

Ettinger Law Firm

presents

The Four Pillars of Estate Planning

featuring

The Lifetime Estate Planning Process™



Ettinger Law Firm

ELDER LAW • ESTATE PLANNING

Protecting your future



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Ettinger Law Firm Mission

To provide timely and accurate legal advice to our clients and to the community;

To assure that our clients receive the highest level of safety and security in a changing world;

To defend our clients' rights and champion their just causes; and

To see to it that those who interact with us are satisfied beyond their expectations.

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INTRODUCTION

Based upon over 2,500 public seminars and tested in thousands of estate plans, Ettinger Law Firm presents *The Four Pillars of Estate Planning*, featuring *The Lifetime Estate Planning Process™*, designed to assure you have covered all of your bases in the event of death or disability. Learn how an effective estate plan rests on the Four Pillars.



The First Pillar – The Basic Plan Using a Revocable Living Trust

- Avoids probate court proceedings on death
- Avoids guardianship proceedings on disability
- Avoids probate for out-of-state property
- Reduces or eliminates estate taxes



The Second Pillar – The Inheritance Trust to Keep It in the Family

- Keeps your hard earned assets in the bloodline so they go to your grandchildren, instead of your in-laws
- Protects the inheritance from children’s divorces, lawsuits, and creditors



The Third Pillar – Protecting Your Assets from Long-Term Care

- Long-term care insurance – get it while the getting is good
- The Asset Protection Trust to protect your assets from nursing home costs and obtain Medicaid benefits as well as, where applicable, veterans benefits



The Fourth Pillar – The Program that Keeps Your Plan Up-to-Date

- Keeps your plan up-to-date, so it works when you need it, instead of when you wrote it
 - Computerized tracking for law changes
 - Weekly Ettinger Elder Elerts
 - Free review of your plan every three years

Simple Will v. The Lifetime Estate Planning Process™		
	Simple Will	Lifetime Plan
States who receives assets at death?	Yes	Yes
Avoids court proceedings on death?	No	Yes
Avoids guardianship on disability?	No	Yes
Private?	No	Yes
Hard to contest?	No	Yes
Saves estate taxes?	No	Yes
Keeps inheritance in the family?	No	Yes
Protects the inheritance from children’s divorces, lawsuits, and creditors?	No	Yes
Protects your home and other assets from nursing home costs?	No	Yes

YOU CAN AVOID LOSING THOUSANDS BY USING TRUSTS

This program is hosted by Ettinger Law Firm, practicing exclusively elder law and estate planning since 1991. Please visit us online at trustlaw.com.



THE FIRST PILLAR OF ESTATE PLANNING — THE BASIC PLAN USING A REVOCABLE LIVING TRUST

NOTES

POWER OF ATTORNEY

- ❖ Authorizes the person you select to manage your legal and financial affairs if you are unable
- ❖ Helps avoid guardianship for legal and financial matters
- ❖ Can be revoked by you at any time
- ❖ Can be to one or more persons
 - ◆ If more than one, you may choose to have them act separately or together

ENHANCED POWER OF ATTORNEY™

- ❖ Form used by elder law attorneys contains additional or expanded powers:
 - ◆ Allows changing beneficiaries on IRA's and insurance policies
 - ◆ Allows creation and modification of trusts
 - ◆ Allows unlimited power to make gifts



HEALTH CARE PROXY AND LIVING WILL

- ❖ Designates the person you want to make medical decisions if you are unable
- ❖ Authorizes agent to access your medical records
- ❖ Living will states your wishes regarding end-of-life decisions, including termination of life support



NOTES

LAST WILL AND TESTAMENT

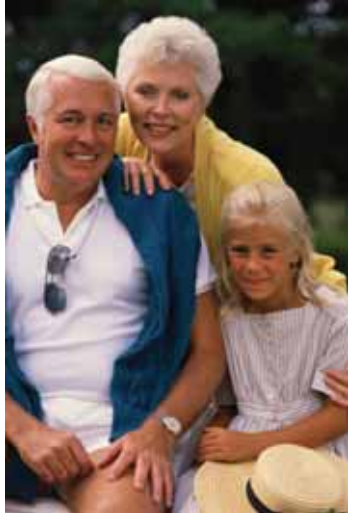
- ❖ Names the executor of your estate
- ❖ Must go through probate at death
- ❖ Does not prevent guardianship if you become disabled
- ❖ Lacks privacy – it becomes a public record
- ❖ Easy to contest



NOTES

REVOCABLE LIVING TRUST — HOW IT WORKS

- ❖ Change title on assets from Mary Jones to....Mary Jones, as Trustee of The Mary Jones Living Trust
- ❖ Trust is a separate legal entity
- ❖ Mary has complete control – she can buy and sell and trade trust assets
- ❖ Mary files same income tax return as before



REVOCABLE LIVING TRUST — WHAT HAPPENS ON DEATH

- ❖ Mary doesn't own anything, so nothing to probate
- ❖ The Mary Jones Living Trust didn't die – back-up trustee steps-in and follows Mary's instructions, just like the will, to divide the assets among the heirs
 - ◆ Settles more quickly and less expensively than the will
- ❖ “Pour-over Will” – cancels your old will and pours into the trust any assets you left out

REVOCABLE LIVING TRUST — WHAT HAPPENS ON DISABILITY

- ❖ Avoids risk of guardianship proceeding
- ❖ Mary’s back-up trustee(s) steps in
 - ◆ Follows Mary’s instructions to take care of her until disability passes, when she may resume control
 - ◆ Authorizes trustee to transfer and protect assets in the event of nursing home (can save about half)



NOTES

REVOCABLE LIVING TRUST — AVOIDING MULTIPLE PROBATES

- ❖ Wills must be probated in every state where you own real property
 - ◆ You may deed property from any state into the trust



NOTES

Horizontal lines for notes on a light blue background.

REVOCABLE LIVING TRUST — SAVING ESTATE TAXES



- ❖ \$1,000,000 New York State exemption may be doubled for spouses by using “two trust technique”
❖ Add up your assets, including life insurance, and if over \$1,000,000 you must plan to save New York estate taxes (starting at 41%) before first spouse dies

REVIEW — THE BASIC PLAN USING A REVOCABLE LIVING TRUST

- ❖ Avoids risk of guardianship proceedings on disability
❖ Avoids probate court proceedings on death
❖ Avoids multiple probates for out-of-state properties
❖ Saves tens of thousands in New York estate taxes for couples with over \$1,000,000 in assets





THE SECOND PILLAR OF ESTATE PLANNING — THE INHERITANCE TRUST TO KEEP IT IN THE FAMILY

THE INHERITANCE TRUST

- ❖ Most estates have an inherent defect – they have no plan to keep the inheritance in the family
 - ◆ Wasn't a problem until recently, with middle-class people now leaving gifts of hundreds of thousands to their children



NOTES

THE INHERITANCE TRUST — HOW IT WORKS

- ❖ Adult child is trustee of their trust
- ❖ They have complete access to income and principal
- ❖ May spend it all – no strings attached
- ❖ May be set up to protect inheritance from children's divorces, creditors, and lawsuits
- ❖ Passes inheritance by blood instead of by marriage (may choose to leave "income only" for son-in-law or daughter-in-law)





THE THIRD PILLAR OF ESTATE PLANNING — PROTECTING YOUR ASSETS FROM LONG-TERM CARE

NOTES

PLAN A — LONG-TERM CARE INSURANCE

- ❖ Protects assets from nursing home costs
- ❖ Helps you afford to stay at home with home care option
- ❖ Helps pay for a disabled spouse so caregiver spouse does not wear themselves out
- ❖ Get a proposal
 - ◆ The sooner you get it the less expensive it is
 - ◆ You may become uninsurable in the future



PLAN B — THE ASSET PROTECTION TRUST

- ❖ Sets up two roadblocks that Medicaid cannot break through
 - ◆ Must name someone else as trustee – usually one or more adult children
 - ◆ Must limit yourself to income only – e.g. interest on C.D.'s, dividends on stocks, etc.



THE ASSET PROTECTION TRUST

- ❖ Doesn't affect your lifestyle since you still receive pension and Social Security checks directly
- ❖ Have exclusive right to use and enjoy your home
- ❖ Makes sense for assets you're not going to spend, like your home and investments you're only taking income from or are reinvesting
- ❖ You have control over your trust by retaining the right to change trustees at any time
- ❖ Nursing home can only get income from the trust -- protects nest egg for your children
- ❖ Allows veterans and their widows to obtain home care and assisted living benefits from the Veterans Administration

THE ASSET PROTECTION TRUST

- ❖ Trust can sell home and trade stock
- ❖ IRA's, 401(k)'s, etc. are exempt from Medicaid
- ❖ There is a five year "look-back" period for Medicaid
- ❖ Always pays to get started – if you don't make five years, you only have to pay for the time left
- ❖ May be revoked upon consent of all the parties (you and your family)



NOTES



THE FOURTH PILLAR OF ESTATE PLANNING — THE PROGRAM THAT KEEPS YOUR PLAN UP-TO-DATE

NOTES

THE LIFETIME ESTATE PLANNING PROCESS™

- ❖ A unique process, trademarked by Ettinger Law Firm in 1999, to help keep your estate plan up-to-date so it works when you need it, instead of when you wrote it
 - ◆ Computerized tracking of your plan for law changes
 - ◆ Weekly copy of Ettinger Elder Elert
 - ◆ “Client only” breakfasts to review changes in the law and for family to meet the lawyer
 - ◆ Free review of your estate plan every three years for changes in your health, your assets, and in your family (births, deaths, marriages, divorces, etc.)

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THE FIRST PILLAR OF ESTATE PLANNING — THE BASIC PLAN USING A REVOCABLE LIVING TRUST

The basic estate plan starts with a power of attorney, so you get the person or persons you choose to handle your legal and financial affairs if you become disabled. We recommend that it be an “enhanced” power of attorney prepared by an elder law firm, so that it has the additional powers you may need in the event of disability, such as the right to change beneficiaries on IRA’s and insurance policies (in case the beneficiary is in a nursing home), the right to create a trust or make a change to a trust and the right to make gifts in unlimited amounts (so that, in the event of disability, all the assets don’t end up going to the nursing home).



Next is the health care proxy and living will, so that you also get the person you choose to make medical decisions for you if you are unable to decide for yourself. The living will allows your loved ones to terminate life support if there is no hope for recovery and no meaningful existence.

As for the estate plan itself, the revocable living trust is a substitute for a will but, unlike a will, the trust does not need to be probated on death, avoiding a potentially costly and/or lengthy court proceeding. Less well known is that, since the trust takes effect while you’re living, it allows you to state who your successor or back-up trustee will be in the event of incapacity. Since about half of all people today are expected to have a period of disability during their lifetimes, it is of the utmost importance to have a lifetime plan. Without a plan, clients risk having a court appointed guardian who may not be the person you would have chosen. Additionally, in a long-term care situation, a legal guardian may be required by the court to use all of the assets for the incapacitated person’s care, instead of having the family take advantage of Medicaid rules allowing significant assets to be protected through transfers to other family members. The well drafted revocable living trust provides that, in the event of incapacity, the back-up trustee is authorized to transfer out of the ill person’s name whatever assets the Medicaid law allows. With the assistance of an elder law attorney, this will currently allow about one-half of the assets to be protected through advanced elder law techniques.

Other advantages of the trust over the will are that your assets are kept private, since there is no public filing and that you are far more likely to avoid a “will contest” since trusts are considerably more difficult to challenge.

Apart from avoiding the expense and delay of probate court proceedings on death, as well as court control of the assets in the event of disability, the revocable living trust also avoids the additional probate proceedings that occur when a client owns property in another state. Finally, the revocable living trust avoids the New York estate tax for couples with over one million dollars in assets. By using the “two trust technique”, both husband and wife, by each setting up a trust, may each claim a one million dollar exemption, generally saving between forty and one hundred thousand dollars in New York estate taxes.



THE SECOND PILLAR OF ESTATE PLANNING — THE INHERITANCE TRUST TO KEEP IT IN THE FAMILY

With the size of estates having grown today to where middle class families are leaving substantial bequests to their children (depending, of course, on how many children they have), the trend is toward establishing trusts for the children to keep the inheritance in the bloodline. In the case of your children, there are a number of benefits to leaving assets to them in a trust. These are: (1) the assets will be protected from their spouse in the event of divorce; (2) the assets may be protected from their creditors in the event of a lawsuit or other financial hardship; and (3) on your child's death, the unused assets will go to your blood relatives (usually grandchildren) instead of to in-laws or others.

These trusts provide that, during your children's lifetimes, they have complete access to the income and the principal of their inheritance trusts – so that you're not giving them a "gift with strings attached" or "ruling from the grave". But when your child dies, you would like the trust assets, which may have grown considerably, to go to your grandchildren. If the grandchildren are under age 30, the funds are held in trust for them until then, with the trustee (usually one of your other children) using so much of the assets as may be needed for their health, education, maintenance and support. If one of your children dies without leaving children of their own, then the trust funds go to their surviving brothers and sisters.



Please keep in mind that, without an inheritance trust, if your son or daughter dies, the entire inheritance you have left to them often goes to a son-in-law or daughter-in-law who may get remarried and share your hard earned assets with a complete stranger. Nevertheless, some clients would not want to disinherit their son-in-law or daughter-in-law. In such cases, the inheritance trust, or a portion of it, may be set up to continue for your in-law's lifetime, providing them with the "income only" so that if they get remarried or end up in a nursing home, the assets are still protected and will still go to your grandchildren after the son-in-law or daughter-in-law dies.



THE THIRD PILLAR OF ESTATE PLANNING — PROTECTING YOUR ASSETS FROM LONG-TERM CARE

Long-term care insurance is the preferred option for protecting assets from nursing home costs, since it is the only one that helps keep clients out of the nursing home – by paying for home care. We’ve had many clients over the years who were forced to spend their final days in a facility simply because they ran out of money to pay for home health aides. Additionally, for married couples, the home care option may protect the well spouse not requiring the care from compromising their own health and finances with the heavy burden of caregiving in their later years.



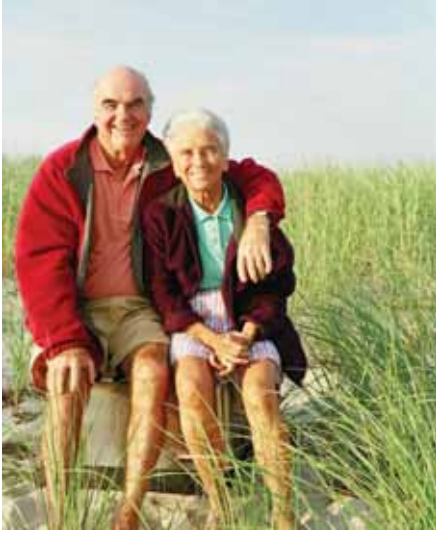
Since the main objection to purchasing long-term care insurance is the expense, we advise of five ways to reduce the cost. First, the client should look at a hundred day elimination period (i.e., you pay the first hundred days) as there may never be a claim on the policy. It is really hedging with a bit of self-insurance. Secondly, the daily benefit purchased may be reduced by income from pensions, Social Security and investments, to the extent these items may not be needed by a spouse.



Third, the benefit period might be limited to five years since this will encompass the majority of claims and the Medicaid look-back period for transfers to individuals does not exceed that period. In other words, with the help of an elder law attorney, the family would transfer the parents’ assets to the children at the time a claim is first made under the long-term care policy, the policy would then pay for care up to the five years and beyond that the client would be eligible for Medicaid benefits, if needed.

The fourth way to cut the cost of long-term care insurance is to work with an independent agent who can provide three or four premium quotes. Some clients end up paying too much due to transactions with captive agents. Finally, the cost of the insurance may be reduced up to thirty percent by choosing a home care only policy — an especially attractive option for clients who cannot afford complete protection and for those over age seventy where the expense tends to be prohibitive. Again, this is also a hedge since most claims under long-term care insurance policies today are for home care.

When the client is turned down for long-term care insurance, or is unable to afford the premium, the next best option is the Asset Protection Trust. Please note that making assets joint with adult children offers no protection since Medicaid considers all of the jointly held assets to be available for the care of the ill parent, except to the extent the child can prove the amount of their actual contribution



(usually none). Additionally, outright transfers to children are generally inadvisable since those assets then become exposed to the children's debts, liabilities, divorces, etc. In addition, some children spend the money, refuse to give it back when needed or, unfortunately, die before the parent and pass those assets on to their heirs. One exception to the inadvisability of outright transfers to children is when nursing facility care is imminent or at least foreseeable. In such a case, the assistance of an elder law attorney is essential since the amounts to be transferred, the order of assets transferred and where to transfer the assets all require the advice of counsel. The object here would be to protect as much of the assets as possible and to qualify for Medicaid benefits at the earliest possible moment. If someone is just getting older, can't or won't get long-term care insurance and wants to plan ahead to protect their assets, again, the best option is to set up an Asset Protection Trust.

Known as an "income only" trust, the irrevocable Asset Protection Trust names someone other than you or your spouse as the trustee, usually one or more adult children, and limits you to the income. The principal must be unavailable in order for it to be protected. These trusts are ideal for the family home as well as for assets the client is only taking the income from anyway or is simply reinvesting. The client's lifestyle is not generally affected since they still receive their pension and Social Security checks directly, they keep the exclusive right to use and occupy the home and they preserve all the tax exemptions on the home. The trust can sell and trade assets through the trustee and you retain some measure of control by reserving the right to change the trustee in the event of dissatisfaction for any reason. The Asset Protection Trust also allows veterans and their widows to obtain "Aid & Attendance" home care and assisted living benefits from the Veterans Administration.

The Asset Protection Trust is subject to a look-back period of up to five years for Medicaid benefits. This means that if assets are transferred and the client needs nursing home care any time after five years have passed, the assets in the trust are protected. Nevertheless, it always pays to get started, since you get credit for the time you accumulate, even if you don't make the five years. For example, if the client needs nursing home care, say, after only four years, then they would only have to pay for the one year that's left.

The Asset Protection Trust is also flexible. You may sell the home, the money is paid to the trust, and the trust can buy a condominium, for example, in the name of the trust so it is still protected. The trust may buy and sell and trade stocks and other assets. IRA's and other qualified plans stay out of the trust since all such retirement plans are exempt from Medicaid. They also avoid probate since they go directly to the designated beneficiaries at death.

There is also no reason to fear the "irrevocable" nature of the Asset Protection Trust, since it may be revoked, although not by you alone, on the written consent of all the named parties. Since that is just you and your immediate family, it generally proves easy to undo the trust if that is needed for any reason (for example, if you wish to take out a reverse mortgage later on).



THE FOURTH PILLAR OF ESTATE PLANNING — HAVING A PROGRAM THAT KEEPS YOUR PLAN UP-TO-DATE

Good elder law and estate planning should address all of the client's issues. A comprehensive review of the client's situation would address planning for disability as well as for death, including minimizing or avoiding estate taxes, legal fees and court proceedings. A plan should be in place to protect assets from nursing home costs. Like a chess player, counsel should look ahead two or three moves in order to determine what may happen in the future.

Nevertheless, even the best of plans may be obsolete by the time they are needed, sometimes decades later. To help solve this dilemma, Ettinger Law Firm invented The Lifetime Estate Planning Process™, to make sure the estate plan works when it is needed, instead of when it was written. Trademarked by the law firm in 1999, The Lifetime Estate Planning Process features the following benefits:



At a minimum, each client's estate plan is reviewed every three years to determine whether changes in the client's personal life, such as their health, assets, or family history (births, deaths, marriages, divorces, etc.) impact the plan. It is unrealistic to expect a plan established today to be effective ten, twenty, thirty or more years in the future. Over time, clients will want to change their back-up trustees or plan of distribution. They may wish to add inheritance trusts to keep it in the family. They might, after a number of years, wish to change from a revocable trust to an irrevocable Asset Protection Trust because they were unable or unwilling to obtain long-term care insurance. Through this program, the client will benefit from having a plan better suited to their current needs at any given time.

Other features of The Lifetime Estate Planning Process are (1) a customized software program that tracks your plan for law changes and advises you when you need to come in; (2) bi-annual client breakfasts to update you as to what is happening in the law and within your law firm, including invitations to your adult children to "meet the lawyer"; and (3) weekly Ettinger Elder Alerts to advise you of elder law and estate planning issues on an ongoing basis.

CONCLUSION

Thank you for taking the time to listen to our presentation and to review these materials. Nevertheless, all of the information in the world is of no benefit unless you act on it. We urge you to attend a free consultation with us to find out whether or not an estate plan makes sense for you and your loved ones. Remember, as always, the consultation is without fee or obligation and we are pleased to see you whether or not you ultimately need and choose our firm to help you. We look forward to talking this over with you sometime soon. Thank you again for your time.

New York State Estate Tax Schedule

Gross Estate Less Deduction \$	Tax \$	Effective Tax Rate %
1,000,000	0	
1,012,500	5,125	41.00
1,025,000	10,250	41.00
1,050,000	20,500	41.00
1,075,000	30,750	41.00
1,100,000	38,800	38.80
1,150,000	42,000	28.00
1,200,000	45,200	22.60
1,300,000	51,600	17.20
1,400,000	58,000	14.50
1,500,000	64,400	12.88
1,600,000	70,800	11.80
1,700,000	78,000	11.14
1,800,000	85,200	10.65
1,900,000	92,400	10.27
2,000,000	99,600	9.96
2,500,000	138,800	9.25
3,000,000	182,000	9.10
3,500,000	229,200	9.17
4,000,000	280,400	9.35
5,000,000	391,600	9.79
10,000,000	1,067,600	11.86
20,000,000	2,666,800	14.04

The 41% tax rate applies until \$1,093,785 and declines thereafter

ABOUT ATTORNEY MICHAEL ETTINGER

Principal attorney Michael Ettinger has been a member of the New York State Bar since 1980. He is an honors law graduate of McGill University in Montreal, Canada and obtained his Master of Laws from the London School of Economics in 1978. Ettinger Law Firm, dedicated exclusively to elder law and estate planning, was formed in 1991. Mr. Ettinger is a founding member of both the American Academy of Estate Planning Attorneys and the American Association of Trust, Estate and Elder Law Attorneys.



ABOUT ATTORNEY JESSICA KIELY

Before beginning her work at Ettinger Law Firm, Jessica Kiely received her Juris Doctor from CUNY School of Law at Queens College, a school which is dedicated to the service of human needs. She chose to attend CUNY because of the reputation of its elder law clinic where she gained invaluable experience working with clients firsthand. Attorney Kiely says, “The clinic did a lot of work for people who had not been involved in the estate planning process. Through working on guardianship proceedings and probate cases, I experienced firsthand what happens when one does not plan for death or disability.” Attorney Kiely’s goal while working with clients is to make sure that they have a plan for death or disability, assuring their assets go to whom they want, when they want, and in the way they want, with the least amount of taxes and legal fees possible.

TESTIMONIALS

“I am very happy with the quality of service I received and highly recommend your office whenever possible.” – R.M.

“Your staff and Mr. Ettinger were all business-like and professional as well as friendly.” – A.R.C.

“I would recommend the Ettinger Law Firm to anyone interested in estate planning.” – S.I.

“Above and beyond – felt very comfortable.” – J.A.C.

“We have nothing but praises for your firm. First class all the way. Thanks!” – R.M.R.

“We were very impressed with the knowledge, expertise and professionalism of your office. We’ve even recommended your firm to other attorneys. Thank you for making a confusing issue much clearer.” – R.W.

“It was a pleasure doing business with your firm. And I agree that as a result I do have peace of mind having done it. Whatever happens in the future, I feel prepared for it.” -- L.I.K.

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