

chapter 14

LEGAL ASSISTANCE

Aging persons and their family members face many unique legal issues. As you have read in this book, the Medicaid program and the myriad legal, financial, care planning, and estate planning issues facing the prospective nursing home resident and family can be particularly complex. If you or a family member needs nursing home care, it is clear that you need expert legal help. Where can you turn for that help? It is difficult for the consumer to identify lawyers who have the training and experience required to provide expert guidance during this most difficult time.

Nursing home planning, Medicaid planning, asset protection planning, and estate planning are all services provided by elder law attorneys. Consumers must be cautious in choosing a lawyer and should always carefully investigate the lawyer's credentials.

The most important and most widely-recognized credential in the field of elder law is the CELA (Certified Elder Law Attorney) designation. The CELA designation is administered by the Board of Certification of the National Elder Law Foundation, which is the only organization accredited by the American Bar Association to certify lawyers in the specialty area of elder law. Among the numerous criteria required for certification, CELAs must pass a rigorous full-day certification examination and receive favorable peer reviews from at least five other attorneys familiar with their competence and qualifications in elder law. CELAs also must have, during the three years prior to certification: handled at least 60 elder law matters with a specified distribution among 12 different areas of elder law and participated in at least 45 hours of continuing legal education in elder law. You can locate a CELA in your area by visiting www.nelf.org.

The Virginia Nursing Home Survival Guide

The leading professional organization of elder law attorneys is NAELA — the National Academy of Elder Law Attorneys — which also has a Virginia Chapter. Though mere membership in the Academy is open to any lawyer and is no guarantee that the attorney is experienced in elder law, membership does at least show that the lawyer has a genuine interest in the field. In addition, NAELA runs several educational sessions each year as well as an Internet discussion group to help attorney members stay current on the latest aspects of elder law. You can find a listing of NAELA members in your area by visiting www.naela.org, which will also tell you if the attorney is a Certified Elder Law Attorney.

According to NAELA, the other top three organizations you may want to call for lawyer referrals are: your local chapter of the Alzheimer's Association or AARP (see **Appendix B**, page 129), or your local Area Agency on Aging (see **Appendix C**, page 134). NAELA suggests you ask lots of questions before selecting an elder law attorney, as you don't want to end up in the office of an attorney who can't help you. Start with the initial phone call. It is not unusual to speak only to a secretary or receptionist during an initial call; however, many elder law attorneys do offer free initial phone consultations to determine if your issue is something they can help you with. NAELA suggests asking the following questions during your first call: How long has the attorney been in practice? Does his/her practice emphasize a particular area of law? How long has he/she been in this field? What percentage of his/her practice is devoted to elder law? Is there a fee for the first consultation and if so, how much? Given the nature of your problem, what information should you bring with you to the initial consultation?

The answers to your questions will assist you in determining whether that particular attorney has those qualifications important to you for a successful attorney/client relationship. If you have a

The Virginia Nursing Home Survival Guide

specific legal issue that requires immediate attention, be sure to inform the office of this during the initial telephone conversation.

In addition to looking for attorneys with the CELA designation and who are members of NAELA, you may want to seek recommendations from any friends and family members who have received professional help with elder law and/or nursing home issues (who did they use and were they satisfied with the services they received?). Hospital social workers, discharge planners, accountants, financial professionals, and even other attorneys can also be good sources of recommendations.

Most states and many local bar associations have formal lawyer referral services that can refer you to an elder law attorney. Be aware, however, that many bar association referral services allow new or inexperienced attorneys to join and do not limit the number of attorneys who may join, so if you use a referral service be sure to check how it operates.

The Internet can be another good source of information about elder law attorneys. The most well-known service that offers independent ratings of attorneys by their peers is Martindale-Hubbell Law Directory, at www.martindale.com. Look for attorneys who are rated AV or BV, which indicates professional standards of conduct and ethics, reliability, diligence, an exemplary reputation, and a well-established practice. You can also find out a lot about an attorney from his or her own Web site — most attorneys these days have Web sites that list at least their educational background and the types of cases they handle — many attorneys have much larger Web sites that provide valuable free information, helpful forms, and even offer a way to obtain legal advice online or via email if you are so inclined. A good example is www.VirginiaElderLaw.com.

In general, a lawyer who devotes a substantial part of his or her practice to elder law and nursing home planning should have more knowledge and experience to address the issues properly. Don't

The Virginia Nursing Home Survival Guide

hesitate to ask the lawyer what percentage of his practice involves nursing home planning. Or you may want to ask how many new nursing home planning cases the law office handles each month. There is no correct answer. But there is a good chance that a law office that assists with one or two nursing home placements a week is likely to be more up-to-date and knowledgeable than an office that helps with one or two placements a year.

Ask whether the lawyer is involved with committees or local or state bar organizations that have to do with elder law or estate planning? If so, has the lawyer held a position of authority on the committee? Does the lawyer lecture on elder law and/or estate planning? If so, to whom? If the lawyer lectures to the public, you might try to attend one of the seminars. This should help you decide if this lawyer is right for you. If the lawyer is asked to speak at educational seminars to other lawyers about elder law and nursing home planning, that is a very good sign that the lawyer is considered to be knowledgeable by people who ought to know.

Another leading organization that some elder law attorneys are affiliated with is NAFEP—the National Association of Financial and Estate Planning (www.nafep.org) which offers the Certified Estate Advisor designation. Certified Estate Advisors have special expertise in many complex financial and estate planning strategies. Attorneys who are Certified Estate Advisors are also able to offer a complete range of estate planning services for every person's estate.

In the end, follow your instincts and choose an attorney who knows this area of the law, who is committed to helping others, and who will listen to you and the unique desires and needs of you and your family.