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After-65 Second Chances

for Inheritances and Long-Term Care Planning

Renée C. Lovelace, CELA*

***Certified as an Elder Law Attorney by the National Elder Law Foundation
as recognized by the State Bar of Texas

Author contact information:

Renée C. Lovelace
The Lovelace Law Firm, P.C.
P.O. Box 90912
Austin, Texas 78709
(512) 858-0707
RCLovelace@aol.com

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One of the difficulties of planning ahead is that there are many possible scenarios that could occur. An individual may be healthy or sick, surrounded by family and friends or more isolated, and may have a supportive partner or be solo. Circumstances change over one's life. However, as baby boomers have moved into the retirement and assistance-needed years, more planning resources have become available. Creative ideas abound. Clients will come to the attorney's office with ideas, seeking counsel to determine the legal and financial options that will work for them.

A. <u>Aging Out of Planning Options</u>. Turning age 65 is a landmark event. On the timeline of life, age 65 may be right up there with age 18, age 21, age 50, and age 100. Providing a timeline that highlights age 65 may help clients and attorneys understand the possibility of aging out of planning options. By focusing on opportunities that come – and go – elder law attorneys may encourage clients to return for valuable guidance over the years, recognizing the impact of changes in their circumstances on their options and plans. Resources hitting bookshelves now focus on the value of planning ahead and identifying ways to protect care. The more time an elder law attorney devotes to counseling a client, the better prepared the client is likely to be in tackling the challenges of aging. Given the many consequences of turning age 65, Paul McCartney of the Beatles may have prompted the best advice, which is to ask many of the long-term care questions starting with: *When I'm 64. . .*

B. <u>Planning Readiness – Building a Foundation, Upgrading Plans</u>. As with reading readiness and financial planning readiness, a client's long-term care planning readiness must be in place before he or she will be motivated to plan. Prior generations rarely considered long-term care planning options. However, many baby boomers have served as caregivers for parents or other family members and are able to envision what is in store for them. Baby boomers who have been devoted and exhausted caregivers may be more realistic (and concerned) about the next generation's interest in caregiving – and they may be ready to plan.

C. <u>The Elder Law Attorney's On-Going Role</u>. Elder law attorneys are guidance counselors for individuals heading towards and going through the aging process. As circumstances change, clients may be able to add more planning steps, fine-tune their planning, and continue to build more secure plans. Aging requires ongoing learning and adjustments – as a sailor sets a boat's sails then continues to adjust for changes in the wind's direction.

While many clients will want to have a one-and-done relationship with basic documents (that they hope never to use) signed and filed away, an ongoing relationship with their elder law attorney may be much more valuable. Many individuals will view ongoing attorney relationships as painful or unnecessary expenses, but others will recognize the high return on investment they could secure by working with a knowledgeable elder law attorney, continuing to adjust for circumstances and

upgrade plans. Options for care, preferences, beneficial gifts, costs, budgets, *and legal planning strategies that fit the client's circumstances* continue to change over time. Concepts that may bring client back to the attorney's office—*to create more benefits for the client and the client's beneficiaries*—include:

- Plan maintenance
- Adjustments for circumstances
- Fine-tuning plans
- Revisiting choices
- Upgrading plans
- Monitoring timelines and changing circumstances
- Revising documents and plans
- Keeping an eye on "the horizon," however the client wishes to define that term, when no more major changes are advisable

Plans, strategies, and steps may need to change as circumstances change in order to achieve long-established goals. One of the goals of this article is to address why experienced elder law attorneys may be more important to clients now than ever before—and why ongoing relationships between elder law attorneys and their clients may be increasing in value.

D. <u>Options that Disappear Based on Age or Events</u>. Options that disappear at specific ages, general age ranges, or based on life events include the ones that follow below.

(1) <u>Precisely at Age 65 – "d4A" Trusts</u>[1]. Up to age 65, and ending on one's 65th birthday, an individual with disabilities may create and fund an under-65 disability trust. At age 65, creating a d4A trust is no longer an option, and transfers to any self-settled trust may no longer be exempt from transfer penalties.[2]

(2) <u>Age 65 +/- Three Months – Timely Medicare Choices</u>. Beginning three months before the month in which one turns 65 and continuing for three months after, there is a seven-month sign-up window for Medicare Part B. Missing this window for Medicare Part B – or for the similar but not identical open enrollment periods for Medicare Part D

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[1] Trusts created pursuant to 42 U.S.C. § 1396p(d)(4)(A) (commonly referred to as "d4A" trusts) are exempt from Medicaid countability as resources. The law creating these trusts was the Omnibus Budget Reconciliation Act of 1993, commonly referred to as "OBRA '93." See Section F(1) of this paper.

[2] See Section F(1).

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