



Elder Counselor

A newsletter for professionals serving seniors and those who love them.

VOLUME 3, ISSUE 4

JULY 2012

ELET TRUST SCHOOL: REGISTER NOW!

Elder Law of East Tennessee will offer Trust Schools for clients and referral sources this August. In this workshop, Amelia will cover all the trust basics: defining a trust, types of trusts, rules, and dos and don'ts. Participants will come away empowered with valuable knowledge and confident that they can serve as good trustees.

For Clients:

Thurs., Aug. 23, 6-8 pm

For Referral Sources:

Mon., Aug. 27, 6-8 pm

Classes will be held in our conference room at 428 E. Scott Ave. Seating is limited, so call early to reserve your spot. For more information or to RSVP, contact [Connie Taylor](#) at 865-951-2410.

QUICK LINKS

[Elder Law of East Tennessee](#)
[Blog: Elder Law Insights](#)
[Blog: Care Conversations](#)
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Elder Care Mediation: A Peaceful Alternative for Addressing Elder Care Disputes

Family Feud

Imagine yourself at war with your family: Mom desperately needs nursing home care or assisted living, but your sister refuses to let her go, insisting that she can continue to serve as the primary caregiver even though you can clearly see that she's letting your mother's health slide. Or maybe your brother wants to prematurely move Dad to a care facility rather than exploring the possibilities of in-home care that could preserve his independence a while longer. Maybe everyone has good intentions, but none of you has the expertise to really know which decision is the best for the elder's long-term well-being. With the pressures of caregiving closing in and the stress of operating under a limited budget or time frame, tempers run hot and fuses burn up quickly, creating a volatile situation for the whole family.



One of the most important factors in giving an aging loved one the best possible care is making sure all the caregivers are on the same page. Ideally everyone will work together to make sound decisions and share responsibilities. However, the reality is often far from ideal. When caregivers approach the challenges of elder care from different perspectives, family relationships may suffer and the elder may be left standing in the crossfire of feuding would-be caregivers. In a situation like this, nobody wins, least of all the elder in need of care.

Give Peace a Chance

Instead of allowing your family's relationships to suffer or letting disputes devolve into stressful and costly court battles, why not seek the help of an elder care mediator? An elder care mediator is a professional neutral moderator who facilitates conversation between opposing parties and brings them to a peaceful and mutually satisfactory resolution. Elder care mediators specialize in resolving conflict related to aging or disability, such as making health care decisions, using resources effectively, choosing living facilities, and asset preservation.

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UPCOMING EVENTS

Aug. 2, 6:00 pm

“Stocking Your Elder Care
Toolbox”

Wellington Place, Sevierville

Aug. 7, 12:00 pm

“Stocking Your Elder Care
Toolbox”

*ALPS Support Group,
Morristown*

Aug. 21, 5:30 pm

“Elder Law Literacy &
Assisted Living 101”

*Atria Senior Living
584-9857 for reservation,
complimentary dinner provided*

Aug. 23, 6:00 pm

Trust School for Clients
*ELET Office, Knoxville
951-2410 for reservation*

Aug. 27, 6:00 pm

Trust School for
Referral Sources
*ELET Office, Knoxville
951-2410 for reservation*

Nov. 8, 10:15 am

“Finding Solutions to Elder
Law Problems”

*28th Annual “Aging: A
Family Affair” Conference
Rothchild’s Conference Center*

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Everybody Wins

Many times it goes against our instincts to invite a stranger to help settle private family matters. But the advantages of mediation are well worth it, especially when the alternative is adversarial court proceedings. The family maintains self-determination, reaching its own solutions rather than allowing a judge’s ruling to decide the outcome. Family members save lots of money by avoiding the expenses of court proceedings. They also avoid the stress, emotional damage, and publicity of adversarial litigation. Valued relationships can be preserved or restored through the process of mediation, which encourages the family to work through their differences and start thinking as a team working toward a common goal. Finally, the process is personal, confidential, and informal, allowing families to resolve their disputes efficiently and in privacy.

Finding a Mediator

Asking for help – and even knowing who to ask – isn’t always easy. Choosing the right mediator is a lot like choosing a good personal counselor. Many professionals who practice as mediators are licensed in another professional capacity such as attorneys, social workers, counselors, or care managers. While some states require certification for a specific type of mediator, mediation is still a largely unregulated industry. Make sure you look into a mediator’s qualifications and ask for references before inviting his or her involvement in an already delicate situation. The [Tennessee Valley Mediation Association](#) provides a [listing of mediators](#) and [links](#) to other mediation resources in Tennessee.

Elder Law of East Tennessee is now offering [Elder Care Mediation services](#) that combine the techniques of family mediation with legal expertise and a targeted knowledge base of elder care issues. Elder Law attorney Amelia Crotwell, owner and founder of Elder Law of East Tennessee, has undergone extensive training in family mediation as required by the Tennessee Supreme Court to become a Rule 31 Listed Family Mediator. She has also accrued twelve years of experience handling elder care matters and has earned nationally and state recognized certifications in Elder Law. To contact Amelia for more information about elder care mediation services, call 865-951-2410 or visit www.elderlawetn.com.

Irrevocable Trusts: Value for Estate and Medicaid Planning

People often wonder about the value of using irrevocable trusts in estate and Medicaid planning. Outright gifts have the advantages of being simple to do with minimal costs involved. Many financial institutions have their own documents they use for changing ownership of assets so there are typically no out-of-pocket costs for the transferor.

So why complicate things with a trust? Why not just keep the planning as simple and inexpensive as possible? The short answer is that gift transaction costs are only part of what needs to be considered. Many important benefits that can result from gifting in trust are forfeited by outright gifting. These benefits are what give value to using irrevocable trusts in estate and Medicaid planning.

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ELDER LAW OF EAST TENNESSEE

Elder Law of East Tennessee uses a unique approach to Elder Law called Life Care Planning. Attorney Amelia Crotwell and Elder Care Coordinator Connie Taylor, LCSW, work as a team to address legal issues while designing a comprehensive long-term care plan that maximizes quality of life and independence for the older adult.

Caring and planning for the future can be burdensome and overwhelming, but Elder Law of East Tennessee can help in many ways. A consultation with Elder Law of East Tennessee is your first step toward the assurance that only a specialized Life Care Plan can provide.

Call 865-951-2410 or visit our [website](#) to get started today. Elder Law of East Tennessee is conveniently located at 428 E. Scott Avenue, Knoxville, TN 37917.

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We will briefly outline ten possible benefits of gifting assets through irrevocable trusts. Each of these potential benefits depends on the specific language selected in drafting the trust. None of them is automatic or inherent in every trust. Thoughtful planning and careful drafting are necessary to take advantage of the benefits available. We at Elder Law of East Tennessee are available to discuss any of these issues in more detail.

10 Benefits of Gifting in Trust

1. Protect Assets from Future Creditors of Beneficiaries

A central benefit of gifting in trust is to protect the gifted assets from creditors and predators of the beneficiaries. This is accomplished by means of a spendthrift provision in the trust that makes trust assets not subject to attachment, foreclosure, garnishment, or other undesirable actions by the creditors of the beneficiaries.

2. Preserve Exclusion of Capital Gain on Sale of Principal Residence

Section 121 of the Internal Revenue Code creates an exclusion of capital gains of up to \$250,000 when the taxpayer's principal residence is sold if the taxpayer owned and lived in it at least two of the past five years before the sale (or one of the past five years if the homeowner had to move to a nursing home). If there are two qualifying co-owners, they can each exclude \$250,000 of gain upon sale in such circumstances. This exclusion of gain is preserved when using a grantor trust but is lost if an outright gift is made.

3. Preserve Step-Up of Basis

Assets such as homes and stocks appreciate considerably in value from their original purchase price during the time they are owned. Normally when an appreciated asset is gifted outright to a beneficiary, the beneficiary receives the basis that the giver had in the asset. Using a grantor trust, however, allows the giver to make a gift to trust and at death, the beneficiary of the trust receives the appreciated asset with a stepped up basis equal to the fair market value on the date of death. For highly appreciated assets, obtaining step-up of basis can be a huge benefit for minimizing or eliminating capital gains tax when the beneficiary later sells the assets. So, in short, capital gains taxes may be due on property gifted outright and avoided for property placed into an irrevocable grantor trust.

4. Select Whether Trust Income is Taxable to Settlor or Beneficiaries

A trust gives a settlor the ability to determine who will pay taxes on income generated by the trust. Grantor trusts are treated by the Tax Code as "owned" by the settlor for income tax purposes, whereas nongrantor trusts place the tax burden elsewhere.

5. Designate Who Will Receive Trust Income

Unlike an outright gift, by which the donor gives up the right to receive income generated by the transferred assets, an irrevocable trust can be designed so that the settlor reserves the right to receive income from the trust. This can be a valuable tool in planning for public benefits such as Medicaid, since only the trust income, not the gifted assets, counts against the settlor's qualification for those benefits.

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Elder Counselor is a bi-monthly publication serving professionals in elder law, senior service providers, and caregivers and families of the elderly and disabled.

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View other archived issues on our website at www.elderlawetn.com/newsletter.

To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.

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6. Specify Terms and Incentives for Beneficiaries' Use of Trust Assets

Many parents or grandparents desire to infuse their planning for their children or grandchildren with positive aspirations. A trust can set conditions on how the gifted money may be spent, such as on the beneficiary's education, or establish that the intended recipient will only receive the gift or bequest if he or she participates in a rehabilitation program or gives up some behavior designated by the donor.

7. Make Trust Assets Noncountable for Beneficiaries' Medicaid or SSI

An outright gift or bequest from a donor, such as a parent, to a disabled beneficiary can result in the beneficiary becoming ineligible for means-based governmental benefits that he or she was eligible for before the gift or bequest. In such situations, the gifted assets are typically consumed for the beneficiary's care. Once they are gone, the beneficiary goes onto the public benefits program from which the gift temporarily disqualified him or her. This can be prevented by including the gift in a trust established to pay for the trustee's needs above and beyond what public benefits programs will cover.

8. Decide Which Beneficiaries Will Inherit Upon Settlor's Death

A trust grants the settlor power of appointment, which gives the settlor the ability to decide who within a designated class of recipients will receive the benefits of the trust, how much they will receive, and in what way they will receive it. The class of potential recipients can be very broad or narrow. Most often it consists of the settlor's descendants, certain other relatives or in-laws, and/or certain charities. A power of appointment is sometimes referred to jokingly as a "power of disappointment" because it truly retains for the settlor or other power holder the power to disinherit someone who acts badly.

9. Determine Successor Beneficiaries

A major concern in Medicaid asset protection planning and estate planning in general is who will be the successor beneficiaries of anything a donor leaves to someone. If the gift or bequest passes outright, the recipient has total control over who will receive any assets that the initial recipient doesn't use up. The recipient's creditors or predators may also gain control over assets which are gifted outright. But by use of an irrevocable trust, the settlor has the option to decide who the possible recipients will be and even to grant limited powers of appointment to the named recipients in order to give them some control as well.

10. Eliminate of Need to File a Federal Gift Tax Return

A goal of many planners in design of irrevocable trusts is to make the initial trust-funding gift "incomplete" for tax purposes. The purpose is generally to prevent the settlor from having to file a federal gift tax return for the year(s) of the funding transactions, assuming that the taxpayer makes no other "taxable gifts" in any such year.

Is an irrevocable trust appropriate for meeting your estate planning or Medicaid planning needs? We at Elder Law of East Tennessee are happy to assist seniors and their loved ones with considering whether an irrevocable trust may be appropriate for them. Please [contact our office](#) to schedule a time to discuss these issues further.