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[www.GriffinElderLaw.com](http://www.GriffinElderLaw.com)

An Elder Law and Estate Planning Practice

7077 S. Tamiami Trail, Sarasota, FL 34231

(941) 966-2700

## **ELDER LAW**

Elder Law is a specialized field of law that deals with the issues faced by the fastest growing segment of the U.S. population, the elderly. This area of law combines elements of Estate Planning, Wills and Trusts, Guardianship, Powers of Attorney, Health Care Planning, Medicare, Medicaid Planning, Veteran Benefits, Long-term Care Planning, Probate, Trust Administration, Special Needs Planning, Elder Advocacy and Nursing Home Resident Rights.

Elder Law attorneys do not only work with the elderly. Because of certain overlaps in the law, Elder Law attorneys often focus on helping individuals with disabilities and “special needs.” Elder Law attorneys are often considered the best legal source for Special Needs Planning, whether it involves planning for a client’s own disability, addressing planning for a disabled child or grandchild of a client or assisting a litigator with a personal injury settlement issues.

The Florida Bar has recognized Mr. Griffin as an expert in the field of Elder Law and has granted him Board Certification in this specialized legal field. All of our attorneys at Griffin & Griffin constantly strive to be at the forefront of aging issues and we work hard to provide our clients will the highest quality legal service possible.

### **Long-Term Care Planning/Medicaid**

Long-Term Care Planning, often referred to as “Medicaid Planning,” is the legal process of evaluating a clients individual needs and preparing a plan that will minimize the economic and emotional impact of placement in a long-term care facility, such as a nursing home or assisted living facility. In addition, in Florida, Long-Term Care Planning may be used to help secure certain in-home services as well. Long-Term Care Planning may involve aspects of trying to secure benefits from the Medicaid Program, Veterans Benefits, long-term care insurance, Medicare and more.

Individuals are often confronted with a barrage of misinformation regarding “Medicaid Planning.” People get bombarded with terms like “spend-down,” “transfer penalty” and “look-back period,” but for many people these terms do not apply. Whether individuals receive information from internet searches, non-elder law attorneys, non-attorney “Medicaid Specialists” or from second-hand sources like the “Lady down the street who’s 3rd husband tried to get on Medicaid,” it is important to understand that Long-Term Care Planning should be handled by an attorney who specializes in the field and who can guide a client down the appropriate path, avoiding traditional legal pitfalls and who can tailor a plan for their client that meets both the immediate needs of the client and the future needs of the client’s spouse and/or loved ones. Because Medicaid is a program that has elements of both National and State Law, as well as both statutory and administrative law

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provisions, it is important that the individual you choose to represent you have the legal expertise and experience to stay abreast of the ever-changing laws.

At Griffin & Griffin, our attorneys keep themselves at the forefront of Long-Term Care Planning and we make use of the most current and effective legal planning and protection tools for our clients and their families. We will assist our clients in custom tailoring a plan that will provide the maximum amount of financial savings with the minimal amount of stress. By choosing our firm you can rest easy knowing that you are in safe and experienced hands.

### **VETERAN BENEFITS**

There are estimated to be over 25 million veterans living today and about a quarter of the nation's population -- approximately 70 million people -- are potentially eligible for VA benefits and services because they are veterans, family members or survivors of veterans. The Department of Veteran Affairs, State and local government agencies offer these veterans, and their families, services ranging from prescription drugs, improved pension, funds to pay for home health care (including funds to a family member), assistance with paying for nursing home or assisted living expenses and more.

At Griffin & Griffin we value the service our Veterans provided and we will work with our clients (whether it is the Veteran, spouse or other family member), often alongside Veteran Aid Organizations, to ensure that our clients and their families receive the maximum amount of benefits available, while not jeopardizing their eligibility for other government benefits.

Not all VA benefits require wartime service. Further, for wartime service criteria to be met the Veteran did not need to serve in the combat theater, they are recognized for their efforts in supporting the effort at home or elsewhere abroad. As of 2021, the law recognizes the following wartime periods to evaluate eligibility for VA pension benefits:

- Mexican Border period (May 9, 1916, to April 5, 1917, for Veterans who served in Mexico, on its borders, or in adjacent waters)
- World War I (April 6, 1917, to November 11, 1918)
- World War II (December 7, 1941, to December 31, 1946)
- Korean conflict (June 27, 1950, to January 31, 1955)
- Vietnam War era (February 28, 1961, to May 7, 1975, for Veterans who served in the Republic of Vietnam during that period. August 5, 1964, to May 7, 1975, for Veterans

who served outside the Republic of Vietnam.)

- Gulf War (August 2, 1990, through a future date to be set by law or presidential proclamation)

### **DURABLE POWER OF ATTORNEY**

A “Power of Attorney” is a legal document, which should be witnessed and notarized, in which the person executing the document (the “Grantor”) grants specific authority to an agent, or “attorney-in-fact”. A Power of Attorney can grant either narrow or broad powers and can be durable (meaning the authority granted in the document survives beyond the incapacity of the Grantor) or non-durable (meaning any grant of authority terminates upon the incapacity of the Grantor). A Power of Attorney may be revoked by the Grantor at any time.

The type of Power of Attorney that each client needs will be based on their unique circumstances. It is not uncommon that, as an Elder Law firm, we find that individuals often do not have a Power of Attorney that adequately meets their future or anticipated needs (whether created from a “Free Internet Form” or created by a traditional “Estate Planning Attorney”), and this can result in costly and intensive legal complications in the future. Therefore, at Griffin & Griffin we will review a client’s existing Power of Attorney, and if necessary, prepare a Power of Attorney that is going to best address all of their future needs.

### **ADVANCE DIRECTIVE FOR HEALTH CARE AND LIVING WILLS**

A health care surrogacy document, often referred to in Florida as an “Advance Directive for Health Care” is a legal document, which should be witnessed and notarized, in which the person executing the document (the “Grantor”) grants specific medical authority to a “Surrogate”. An Advance Directive for Healthcare works similar to a Power of Attorney except that it deals exclusively with medical related issues. Some Powers of Attorney include some elements of an Advance Directive for Healthcare, however, for your protection we recommend that these documents be separate. This document may grant unto the Surrogate specific powers to make medical decisions for the Grantor if the Grantor becomes unable to make decisions for him or herself. These powers may include authorizing medical treatments, accessing medical records, hiring doctors and specialists, consenting to surgery and more. It is important to note that a well-drafted Advance Directive for Health Care will only give authority to an agent when the Grantor is no longer able to make decisions for him or herself.

An additional health care surrogacy document that should be considered is a “Living Will.” This legal document grants the authority to a Surrogate to make certain end-of-life decisions. Depending on the Grantor’s individual wishes this document will direct and authorize a Surrogate to withhold or implement certain life-prolonging procedures (artificial breathing, artificial heart, dialysis, tube feeding, artificial hydration, etc.) on the Grantor’s behalf. In light of “right-to-die” cases, like Florida’s Terri Shiavo case, it is important for every individual, regardless of age or infirmity to have a proper Living Will. This Living Will may be included in

the Advance Directive for Health Care or may be a separate document.

At Griffin & Griffin we will review a client's existing health care surrogacy documents, and if necessary, prepare an Advance Directive for Health Care that is going to best address all of their future needs. We will also counsel a client regarding certain legal issues and a client's personal feelings regarding end-of-life care and prepare a Living Will that best reflects his or her personal desires.

### **LAST WILL AND TESTAMENTS**

A Last Will and Testament, often referred to simply as a "Will," is a legal document by which a person, the "Testator," names one or more persons, the "Personal Representative," to manage his or her estate and provides direction for the transfer and disposition of his or her property following the Testator's death. In Florida, we use the term "Personal Representative" to refer to the individual who administers the estate following the death of the Testator; in other States this person is referred to as the "Executor." A Will can be as simple or as complex as it needs to be to properly convey the assets of the Testator to his or her intended beneficiaries. Following the Testator's death, the Will is probated (See Probate) and the Court will supervise the Personal Representative to ensure that they have fulfilled their obligations and properly distributed the assets.

When drafting a Will in Florida a client must pay particular attention to issues relating to Homestead Property (I.E. primary residence), the Spousal Elective Share Rules (in which a spouse cannot be disinherited), tax issues, and more. At Griffin & Griffin, we would address these issues as well as examine issue like the potential needs of the intended beneficiaries, including the possible future need for long-term care of a spouse, child or other beneficiary, any "special needs" of any beneficiary, providing creditor/bankruptcy protection for a beneficiary's share and many more issues. At Griffin & Griffin we will examine whether it is appropriate or necessary for the use of a Trust (See Trust Agreements / Living Trust), in conjunction with a Will, to ensure the efficient and orderly administration of the Testator's estate.

At Griffin & Griffin, we take the time to understand our client's unique desires, needs and complexities to ensure that our client's Will provides the greatest amount of protection and ensures the most simple and efficient administration possible.

### **TRUST AGREEMENTS**

A living trust, sometimes referred to as an "inter vivos trust" (inter vivos is Latin for "between the living"), is a trust created during a person's lifetime and is intended to achieve certain lifetime and post-death goals as determined by the Grantor. The individual establishing the Trust is known as the "Grantor" or "Trustmaker" and the person who will manage the property in the Trust is known as the "Trustee." A Trust can be useful in certain situations to help avoid Probate (and thereby eliminate judicial oversight and expense) (See Probate), help in situations of incompetency, avoid Guardianship (See Guardianship), allow "smooth" management of assets after the death of the Grantor, allow for planning for persons with "special needs," allow

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management and control of the Grantor's property after the death of the Grantor (possibly for generations), provide certain tax benefits as well as other uses and benefits. A Trust does not however, eliminate the need for Will, although a different type of Will, known as a "Pour-Over Will", may be used.

As you may imagine based on the various uses and benefits of a Trust, there are many different forms of Trusts, and no two trusts are alike. Further, despite all of the benefits listed, not everyone needs or benefits from the creation of a Trust. There may be no need for the creation and administration of a Trust if it is not appropriate for your situation.

At Griffin & Griffin we examine a client's unique situation and determine which type of Trust and which Trust provisions, if any, would be appropriate for meeting our client's needs and desires. We will be upfront and honest with our clients if we believe that the cost of any planning technique will outweigh the benefit and we will never recommend a plan or process that is not necessary for our client.

### **PROBATE AND TRUST ADMINISTRATION**

Probate: Probate is the legal process of administering the estate of a deceased person by resolving all claims and distributing the deceased person's property under a valid will. A Court decides the validity of a testator's will. The Probate process helps to interpret the instructions of the deceased, decides the Personal Representative for the estate, and adjudicates the interests of heirs and other parties who may have claims against the estate.

As with any legal proceeding, there are technical aspects to probate which need to be dealt with such as: Creditors need to be notified and legal notices published. Personal Representatives need to be guided in how and when to distribute assets and how to take creditors rights into account. A Petition to appoint a personal representative will need to be filed and Letters of Administration obtained. Homestead property, which follows its own set of unique rules in Florida, must be dealt with separately from other assets. There are time factors involved in filing and objecting to claims against the estate. There may be a lawsuit pending over the decedent's death or there may have been pending suits that are now continuing. Real estate may need to be sold to effectuate correct distribution of assets pursuant to the estate plan or merely to pay debts. Estate taxes must be considered if the estate exceeds certain thresholds. Other assets may simply need to be transferred from the decedent to his or her heirs. At every step, expert knowledge and advice will help the process go smoother with as little extra stress as possible.

At Griffin & Griffin we handle all of the paperwork for you and work to ensure that our clients do not fall into any of the pitfalls of estate administration. We know that Probate accompanies the death of a loved one and our clients focus should not be hindered by the concerns of probate, therefore, we work hard to make the process and smooth and stress free as possible.

Trust Administration: Trust administration works very much like the probate process without the added need for Court oversight. The Trust administration process is aimed at assisting the named

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Trustee of a Trust with the guidance and assistance he or she needs to ensure that the trust is properly and expediently administered, that creditors rights are adequately and properly addressed, that all tax issues are complied with, and any sub-trusts are properly established and administered. The trust administration process can often be accomplished much faster than the probate process because many of the time restrictions and limitations are not imposed on the Trustee. Despite the lack of initial judicial oversight the Trustee is not without responsibilities that must be met. If the Trustee fails in any of his or her responsibilities the beneficiaries have a right to sue to enforce their perceived rights. This process therefore creates a system of self-regulation which is aimed at keeping the Trustee in check.

At Griffin & Griffin we work with Trustees, or serve as Trustees ourselves, to help ensure that our client's wishes are properly fulfilled and that Trust beneficiaries receive all the benefits they are entitled to properly and in an expedient manner.

### **SPECIAL NEEDS TRUST PLANNING**

Special Needs Planning is an area of practice that addresses the needs of any individual who has been diagnosed with some form of disability, regardless of age or condition. Individuals who have "special needs" are often entitled to certain government benefits, the most important of which is usually medical coverage, and when someone with a disability receives assets, whether by inheritance, lawsuit settlement, or otherwise the receipt of the funds can jeopardize their eligibility for benefits, forcing them to exhaust their funds on medical care and thereby not providing the life improving benefit for which the money was intended. It is unfortunate when a well-meaning family member leaves money to an individual with "special needs" through gift or inheritance thereby disqualifying that person from the benefits they need and forcing them to go through the often difficult requalification process. It is equally unfortunate, and unnecessary, when a person with "special needs" is excluded from a Will or gift out of fear the money will all be used for otherwise-covered medical expenses.

However, by the use of Special Needs Trusts and other tools, we at Griffin and Griffin can provide these individuals and their families with the tools to help the individuals with "special needs" and protect the money given them so that it is used to improve the quality of life of the recipient and not used simply to keep the recipient alive. We are very proud of our work in this area and we know that this planning improves the lives of many men, women and children.

### **GUARDIANSHIP SERVICES**

Guardianship, sometimes referred to as conservatorship, is a legal process, utilized when a person can no longer make or communicate safe or sound decisions about his or her person and/or property or has become susceptible to fraud or undue influence. Unlike a Power of Attorney, a guardianship will remove the rights of the alleged incapacitated person, and thereby invest some or all of those powers in another person (the "Guardian"). A guardianship may be sought to remove only some or all of the rights of the alleged incapacitated person. Because establishing a guardianship may remove considerable rights from an individual, it should only be considered after all alternatives to guardianship have proven ineffective or are unavailable. A Guardian may be sought to deal with

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a long-term issue (I.E. permanent guardianship) or may be sought to deal with an immediate temporary issue (I.E. emergency temporary guardianship).

To institute a permanent guardianship the Petitioner (the person seeking the determination of incapacity) must hire an attorney and file certain pleadings with the Court. The Court will then appoint an attorney to represent the interests of the alleged incapacitated person. The Court will also appoint an examining committee (consisting of three qualified persons, one of whom will be a doctor) to examine the alleged incapacitated person and determine his or her ability to handle his or her personal affairs. They will submit their reports to the Court. A hearing will then be heard before the Court and each party, the petitioner and the alleged incapacitated person, will have an opportunity to present their case. If necessary, this hearing may include witnesses and other presentation of proof and evidence. Following the hearing the Judge will determine if the alleged incapacitated person should have some or all of his or her rights removed. If the Judge determines that a person should have his or her rights removed, the Judge will determine if any less restrictive alternatives to guardianship exist (E.G. Durable Power of Attorney, Advanced Directive for Health Care, Trust, etc.) and if not the Judge will appoint a Guardian for the alleged incapacitated person (thereinafter referred to as the “Ward”). The Court may consider almost any person of legal age for appointment as Guardian, and this person may either be a family member or friend of the Ward or can be a professional Guardian.

Following the appointment of a Guardian, and depending on the extent of the guardianship, it becomes the Guardians responsibility to ensure the safety and well-being of the Ward. The Guardian may be required to post a bond to ensure the protection of the Ward’s assets and file annual reports, including a report on the safety and well-being of the Ward and an annual accounting detailing the year’s financial receipts and expenditures.

Unless terminated by the Court, a permanent guardianship will remain in place until the death of the Ward and will require final reports and accountings following the death.

At Griffin & Griffin we strive to make this complicated and overwhelming process as easy as possible for our clients. We represent both family members seeking guardianship as well as alleged incapacitated persons and we understand that this process is not easy, legally or emotionally, for anyone involved. We work hard to minimize the impact this process has on families and loved ones.

### **ELDER ADVOCACY AND LITIGATION**

Every day, headlines throughout the U.S. paint a grim picture of seniors who have been abused, neglected, and exploited; often by people they trust the most. Abusers may be spouses, family members, personal acquaintances, professionals in positions of trust or opportunistic strangers who prey on the vulnerable. The aged and infirmed are often the easiest targets for abuse, neglect and exploitation.

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To report elder abuse by phone, call the Florida Department of Elder Affairs at 1.800.962.2873 (800.96.ABUSE). Press 2 to report suspected abuse, neglect, or exploitation of an elderly or vulnerable adult. You may also report elder abuse online, at <https://reportabuse.dcf.state.fl.us/>

Reporting elder abuse can be done completely confidentially.

Residents in Nursing Homes and Assisted Living Facilities are equally entitled to protection and safety. Therefore, numerous federal and state laws were developed to provide nursing home residents protection from abuse and neglect. Additionally, residents have privacy, security and other rights which can be enforced. Placement in a nursing home should not mean the end of autonomy and respect, and we at Griffin & Griffin work to ensure our clients receive all they deserve.

At Griffin & Griffin we take these problems seriously and work hard with our clients and families to protect them from exposure to these risks and ensure that they are not victims of such abuse, neglect or exploitation. However, if one of our clients has been abused, neglected or exploited we work hard with agencies and advocates across the State to ensure that any perpetrator is brought to justice.

### **NURSING HOME RESIDENT RIGHTS**

At Griffin & Griffin we advocate for the essential principal that all elders are treated with the respect and dignity they deserve. Entrusting your loved one to the care of others can be a difficult and overwhelming process. While no nursing home can provide the loving and compassionate care provided at home, placement is often necessary for the well-being of the ill individual as well as the emotional and physical well-being of the caregiver.

Mr. Griffin is a frequent speaker on the subject of Nursing Home Resident Rights to other legal professionals.

Nursing home residents have certain rights and protections under the law.

These resident rights include, but aren't limited to:

- The right to be treated with dignity and respect.
- The right to be informed in writing about services and fees before you enter the nursing home.
- The right to manage your own money or to choose someone else you trust to do this for you.

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- The right to privacy, and to keep and use your personal belongings and property as long as it doesn't interfere with the rights, health, or safety of others.
- The right to be informed about your medical condition, medications, and to see your own doctor. You also have the right to refuse medications and treatments.
- The right to have a choice over your schedule (for example, when you get up and go to sleep), your activities and other preferences that are important to you.
- The right to an environment more like a home that maximizes your comfort and provides you with assistance to be as independent as possible.

If you have concerns about the care your loved one is receiving, please contact us today.