

PRESENTED AT

The University of Texas School of Law
22nd Annual Estate Planning, Guardianship, and Elder Law Conference

July 30-31, 2020
Live Webcast

How Clients Can Avoid Becoming a Burden on Devoted Children

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.
Austin and Tyler, Texas
(512) 858-0707
RCLovelace@aol.com

How Clients Can Avoid Becoming a Burden on Devoted Children

PART ONE

1

THE PROBLEMS

I	What We Mean by the Term “Burden” and Why We Care.....	1
II	The Basics at the Beginning.....	2
III	The Math: The People-Paper-Money Formula.....	3
IV	Add to the Formula: Human Nature + <i>Behavioral Drift</i>	3
V	Navigate Around the Fiduciary Disputes Evolution.....	4
VI	Potentially Costly Task Components = Opportunities to Reduce Burdens.....	4
VII	Sweeten the Pitch to Reluctant Prospective Fiduciaries by Protecting Them.....	4
VIII	Different Children = Different Risks.....	5
IX	“Oh. . .They Have Family Dynamics” (<i>Say it with a Southern drawl</i>).....	9
X	The Thetford Case: <i>The Collision of Multiple Long-Term Care Dilemmas</i>	9

PART TWO

14

SOLUTIONS

XI	Reducing Burdens in Estate Administration and Distributions.....	14
XII	Beneficiary Trust Administration: <i>The First Trustee Must Die</i>	17
XIII	Providing Care.....	19
XIV	Transitioning Authority.....	21
XV	Respectful and Incremental Transitions of Control Before a Crisis Occurs.....	23
XVI	Monitoring—to Prevent Fraud and Mistakes; to Protect Clients and Fiduciaries.....	27
XVII	Diversification of Investments and Care.....	32
XVIII	Guarding Against Fraud = Guarding Against Accusations of Fraud.....	35
XIX	The Great Debate: Should a Fiduciary Have a Separate Attorney from the Start?....	37

PART THREE

REVISIT <i>PEOPLE, PAPER, AND MONEY</i>—TAKE A CLOSER LOOK AT THE CHILDREN—BOTH DEVOTED AND RISKY	39
--	-----------

Conclusion

41

How Clients Can Avoid Becoming a Burden on Devoted Children¹

By Renée C. Lovelace

When a client's children serve as caregivers, care coordinators, and fiduciaries, they face costs and risks not faced by a client's other family members. This article explores ways in which clients may be able to reduce risks to and burdens on their devoted children while protecting their own care and control.

PART ONE: THE PROBLEMS

I. What We Mean by the Term “Burden” and Why We Care.

Time and money are finite resources. Everyone has 168 hours each week and no one has unlimited money. Work consumes time, but most people trade time for money to support their families.

Many individuals provide uncompensated care for people they love, donating both time and money, but very few individuals have *free time*. Using one's time to provide care for another prevents an individual from using such time to earn money, protect their own health, rest before working again, and provide care or assistance to others he or she also loves.

If a client comes to an attorney's office stating that a key objective is to “avoid becoming a burden on my children,” additional layers of planning may be necessary to address that goal. Clients may find they have two distinct fears:

- #1 – that their children will not assist them when they need help, and
- #2 – that their children will give up too much of their own lives to help.

When clients want to avoid adding burdens to devoted children, avoiding costly disputes may become one of their highest priorities. In Section X of this paper, we address a case that contains more challenges and *teaching opportunities* than most individuals could survive. In reviewing that case, each of us—and each of our clients—may want to ask:

Could that be me?

*What would I be willing to invest to ensure that I do
not cause the costs and burdens that the disputes in
that case generated?*

¹ Several sections in this paper expand upon the article titled *Mental Capacity: A Proposal to Address the Weak Link In Long Term Care Planning* by this author at the 21st Annual Estate Planning, Guardianship, and Elder Law conference in Galveston, Texas, August 1-2, 2019.

II. The Basics at the Beginning.

Basic steps that all individuals should consider when their goals include reducing burdens on those they love, especially when those loved ones may be future caregivers or advocates, include:

- **Hiring the right attorney** – carefully searching for, then hiring, an experienced and knowledgeable attorney.
- **Putting basic documents in place** – working with their attorney to prepare basic estate planning documents that will include documents that transfer assets at death as well as incapacity documents such as medical directives and powers of attorney.
- **Preparing asset snapshots** – preparing and maintaining detailed listings of assets.
- **Considering projections** – preparing at least basic cost or cash flow projections to determine how long their property may last under various aging and long-term care scenarios.
- **Considering Medicaid** – undertaking Medicaid planning steps early if it appears that Medicaid could be needed as a safety net for long-term care.
- **Building and maintaining support systems** – protecting health and well-being, including maintaining social networks and home safety. There are many books addressing these goals. The attorney will typically not participate in a client's planning for these steps, but attorneys may want to add these steps to a checklist of risks and opportunities.
- **Using a care manager in advance** – finding and working with a licensed care manager before there is a crisis. A knowledgeable and experienced care manager could provide a home assessment, discuss living arrangements, make tentative projections on how long living situations are sustainable under various possible scenarios, and provide a host of other suggestions and information that will help a client stay at home safely longer, as well as to have more choices on future living arrangements.
- **Hiring the right advisors** – researching and selecting experienced advisors for financial, medical, home maintenance, and other key matters; meeting with these advisors both for critical current steps and also for discussions of future possible scenarios where the advisor could provide assistance; futures planning meetings could take place separately outside of work that is deadline based such as, for example, meeting with one's accountant during tax season but separately, off-season, to discuss long-term issues.
- **Doing what it is possible to do** – living with the Serenity Prayer in mind: *Do what you can, make peace with what you cannot do, and carefully figure out which is which.*

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: How Clients Can Avoid Becoming a Burden on Devoted Children

Also available as part of the eCourse

[2020 Estate Planning, Guardianship, and Elder Law eConference](#)

First appeared as part of the conference materials for the
22nd Annual Estate Planning, Guardianship and Elder Law Conference session
"How Clients Can Avoid Becoming a Burden on Devoted Children"