him or her to do the best job for you. If you have established a relationship of open communication, you will more likely be able to resolve any difficulties that may arise later between the two of you. If you take the time to make sure that you are happy right at the beginning you can make this a productive experience for you and the attorney.

## **Fees**

There are many different ways of charging fees and each attorney will handle fees differently. Some attorneys charge by the hour with different hourly rates for work performed by attorneys, paralegals, and secretaries. If this is the case, find out what the rates are. Other attorneys charge a flat fee for all or part of the services. A flat fee is typical if you are having documents prepared. Your attorney might use a combination of these billing methods. Ask about these matters at the initial

conference, so there will be no surprises! It is very important that you feel comfortable in this area.

In addition to fees, most attorneys will charge you out-of-pocket expenses. Out-of-pocket expenses typically include charges for copies, postage, messenger fees, court fees, and long-distance telephone calls. Find out if there will be any other incidental costs.

The attorney may ask for a retainer. This is money paid before the attorney starts working on your case. It is placed in a trust account and each time the attorney bills you, the bill is paid out of that account. Expenses may be paid directly from the trust account. The size of the retainer may range from a small percentage of the estimated cost to the full amount.

Once you decide to hire an attorney, ask that your arrangement be put in writing. The writing can be a letter or a formal contract. It should spell out what services the attorney will perform for you and what the fee and expense arrangement will be. REMEMBER-- even if your agreement remains oral and is not put into writing, you have made a contract and are responsible for all charges for work done by the attorney.

You may be entitled to free legal assistance from your local legal aid office. Usually, your income and assets determine your eligibility for legal aid; however, many of the legal aid offices in Virginia are able to provide at least legal advice to anyone over the age of 60. Your local legal aid office should be able to tell you, after a short phone call, whether you are eligible. You will find the legal aid office nearest you by searching the SeniorNavigator.com local services database using the keywords: *legal aid*. You may also call the Legal Services Corporation of Virginia at 1-804-782-9438 to locate a legal aid office in your area of Virginia.

## **Consumer Tips**

The Virginia State Bar publishes the [Senior Virginians Handbook](#) (2021), which provides information about many legal issues facing older adults as well as resource lists of Area Agencies on Aging, Legal Aid offices, and other services. In addition, the [Free Legal Answers website](#) may be helpful.

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\* Portions of this section are adapted with permission from a brochure published by the **National Academy of Elder Law Attorneys** entitled *Questions & Answers When Looking for an Elder Law Attorney*, and a brochure published by the **Virginia State Bar** entitled *Selecting and Working with a Lawyer*.

Article Source

Virginia Bar Association

Source URL

<https://www.vsb.org>

Last Reviewed

Saturday, April 8, 2023