Contents

Preface	xi
PART I	
Retirement Considerations	1
CHAPTER 1	
The Practice of Elder Law	3
I. Why Elder Law?	3
II. The Role of the Elder Law Attorney	5
III. Ethical Issues for Elder Law Attorneys	8
A. Who Is the Client	8
B. Dealing with the Client's Family	9
IV. Client Competency and Mental Capacity	11
VI. Initial Meeting with the Client	15
A. Client Information	16
B. Dealing with the Client's Spouse	18
C. Articulating Client Goals	20
D. Understanding Available Solutions and the Need	
for Other Professional Involvement	20
VI. Basic Estate Planning Documents	22
A. Will	22
B. Power of Attorney	23
CHAPTER 2	
Medical Realities of Aging	25
I. Introduction	25
II. The Aging Body	25
A. Skin Diseases and Conditions	26

B. Diseases and Conditions Affecting Joints, Muscles,	
and Bones	28
C. Hearing and Vision	30
D. Heart Conditions	32
III. The Aging Brain	32
A. Dementia	33
B. Parkinson's Disease	34
C. Depression	35
CHAPTER 3	
Social Security	37
I. Introduction	37
II. Eligibility	38
III. Retirement Benefits	39
A. Full Retirement Age	39
B. Early Retirement Options and the Earnings Test	39
C. Deferred Retirement Options	41
IV. Calculation of Benefit Amount	41
V. Derivative Benefits: Spousal, Survivor, and Children	42
A. Spousal Benefits	42
B. Surviving Spousal Benefits	44
C. Divorced Spouse Benefits	45
D. Children's Benefits	45
VI. Disability Benefits	46
VII. Federal Income Taxation of Benefits	46
VIII. Administration and Appeals	47
IX. Benefit Claiming Strategies	48
A. Single Individual, Never Married, with No Children	49
B. Married Couples	53
CHAPTER 4	
Retirement Income: Pensions and IRAs	57
I. Introduction	57
II. Private Pensions	58
A. Defined Benefit Plans	59
B. Defined Contribution Plans	61
C. Qualifying Longevity Annuity Contracts (QLAC)	64
D. Roth IRA Withdrawal Rules	66
III. IRA Tax Planning	67
A. Converting a Traditional IRA to a Roth IRA	67
B. Withdrawal Strategies	68

v

CHAPTER 5	
Medicare	69
I. Introduction	69
II. Finance Sources	69
III. Eligibility	71
A. Part A	71
B. Part B	72
C. Part C—Medicare Advantage Plans	72
D. Part D	73
IV. Coverage	74
A. Part A	74
B. Part B	76
C. Part C—Medicare Advantage Plans	77
D. Part D	77
V. Appeal of Claim Denials	78
VI. Medigap Policies	79

CHAPTER 6 Veterans Benefits

erans Benefits	81
Introduction	81
Veterans Pension Benefits	82
A. Pensions for Disabled or Older Veterans	82
B. Aid and Attendance	84
C. Housebound Benefits	85
D. Pension Benefits for Surviving Spouses and Dependents	85
Compensation for Disability	85
Other Benefits	88
Applications and Appeals	88
Mentally Incapacitated Veterans	90
Attorney Fees	90
	Introduction Veterans Pension Benefits A. Pensions for Disabled or Older Veterans B. Aid and Attendance C. Housebound Benefits D. Pension Benefits for Surviving Spouses and Dependents Compensation for Disability Other Benefits Applications and Appeals Mentally Incapacitated Veterans

CHAPTER 7 Statutes That Protect the Elderly	91
I. Introduction	91
II. Age Discrimination in Employment Act	91
III. Proving Age Discrimination in Employment	94
A. Plaintiff's Burden	94
B. Summary Judgment	95
C. The Bona Fide Occupational Qualification Exception	95
IV. Waiver and Release	96
V. Enforcement Procedures, Remedies, and State Law Remedies	96
VI. Americans with Disabilities Act	97
VII. Federal Fair Housing Act	99

PART 2

Post-Retirement Issues	101
CHAPTER 8	
Housing Choices	103
I. Introduction—Housing Choice Determinates	103
A. Age	104
B. Health	105
C. Financial Resources	106
D. Spouse and Family Aspects	107
E. Moving Because of Recreation or Because of Weather,	
Safety, and Transportation Concerns	108
F. Housing Needs Change over Time	109
G. Sale of a House	109
II. Appropriate Housing Options	111
A. Aging in Place	111
B. Age-Restricted Housing	115
C. Condominiums and Cooperatives	117
D. Planned Communities	118
Appendix 1: Housing Expense Worksheet	120
CHAPTER 9	
Family Vacation Homes	121
I. Introduction	121
II. Client Objectives	122
III. Common Tenancies and the Right of Partition	123
IV. Limited Liability Company (LLC)	125
A. Introduction	125
B. State Law Requirements for LLCs	125
C. Federal Income Tax Treatment	126
D. Creation of the LLC	126
E. Management of the LLC	128
CHAPTER 10	
Management of Property of a Person Who Is Mentally Incapacitated	133

7 1	
I. Introduction	133
II. Mental Incapacity and Property Management	134
A. Capacity to Execute a Will or a Trust	135
B. Capacity to Make a Gift or a Contract	136

Conter	nts vii
III. Powers of Attorney	137
A. Legal Requirements to Execute a Valid POA	137
B. Springing and Standby Powers of Attorney	130
C. Selection of the Agent	135
D. Specialized Powers of Attorney	140
E. Powers Granted to the Agent	141
F. Medallion Signature Guarantee	142
IV. Representative Payee	145
V. Joint Property	147
VI. Trusts	149
CHAPTER 11	
Health Care Decision Making	151
I. Introduction	151
II. Mental Capacity to Make Health Care Decisions	152
III. Advance Directives and Surrogate Health Care Decision Makers	153
A. Guardians	153
B. Spouses and Family Members	153
C. Statutorily Appointed, Surrogate Health Care Decision Makers	154
D. Living Wills	155
E. Appointment of a Surrogate Health Care Decision Maker	158
IV. Advance Directives That Require Physician Authorization	161
A. DNR Orders	161
B. POLST—Physician Order for Life-Sustaining Treatment	163
CHAPTER 12	
Long-Term Care Insurance	165
I. Introduction	165
II. The Features of Long-Term Care Insurance	166
A. Eligibility Requirements	168
B. Coverage Limits	170
C. Premiums	176
D. Tax-Qualified Policies	178
E. State Partnership Policies	179
III. Reasons to Purchase Long-Term Care Insurance	180
A. Single Individuals	180
B. Married Couples	181
C. To Facilitate Planning for Medicaid Eligibility	183
D. Second or Later-Life Marriages	184
IV. "Hybrid" Long-Term Care Insurance Products	184

PART	3

Later-Life Concerns	187
CHAPTER 13	
Provision of Long-Term Care Outside	
of a Nursing Home and Hospice Care	189
I. Introduction	189
II. Payment Sources	190
A. Private Insurance	190
B. Medicare	191
C. Medicaid	191
III. Long-Term Home Care	192
A. Hiring Private Home Caregivers	192
B. Hiring a Relative to Provide Care	195
IV. Congregate Housing	198
V. Assisted Living	199
VI. Continuing Care Retirement Communities	204
VII. Hospices and Hospice Care	209
CHAPTER 14	
Medicaid	213
I. Introduction	213
II. Eligibility	214
A. Categorically Needy	215
B. Optional Categorically Needy	215
C. Optional Medically Needy Coverage	216
D. Determination of Income	217
E. Resource Eligibility Requirements	218
F. Effect of Marriage upon the Determination of Income	
and Resources	219
C. Dealing with Excess Pasouroos	222

und Resources	210
G. Dealing with Excess Resources	222
H. Transfers of Resources and Periods of Ineligibility	225
I. Personal Service Contracts	227
III. The Use of a Medicaid Asset Protection Trust	227
IV. Home- and Community-Based Services	230
V. Long-Term Care Insurance Partnership Program	231
VI. Medicaid Estate Recovery	232
VII. Medicaid Right to Collect against Third Parties	235
VIII. Appeals from Denial for Medicaid	235

VIII. Appeals from Denial for Medicaid

CHAPTER 15	
Guardianship and Conservatorship	237
I. Introduction	237
II. Defining Who Is an Incapacitated Person	239
III. Types of Guardianships	240
A. Plenary Guardians	240
B. Guardian of the Person	241
C. Guardian of the Estate	242
D. Limited Guardianship	243
E. Temporary or Emergency Guardians	244
IV. Guardianship Procedures	244
A. Jurisdiction and Venue	244
B. Contents of the Petition	245
C. Notice	246
D. The Hearing	246
V. Authority of the Guardian	251
A. Guardian of the Estate	251
B. Guardian of the Person	253
VI. Obligation to Make Reports to the Court	254
VII. Termination of Guardianship	255
CHAPTER 16	
Trusts	257
I. Introduction	257
II. Revocable Trusts	258
A. Creation of a Revocable Trust	258
B. Advantages of a Revocable Trust	259
C. Federal Taxation of Trusts	260
D. Selection of Trustees	260
E. Beneficial Interests	262
III. Irrevocable Trusts	263
A. In General	263
B. Choice of Trustees	264
C. Trust Protector	265
CHAPTER 17	
Estate Planning with the Very Old Client	275
I. Introduction	275
II. Time Is Short	275
III. Communication Problems	277

III.	Communication Problems	
------	------------------------	--

IV. Testamentary Capacity	279
V. Presence of Third Party	280
VI. Undue Influence	281
VII. Use of Trusts	283
VIII. Charitable Gifts	285
IX. Powers of Attorney and Surrogate Health Care Decision Maker	288
Index	291
IIIUCA	251

х