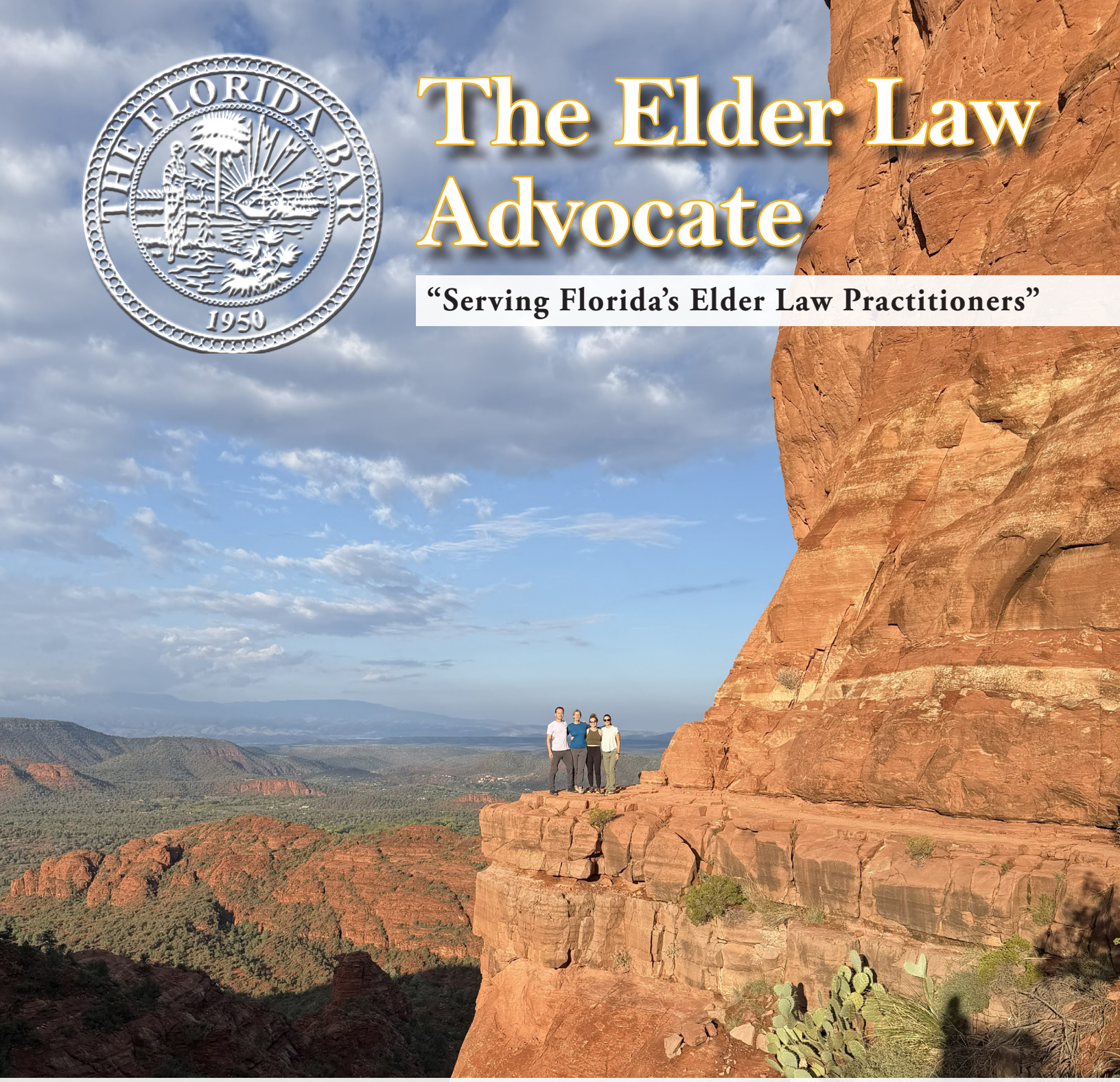
The Elder Law Advocate

"Serving Florida's Elder Law Practitioners"



Featuring:

- Elder Law Section Retreat in Sedona, Arizona – What a trip!
- Using AI in estate planning and elder law
- Reporting Medicaid application problems – Don't forget to use the QR code

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The Elder Law Advocate

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The Elder Law Advocate will be glad to run corrections the issue following the error.



ON THE COVER

2025 Elder Law Section Retreat
Sedona, Arizona

Contents

Message From the Chair: It's our 35th year! 3

Elder Law Section Retreat: The story in pictures 4

ChatGPT and the dangers of using it for estate planning 6

Engaging with the future: How generative artificial intelligence can assist in elder law 8

Pooled trusts – Don't get sucked under 10

From the Joint Task Force for the Elderly & Disabled: Help build a database of Medicaid application problems 11

Capitol Update: Getting ready for Session 2026 12

Committees keep you current 14

Practice Management: From reflection to momentum. Preparing your elder law practice for 2026 success 16

Tips & Tales: To trust or not to trust 18

Tax Tips: Esoteric tax and life insurance rules for elder law practitioners 20

Summary of selected case law 23

Elder Law Section Executive Committee 25

Mark your calendar 25

Submit Articles

The deadline for the SPRING 2026 EDITION IS FEBRUARY 13, 2026. Articles on any topic of interest to the practice of elder law should be submitted via email as an attachment in MS Word format to Genny Bernstein at gbernstein@jonesfoster.com, or call Emily Young at 850/561-5650 for additional information.



Message From the Chair

by Shannon M. Miller

It's our 35th year!

As we head into 2026, I can't help but feel immense gratitude—and excitement—for what lies ahead for our Elder Law Section. This year has been one of connection, creativity, expansion, and celebration. From the breathtaking red rocks of Sedona at our October retreat to the glittering anticipation of our upcoming Roaring '20s-themed Gala in Orlando, our section continues to blend purpose with joy in everything we do.

The Sedona retreat reminded us why we do this work. Together, we explored balance, mindfulness, and what it truly means to find fulfillment in our practices and lives, and what it means to face our own mortality and help clients through their own journeys. It was rejuvenating to witness new friendships form and seasoned colleagues rediscover their "why." I left feeling reenergized and deeply proud of our community—one that not only fights tirelessly for Florida's most vulnerable citizens, but also supports each other along the way.

That spirit of innovation carried through our legislative efforts as well. Our "Stop the Scammers" law, which took effect July 1, is already making a tangible difference for older Floridians. Prosecutors across the state are now using this new tool to stop financial exploitation before it devastates lives. This success shows what we can achieve when we collaborate with purpose and persistence.

Looking ahead, we're channeling that same energy into the **2026 Florida Elder Law Symposium and 35th Anniversary Gala**, **January 15-17**, at the Grand Bohemian in Orlando. Expect an event unlike any we've hosted before—rich with education, laughter, music, and sparkle. It's our chance to honor 35 years of advocacy, leadership, and heart. So, dust off your flapper dresses, polish your dancing shoes, and prepare for an evening that celebrates both our history and our bright future.

"We are not just a professional section; we are a community. We lift one another up, share knowledge freely, and never lose sight of the humanity behind our practice."
— Shannon M. Miller

I'm deeply thankful for our officers, committee leaders, and every member who continues to volunteer, teach, write, mentor, and show up. You are the reason our section thrives. Together, we are not just the "little section that could"—we are the section that does.

Here's to 2026: a year of gold, gratitude, and growth.

See you at the Gala!

Namaste,

Shannon



Elder Law Section Retreat
October 9–11, 2025 • Sedona, Arizona

Natural beauty abounds as ELS hikers explore breathtaking Sedona, Arizona

Members and friends of the Elder Law Section recently traveled to Arizona for a time of fellowship, relaxation, and planning for the section's future. Here is the story in pictures …



Alex Kholkhlov, Shannon Miller, Rima Nathan, and Kaitlin Stolz



Rima Nathan, Kaitlin Stolz, and Shannon Miller



Rima Nathan, Kaitlin Stolz, Alex Kholkhlov, Shannon Miller, Genna Fasullo LaPeer, Chandler Bradley, and Scott LaPeer



Alex Kholkhlov, Chandler Bradley, Shannon Miller, Kaitlin Stolz, and Rima Nathan head to Bell Rock.



Emily Young, Ailish O'Connor, Genna Fasullo LaPeer, Scott LaPeer, Danielle Faller, Irene De Jesus, Max Solomon, Ben Darby, Sadie Darby, and Heidi Brown (in the jeep) enjoy a Pink Jeep Tour.



Genna Fasullo LaPeer, Danielle Faller, and Max Solomon

Of course we made time for yoga!



Genna Fasullo LaPeer, Sadie Molinet, Alex Kholkhlov, Shannon Miller, Kevin Albaum, Max Solomon, Rima Nathan, Kaitlin Stolz, Irene De Jesus, Danielle Faller, Stephanie Quinnell, Chandler Bradley, Heidi Brown, Ben Darby, and Sadie Darby



Chandler Bradley, Kaitlin Stolz, Rima Nathan, Shannon Miller, and Alex Kholkhlov

Celebrating friendship is a part of every ELS event.



Danielle Faller, Shannon Miller, and Heidi Brown



Shannon Miller, Alex Kholkhlov, Rima Nathan, Kaitlin Stolz, Sadie Molinet, Lauren Albaum, and Kevin Albaum



Alex Kholkhlov, Ben Darby, Sadie Darby, Kaitlin Stolz, Rima Nathan, Irene De Jesus, Heidi Brown, Max Solomon, Danielle Faller, Genna Fasullo Lapeer, Scott LaPeer, Chandler Bradley, Stephanie Quinnell, Shannon Miller, Ailish O'Connor (standing at right), and Emily Young (by window at right)

ChatGPT and the dangers of using it for estate planning

by Alan Reinfeld

submitted on behalf of the Estate Planning & Advance Directives, Probate Committee



Alan Reinfeld

As we dive deeper into ChatGPT and artificial intelligence, we need to ask how ChatGPT will impact estate planning now and in the future.

As most of us already know, ChatGPT is a generative artificial intelligence tool or chatbot that generates text, speech, and images in response to user prompts. It can be an amazing tool that helps create documents from open-sourced materials available on the internet. It can also analyze a document and may even generate better forms than those available on the internet for free or for purchase. However, ChatGPT, like all artificial intelligence tools, primarily uses documents or information on which it was trained. It does not generally train on nonpublic, complicated trust or will information. It only has the documents it was given and those available in the public domain.

As a warning, artificial intelligence should be used as a tool and not as a substitute for proper estate planning or drafting. For testing purposes, I queried ChatGPT to see how it responded to certain commands and draft functions. I used an obvious example, to me at least, a no contest clause for will beneficiaries.

No contest clauses are invalid under Florida law through Fla. Stat. § 732.517 and Fla. Stat. § 736.1108 and are, therefore, unenforceable under Florida law. In essence, a no contest clause discourages or deters a beneficiary or an interested person of a will or trust from challenging the terms of the will or trust. In Florida, a beneficiary can challenge the terms of a trust or will, or even bring such document into litigation, without fear of being penalized.

The document created by ChatGPT was based on the prompt I used. When I asked ChatGPT to draft a no contest clause (my specific instructions were "draft a no contest clause"), with no other information, ChatGPT drafted a basic no contest clause. It did not note, however, whether such provisions are valid under Florida law since I did not include that question in my prompt. Hence, ChatGPT drafted the clause as if it were valid because the input did not request relevant state law information. When I changed the input to ChatGPT and asked it to draft a no contest clause under Florida law (my specific instructions were "draft a no contest clause under Florida law"), ChatGPT proceeded to draft the clause and also properly noted that no contest provisions are invalid under current Florida law. How I phrased the question determined how ChatGPT responded.

As part of my journey in using ChatGPT, I also asked it to draft a "last will and testament for Florida" to assess what ChatGPT would do. It drafted a relatively basic will, but the execution and self-proof portions of the will were deficient. The will did not include designated places for witnesses to sign following the testator's/testatrix's signature as required by Florida law and, instead, put the witnesses' signatures into the self-proof portion of the will. It also did not properly use the physical/virtual presence for the notary section as required under Fla. Stat. § 117.05. While it might be possible to draft a basic will with the form ChatGPT provided, execution of the will might not be valid under Florida law.

In summary, ChatGPT may be a useful tool for extremely basic drafting, but it will not substitute for the experience of an attorney anytime soon. ChatGPT is limited to the information input by the user and the information available in the public domain. I would add that for any complex drafting, it would serve no purpose, as the millions of documents ChatGPT has been trained on likely did not include complex trusts. The best use for artificial intelligence is to consider it as an outline or a starter that will help jumpstart the drafting process, but it cannot be relied on since it lacks critical thinking skills and knowledge that an estate planning attorney possesses.

Alan Reinfeld, Esq., is a second-generation estate planning attorney located in Broward County, Florida, and a partner at Reinfeld, Cabrera, & Tison practicing in estate planning, trust, and probate administration.

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Engaging with the future: How generative artificial intelligence can assist in elder law

by Enrique D. Zamora and Olivia Kaszubski
submitted on behalf of the Guardianship Committee

Effective October 28, 2024, The Florida Bar now reinforces that lawyers should understand the benefits and risks associated with the use of technology, specifically generative artificial intelligence (GAI).[1] Whether or not an attorney chooses to use new technology, they should know what technology is available, have a general understanding of the technology, learn how to avoid potential breaches of professionalism, and then weigh whether, if implemented, the technology would positively impact the attorney's practice.

What is GAI?

GAI serves as a creative content gathering technology that retrieves data, linking patterns to generate its own responses—creating text, images, audio, and videos.[2] Systems like ChatGPT (Open AI) and Google Bard (now Gemini) utilize natural language processing to understand human language, statistical models, and varying linguistic fluctuations with machine learning and deep learning.

Ethical considerations

To utilize the database effectively, the user creates a prompt—an input or query given to the model.[3] When creating a prompt, it is important to (1) provide clear instructions, (2) be specific and provide context, (3) define the task, (4) describe the target audience or point of view, (5) use general and ambiguous language about specific details to secure client privacy, and (6) ask open-ended questions to increase the accuracy in the technology's response to avoid systematical discrepancies.[4]

When a prompt is too specific, a GAI will generate an output that deviates from reality or context, known as hallucinations, that could state incorrect "facts" confidently, make nonexistent sources or references, or create credible-sounding content but false explanations. *See, e.g. Gutierrez v. Gutierrez*, 49 Fla. L. Weekly D2440 (Fla. 3d DCA December 4, 2024) (barring pro se litigant, whose filings contained fictitious and nonexistent case law, from future filings related to the underlying probate actions without the review and signature of a member of The Florida Bar).

To avoid hallucinations and potential bar complaints when using GAI technologies, treat the system as another member of the firm—you must always double-check GAI-generated outputs. Moreover, set guidelines for using GAI for everyone in the firm and review their work,[5] including nonlawyer assistants.[6]

GAI technologies do not rely solely on preexisting data, but these technologies also gather and retrieve user-provided information. To further safeguard against risks related to confidentiality and attorney-client privilege, a new comment to Fla. Bar Rule 4–1.6 cautions lawyers about this threat, stating "For example, a lawyer should be aware that generative artificial intelligence may create risks to the lawyer's duty of confidentiality."[7] To mitigate potential damages to attorney-client privilege, a lawyer should be aware of maintaining general, ambiguous language while using prompts for GAI.[8]

Some GAI programs like ChatGPT (Open AI) Teams version have the option to turn off data for training within the settings. Before using a GAI program, clarify whether the program can use or train on your data.

continued, next page

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The Elder Law Section publishes three issues of *The Elder Law Advocate* per year. The deadlines are February 1, 2026; June 1, 2026; and October 1, 2026. Artwork may be mailed in a print-ready format or sent via email attachment in a .jpg or .tif format for an 8-½ x 11 page.

Call Emily Young, 850/561-5650 for advertising rates and additional information.



Enrique D. Zamora is a partner at Zamora Hillman & Villavicencio whose practice focuses on litigating and administering guardianships, probate, and trusts, as well as estate planning. He holds a degree in finance from the University of Florida and a JD from Vanderbilt University Law School. Mr. Zamora is an adjunct professor of law at St. Thomas Law School where he teaches guardianship law and elder law. He has been a member of the Elder Law Section for over 10 years and serves as chair of the Law School Liaison and Guardianship committees.



Olivia Kaszubski is an intern at Zamora Hillman & Villavicencio. She holds a degree in political science from the University of Alabama and is a third-year law student at St. Thomas Law School where she serves as the internal vice president of the Elder Law Society, serves as a third-year ambassador for the school's chapter of Florida Association for Women Lawyers (FAWL), and is a member of the Tax

Endnotes

1 Fla. Bar 4-1.1—Competence.

2 *Implications of AI* (May 9, 2024), What is the Difference between AI, AGI, and GAI? at www.implicationsofai.net (last accessed April 4, 2025).

3 *GeeksforGeeks* (May 7, 2024), What is an AI Prompt? at www.geeksforgeeks.org (last accessed April 14, 2025).

4 *Id.*

5 Fla. Bar 4–5.1—Responsibilities of Partners, Managers, and Supervisory Lawyers Cmt. "[C]onsider safeguards for the firm's use of technologies such as generative artificial intelligence..."

6 Fla. Bar 4–5.3—Responsibilities Regarding Nonlawyer Assistants Cmt. "A lawyer should also consider safeguards when assistants use technologies such as generative artificial intelligence."

7 Fla. Bar Rule 4–1.6—Confidentiality of Information Cmt. Acting Competently to Preserve Confidentiality.

8 For an explanation of confidentiality concerns and tips, *see* Giordano, Caroline B. and Richard W. Warren, *Legal News & Business Law News*, National Law Review, (February 22, 2024), Artificial Intelligence in the Workplace: Spotlight on Confidentiality Concerns at https://natlawreview.com/article/artificial-intelligence-workplace-spotlight-confidentiality-concerns/ (last accessed February 13, 2025).



Pooled trusts – Don't get sucked under

by William D. Slicker

Pooled trusts are an investment strategy for people with special needs. Often these people are in guardianships or are the beneficiaries of personal injury settlements. Many people in these categories pool their money together, but each individual is supposed to maintain a separate account within the pooled trust. The pooled trust money is then managed in a way that is supposed to preserve the monies and spend them for the benefit of each beneficiary of the pooled trust.

Unfortunately, there is no uniform oversight of these pooled trusts, and some pooled trust managers have misappropriated funds from their pooled trusts.

In 2007, in Orlando, attorney Linda Littlefield and her husband, Ross Littlefield, created the JNN Special Needs Asset Preservation Pooled Income Trust, which collected approximately $4.7 million from special needs clients. Once the funds were placed into the foundation, the Littlefields transferred the money to other accounts under their control and used the money for their own personal benefit. The Littlefields stole approximately $2.8 million from their clients. Linda Littlefield was disbarred and sentenced to five years in federal prison. Her husband was sentenced to four years in federal prison.[1]

More recently, multiple people started complaining that the money of a special needs family member was missing from the Center for Special Needs Trust Administration, Inc., headquartered in St. Petersburg, Florida. It appeared that the manager of the pooled trust, Leo Govoni, had loaned to his companies over $100 million, which was about half of the money in the pooled trust.[2] As a result of the multiple claims against it, the Center for Special Needs Trust Administration, Inc., filed for Chapter 11 bankruptcy on February 9, 2024.[3] Govoni was subsequently indicted by the U.S. Trustee in Tampa for a fraud scheme that involved stealing millions from people with special needs.[4] The case is set for a January 2026 trial.[5]

These and other instances of misappropriation of funds have raised concern about the lack of oversight of pooled trusts.

At the national level, the Alliance of Pooled Trusts (aptrusts.org) has been formed to try to address the potential abuses of pooled trusts, oversight of pooled trusts, and legislation of pooled trusts.

The Florida Bar's Elder Law Section has produced a white paper regarding pooled trusts. The Elder Law Section is looking into proposed legislation that would require a central registry for pooled trusts and state funding for independent audits of pooled trusts.

At the Florida judicial level, Judges Pamela Campbell and Sherwood Coleman have created a checklist order for pooled trusts. This order is a list of information about a pooled trust that a petitioner must provide to the judge regarding a proposed pooled trust prior to the judge granting a petition for the court to place any money into the pooled trust. That checklist reads as follows:

Prior to the Court considering the Petition for Authorization to Establish a Special Needs Pooled Trust, please provide the following information:

1. How long has the company been in operation? Are there any relationships between the guardian, the guardian's attorney, and the pooled trust company that could be perceived as a conflict of interest?
2. How are the trustee fees calculated and assessed, and how often are they paid?
3. Does the company have errors and omissions insurance? Who is the carrier and what is the value of the policy, and who is covered?
4. Is there any insurance coverage for theft of any funds under management by the company?
5. Does the company have independent audits performed and how frequently?
6. Can the company confirm that all investments are in FDIC or SIPC insured products?
7. Does the Company provide annual or more frequent accountancy of each individual trust managed by the Company?
8. Does the Company have a Board of Directors, who meet regularly, and review the financial reports?
9. Are all the Company's required tax filings current?
10. Does the Company require background checks on em ployees who handle finances?
11. Has the Company gone through any kind of adverse audit by any regulatory agency, i.e., DFC, IRS, etc., if so, please describe and state whether the audit is complete, and the results of such audit.

Once this information is provided, the Court can consider the Petition.

It is anticipated that other judges will soon have similar requirements. Accordingly, the days of asking the court for permission to put a client's funds into a pooled trust being automatically granted are over. In the future, counsel should be prepared to ask questions and get information from the proposed pooled trust in order to get a judge to approve placing client funds into a pooled trust.



William D. Slicker, Esq., designed his practice to meet the needs of a person when he or she most needs an attorney: bankruptcy, family law (divorce and paternity), wills, estates, real estate, and business law.

Note: Some of the information in this article came from a webinar for guardians presented by attorney Travis Finchum and Judge Pamela Campbell.

Endnotes

1 US Attorney's Office Middle District of Florida Disbarred Attorney and Her Ex Husband Sentenced to Prison for Stealing $2.8 million from clients Oct. 18, 2013, https://www.justice.gov/usao-mdfl/pr/disbarred-attorney-and-her-ex-husband-sentenced-prison-stealing-28-million-clients.

2 Muller, Brittany, St. Pete non-profit missing $100M to shut down permanently amid FBI Investigation, News Channel 8, Oct. 28, 2024, https://www.wfla.com/8-on-your-side/st-pete-non-profit-missing-100m-to-shut-down-permanently-amid-fbi-investigation/.

3 Middle District of Florida Case 24-00676.

4 Florida Non-Profit Founder and Accountant Charged with Conspiracy to Commit Wire and Mail Fraud, Office of Public Affairs (June 23, 2025) https://www.justice.gov/opa/pr/florida-nonprofit-founder-and-accountant-charged-stealing-over-100m-special-needs-victims.

5 *United States v. Govoni*, Case No. 8:25-cr-299-VMC-HNA (Aug. 15, 2025) https://www.justice.gov/usao-mdfl/Govoni.

From the Joint Task Force for the Elderly & Disabled: Help build a database of Medicaid application problems

Elder law practitioners assisting their clients with Medicaid qualification have reported ongoing challenges in the Medicaid application process that arise in many different situations. As a result, the Joint Public Policy Task Force for the Elderly & Disabled (comprising both ELS and AFELA leadership) has initiated dialogue with the Florida Department of Elder Affairs and the Florida Department of Children & Families. A recent meeting arranged by task force lobbyists Brian Jogerst and Greg Black was held in Tallahassee with representatives of both DOEA and DCF, attended by task force members Emma Hemness, David Jacoby, Mike Jorgensen, and volunteer Angela Warren. This meeting was similar to prior meetings wherein the two departments requested examples of the issues we are experiencing. The task force believes we need to be prepared at all times to provide specific instances of any breakdowns in the application process.

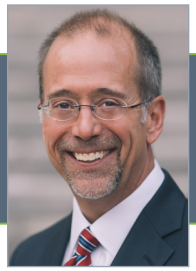
In a continued effort to monitor and track ongoing challenges encountered in Medicaid case matters, we require your assistance in building a database of specific examples. Task force members Britton Swank and Jason Waddell have created the Medicaid Application Problems – Tracking Sheet. An interactive form is available to complete online. Please share this form with your staff members and encourage them to record issues encountered in the Medicaid application process as they occur. Once you or your staff members submit the form, it will be sent to the task force's database.

Pssst ... Don't forget to use the Medicaid Tracker to report issues with the Medicaid application process. Use the link or the QR code on this page to access it.

When we see a trend developing, we can raise the issue. This effort will be successful only if everyone participates. This information will enable the task force to continue meaningful dialogue with DOEA and DCF as we work toward solutions to these challenges, assisting both your practice and the clients for whom you advocate.

Access the online form by clicking the link or the QR code:

https://bit.ly/medicaid-tracking



Capitol Update

by Brian Jogerst

Getting ready for Session 2026

The 2025 Legislative Session went into overtime, largely due to differences over the state budget. While much too early to know, some are already predicting that a contentious and overtime session may be in store for 2026 due to the budget and potential differences in property tax proposals. Adding to this uncertainty, state economists have cautioned that revenues will begin to level off in the next few years—not a reduction but a potential levelling of revenue growth.

New leaders designated

In early October, the House Republicans formally designated Representative Sam Garrison (R-Clay County) as the speaker of the House for the 2026–2028 term. A week later, the Senate formally designated Senator Jim Boyd (R-Manatee County) as the Senate president for the 2026–2028 term. Elder Law has worked closely with both leaders. Updates on their priority issues for their respective tenures will be provided in future updates.

Key issues for 2026

Governor DeSantis has expressed his desire to greatly eliminate property taxes, posting on X, "Home ownership should mean you fully own your home, not be forced to pay rent to the government in the form of property taxes."

While not specifically an Elder Law issue, reduction or elimination of property taxes will be a central debate during the upcoming session and may cast a shadow over all other legislative proposals. Any changes to the property taxes must be approved by the voters through constitutional amendments (requires 60% approval by the voters).

The House released seven proposed constitutional amendments for consideration during the 2026 Session. The governor quickly criticized the House for filing too many proposals. The House defended their plan as voter choice with the governor dismissing it as "milquetoast." The governor will unveil his final plan soon, setting up a major 2026 legislative showdown. For a summary of the House proposals, visit https://bit.ly/fla-tax.

Elder Law issues

At this writing, only 316 bills have been filed in the House and Senate, and in a typical year, more than 2,000 bills are filed. The following is an overview of key issues that Elder Law is reviewing:

Patient Directed Medical Orders – For the second session, Senator Ana Maria Rodriguez (R-Miami-Dade, Monroe counties) filed Senate Bill 312, which is designed to address patient-directed medical orders, including telehealth provisions and requirements for withholding or withdrawing life-prolonging procedures. The Senate bill did not receive a committee hearing in the last session, and thus far no House bill has been filed—although a House bill is expected to be filed prior to the 2026 Session.

Virtual Currency Kiosk Businesses/ Crypto ATMs – Another bill back for a second session, albeit with a different Senate sponsor, is Senate Bill 198 by Senator Daryl Rouson (D-Hillsborough County). In 2025, Elder Law was concerned that "scammers" are using bitcoin ATMs to steal money—especially targeting seniors and vulnerable adults who are depositing large sums of money into the unregulated crypto ATMs without any proof that the deposit was made or any daily limit on the amount deposited. Elder Law is actively reviewing the legislation for the 2026 Session, and a House companion bill is expected to be filed as well.

Recovery of Damages for Medical Negligence Resulting in Death – House Bill 6017 was adopted by the 2025 Legislature but was vetoed by Governor DeSantis. The bill expanded the application of the Florida Wrongful Death Act by repealing exceptions that prohibit certain parents and children of a deceased patient who dies due to medical negligence from recovering noneconomic damages. In addition, if a wrongful death occurred because of medical negligence, a decedent's adult children may recover noneconomic damages if there is no surviving spouse and provides that the parents of an adult decedent may recover noneconomic damages if there is no surviving spouse or surviving minor or adult children.

In 2025, the Senate defeated an amendment—by one vote—to place caps on the noneconomic damages to address concerns by the health care communities that the bill would lead to increased medical malpractice rates.

In his veto letter, Governor DeSantis stated his concerns with raising medical malpractice rates without caps on non-economic damages.

Representative Dana Trabulsy (R-St. Lucie County) filed the bill again this year (House Bill 6003) without caps, but last year's Senate sponsor, Senator Clay Yarborough (R-Duval County) indicated that he will not file the bill again in 2026. However, a Senate bill is expected to be filed prior to the 2026 Session.

Curators of Estates – Yet another bill from the 2025 Session has been refiled for the 2026 Session. House Bill 131 by Rep. Randy Maggard (R-Pasco County) revises rules for appointing and overseeing curators in estate management, including bond, authority, and reporting requirements. Elder Law had concerns with the bill and is actively reviewing the 2026 legislation.

Public Insurance Adjusters – Senator Colleen Burton (R-Polk County) filed Senate Bill 266, which expands the ability of insureds, including vulnerable adults, to cancel or rescind public adjuster contracts, and clarifies disciplinary guidelines for public adjusters. A House companion bill has yet to be filed.

Important dates

The 2026 Legislative Session is the "early session," meaning it begins on January 13, 2026, and is scheduled to end on Friday, March 13, 2026. The 2027 Session will begin in March 2027 and end in early May 2027. Absent a special session, the Legislature will not be in session for a full year when it adjourns in March 2026.

Your help is STILL needed

As stated in previous articles and discussed at Elder Law meetings, the Legislative Committee reviews legislation and amendments prior to and during session. Amendments can be filed at the last minute requiring a quick and thorough review and modifications.

As such, we need your help.

If you want to participate on a substantive committee or review/comment on the bills that are filed, please contact the leadership of the ELS Legislative Committee:

Kandace Rudd

kandace@mclawgroup.com

Travis Finchum

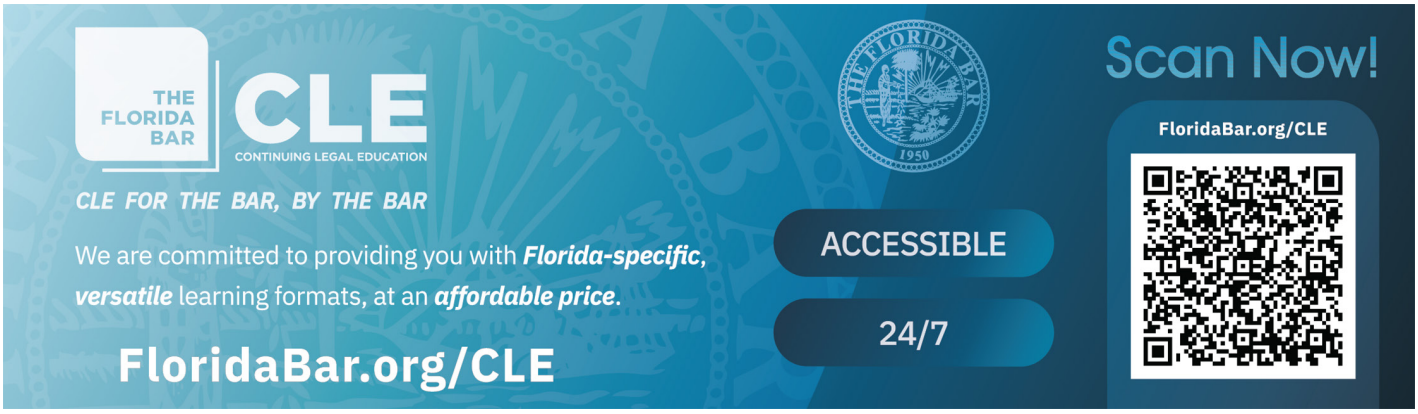
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The Legislative Committee meets bi-weekly during the legislative committee weeks and every Friday at 8:00 a.m. during session to discuss issues reviewed by the ELS substantive committees.

We have enjoyed success on legislative issues by working with legislators and providing feedback to them as well as by testifying at committee hearings. It is imperative that we continue to have thorough and timely responses during the Interim Committee Weeks and Legislative Session as meeting notices leave minimal time to respond. We are grateful for the grass-roots support we have received and for the difference it makes when working with legislators.

You can also help by meeting with your local legislators and being a local resource to them. If you do not know your legislator, we remain willing to facilitate an introduction with the legislator and/or their staff. Continued relationship-building with legislators, the state's policy makers, is a critical component of our advocacy efforts because the local relationships and outreach to legislators from trusted sources helps Elder Law be a trusted voice and improves our advocacy efforts.

Brian Jogerst and Tom Griffin are partners at The Griffin Group, a Tallahassee-based governmental consulting firm with more than 40 years' experience lobbying on health care and related legal issues. The Griffin Group is under contract with the Academy of Florida Elder Law Attorneys and the Elder Law Section of The Florida Bar for lobbying and governmental relations services in the State Capitol.



Committees keep you current on practice issues

Contact the committee chairs to join one (or more) today!

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Call for papers – Florida Bar Journal

Emily Young is the contact person for publications for the Executive Council of the Elder Law Section. Please email eyoung@floridabar.org for information on submitting elder law articles to The Florida Bar Journal for 2025-2026.

A summary of the requirements follows:

- **Articles submitted** for possible publication should be MS Word documents formatted for 8½ x 11 inch paper, double-spaced with one-inch margins. Only completed articles will be considered (no outlines or abstracts).
- **Citations** should be consistent with the Uniform System of Citation. Endnotes must be concise and placed at the end of the article. Excessive endnotes are discouraged.
- **Lead articles** may not be longer than 12 pages, including endnotes. **Review is usually completed in six weeks.**





From reflection to momentum Preparing your elder law practice for 2026 success

by Audrey Ehrhardt



Do you find that every December brings that same tug-of-war between wrapping up the year and wishing there were just a few more weeks left to "catch up"? Most of us can relate to this in our busy practices as we work through winding down the year. But here's a truth most elder law attorneys overlook: the final stretch of the year isn't just about closing files—it's your best chance to design next year's success before it even begins.

If 2025 taught us anything, it's that law firms that plan intentionally don't just stay afloat in a changing world. Instead, they grow with clarity and confidence. The way you manage your law practice systems, your legal team, and your client experience today sets the tone for not only for your day-to-day interactions, but for the entire year ahead. Intention matters. And, armed with that knowledge, before you race into 2026, let's take a deep breath and run an honest check-up on your practice.

1. Audit how your law firm actually runs. As you take a candid look at your practice, start with your systems. In other words, the lifeblood of your operations. Are your workflows powered by clarity or chaos? When was the last time you truly reviewed your technology setup? Are you making your software work for you, or are you still working around it? Imagine walking into January knowing that your tools are streamlined, your automations actually save you time, and every process has a purpose. That's what an intentional system check can do for you since you cannot fix what you don't know needs to be worked on.

2. Review the human side of your practice. Behind every system are people—and the end of the year is the perfect time to check in. Is your team structure still aligned with your goals? Are there roles that need redefining or responsibilities that have crept off course? What are the results of your end-of-the-year performance meetings? Does everyone understand not just what they do, but why they do it? Asking these questions can transform your team from busy to brilliant as well as set the course for the year ahead.

3. Refresh your documents and policies. When was the last time you updated your engagement agreements, internal policies, or even your estate planning and elder law templates? Have changes in the law or client expectations this year made you suspect your documents are outdated? Use this moment to ensure every word reflects your current practice

and professionalism. If you need to, set intentional time to make changes that carry you through 2026. This way you can start 2026 with confidence, knowing your documents protect you, your team, and your clients.

4. Reimagine the client experience. How do clients meet you now? Virtually? In-person? Through an online scheduler? Does their journey feel easy and consistent, or confusing and fragmented? Are your consultations, communications, and follow-ups as polished as your legal work? Do you need to set time here as well to start the year the way you want to? There is no question that when you take the time to craft an experience that mirrors your firm's values, you can make every client feel seen and supported.

5. Protect your calendar, and your bandwidth. Look at your 2025 calendar next. What does it say about your priorities? Did you make space for strategic thinking, team development, or rest? Are you ready to schedule those for 2026 so your year feels balanced, not breathless? Choosing to set your calendar intentionally isn't indulgent, it's leadership in action.

Before you charge into January, take a moment to appreciate how far you've come. What went right this year? What lessons reshaped your approach? Running an elder law firm means guiding families through life's most tender transitions, and you've done it with grace. Celebrate your wins, learn from the rest, and walk into 2026 ready to lead with vision and heart.

At the end of the day, your law practice and 2026 don't have to happen to your firm. You can walk into it with purpose, alignment, and a plan. When you choose to act intentionally and take the time for candid review, you are giving yourself the space to lead, not just react. Because the only thing better than a successful year … is knowing the next one's already set up to run smoother than ever.

Audrey Ehrhardt, Esq.*, *CBC, *builds successful law firms and corporations across the country. A former Florida elder law attorney, she is the founder of Practice42 LLC, a strategic development firm for attorneys. She focuses her time creating solutions in the four major areas of practice development: business strategy, marketing today, building team, and the administrative ecosystem. Join the conversation at www.practice42.com.*





Tips & Tales

by Kara Evans

To trust or not to trust

The tale: Four separate clients come to your office for a second opinion.

Client 1 has a midsize estate and a Florida homestead. She has two adult children who get along well. Each owns their own home and has a well-paying, responsible job. The attorney this client consulted recommended a revocable trust as an estate planning tool.

Client 2 has a modest brokerage account and a small checking account. She does not own any real estate. She has substantial medical debt from years of poor health. The attorney this client consulted recommended a revocable trust as an estate planning tool.

Client 3 has six children, two of whom live in her home along with their young children. One of the children is on Medicaid and is receiving Supplemental Security Income. The six children do not get along, and the client is concerned that the four children who do not live in the home will try to force out the two who do. Furthermore, Client 3 hates her daughter's husband and thinks he is very controlling. She does not want him to get his hands on her money. The attorney this client consulted recommended a revocable trust as an estate planning tool.

Client 4 has an estate of approximately $4 million and also has six children. His children are all responsible individuals and manage money very well. He owns two vacation properties in other states. The attorney this client consulted recommended a revocable trust as an estate planning tool.

The tip: Trusts are incredibly useful estate planning tools. But they are not the only tool in our toolbox. Among the clients described above, which ones would benefit from a trust, and which ones would be better served by another strategy?

Most clients are looking to avoid probate, and they are convinced that using a revocable trust is THE way to do so. In pursuit of probate avoidance, they either ignore or are not informed of the downsides of using a trust. Most are unaware of the ramifications of unpaid creditors. Fla. Stat. § 733.710 sets out the two-year statute of non-claim. This means that a creditor may have up to two years in which to file a claim against a decedent's estate. However, once two years passes, all claims are barred. If an estate is not opened, the creditor, as an interested party, may open the estate. Fla. Stat. § 736.05053 mandates the trustee's duty to pay the expenses and obligations of the settlor's estate. What does this mean for the client who uses a trust to avoid probate? Imagine the client's child distributes the entire trust six months after the client's death. Two months before she died, the client had a small fender-bender in a grocery store parking lot, but was too embarrassed to tell anyone. The person they hit brings suit nine months after the client's death. Their child has now violated his fiduciary duty by not paying the expenses and obligations of the settlor's estate. He can be held personally liable to the extent there were assets in the trust. The probate code, in Fla. Stat. § 733.702, offers a way to limit the presentation of claims to a three-month period through publication and service of a notice to creditors. If you are recommending a trust for probate avoidance, you have an obligation to explain this issue to your client.

In addition to the obligation to the decedent's estate, Fla. Stat. § 736.0813 sets out the trustee's duty to inform and account to the beneficiaries. The process of notification, accounting, and distribution of trust assets rivals that of probate. Clients are misled into believing that their child or children can simply distribute the trust assets after their death. Your client deserves to be informed of the pitfalls of using a trust, including understanding the obligations and liability their trustee may face.

If probate avoidance is the only goal, there are other ways to avoid probate. Simply naming beneficiaries on IRAs, brokerage accounts, life insurance policies, and bank accounts avoids probate without the need for a trust. If a client wishes to distribute Florida real property to their heirs, an enhanced life estate deed, a/k/a ladybird deed, is truly the simplest way. In an enhanced life estate deed, the grantor gives the property to themselves for the period of their lifetime while reserving the right to do anything they wish with the property, including selling the property. Only upon the death of the grantor will the persons named to receive the remainder get an interest in the property. This deed bypasses the dreadful probate that clients are so eager to avoid.

While none of the clients requesting a second opinion need the extensive tax planning or asset protection that an irrevocable trust might provide, they still might need the protection a revocable trust can provide. And I do not mean asset protection, as a revocable does not provide asset protection (see Fla. Stat. § 736.0505(1)(a)). I do mean the ability to control what happens to the client's assets after death. This includes the ability to protect a client's beneficiary from exploitation and abuse or the ability to protect a beneficiary's public benefit eligibility. In a trust, your client can direct that the assets be held and managed for the benefit of another individual or to protect a child from a controlling spouse. These are powerful tools.

For example, an enhanced life estate deed is only beneficial if the intended beneficiaries can work together to own or sell the property. If a client has multiple beneficiaries who cannot even be in the same room without a fight breaking out, an enhanced life estate deed can be a path to litigation. Under those conditions, a trust can be the right answer. The trust has a trustee who will have the authority to manage and/or sell the property without the issues multiple beneficiaries with competing interests can bring. Naming beneficiaries on assets also means that the beneficiaries receive the assets with no strings attached. This may put the assets at risk from all the dangers associated with ownership. Children receiving public benefits may lose those benefits. Greedy spouses may access the funds meant for a child. Naïve individuals may be subject to financial exploitation.

In light of this information, what do the clients described above actually need?

Client 1 needs an enhanced life estate deed and counseling on the proper use of beneficiary designations.

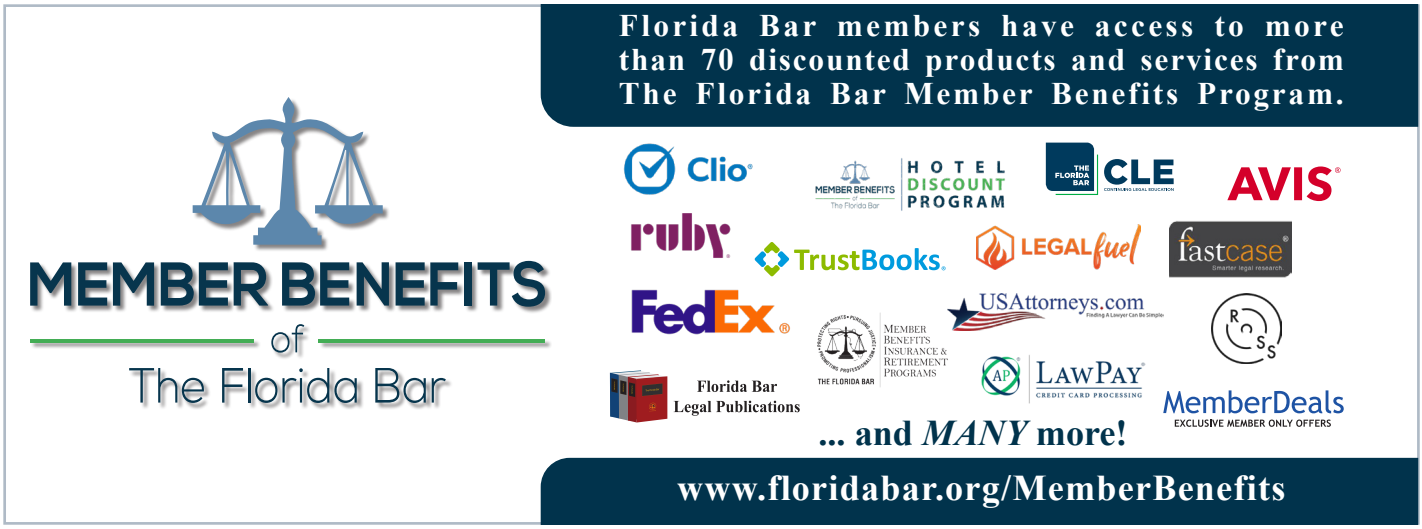
Client 2 should absolutely NOT have a trust. A trust will put at risk everything she is trying to pass to her children.

Client 3 embodies all the reasons a client would need a trust: squabbling siblings, greedy spouses, and a child receiving public benefits.

Client 4 is a bit trickier. It is only the out-of-state properties that call for a trust to avoid probate. He should create a trust, but he should fund it only with the out-of-state properties and enough money to cover the expenses until the properties can be distributed or sold. The rest of his assets should pass by beneficiary designation. Remember, just because a client has a trust does not mean everything the client owns should be in that trust.

It goes without saying that each of these clients also has a durable power of attorney, a health care surrogate, and a living will, and every client needs a last will and testament to catch anything that falls through the cracks and to handle any entitlements that arise after death. But each client deserves a thorough explanation of the benefits and the pitfalls of creating a trust. Every attorney needs to use all the estate planning tools in their toolbox.

Kara Evans, Esq., is a sole practitioner with offices located in Tampa, Lutz, and Spring Hill, Florida. She is board certified in elder law and concentrates her practice in elder law, wills, trusts, and estates.





Tax Tips

by Michael A. Lampert

Esoteric tax and life insurance rules for elder law practitioners

Introduction

Elder law attorneys often focus on core areas like Medicaid and other government benefit planning and eligibility, guardianships (which I do not handle), and general estate planning and administration. Tax issues often are limited to taxation of trusts, estate tax exclusions, basis step-up and the like, along with some more common income tax issues. Yet, many clients—particularly those with higher net worth, complex assets, or aging financial products—present scenarios where lesser-known federal tax provisions can produce significant advantages or pitfalls. This article explores some of these less common, more esoteric tax provisions that elder law practitioners might (rarely) encounter. Also included is a section on tax issues related to existing life insurance policies that may no longer serve their intended purpose.

Not as common rules

A number of special rules and deductions will become even less common moving forward. Why? Because with the higher estate tax exemption amount at $15 million in 2026 (indexed for inflation), fewer clients will have an estate tax at their death. Some of the not as common, esoteric rules include:

IRC § 2032A – Special-use valuation (farm or closely held business real property). A special-use valuation election allows real property used in farming or a closely held business to be valued for estate tax purposes at its use value rather than its highest market value. Requirements include ownership and use tests, and heirs must continue the qualified use for 10 years or risk recapture. (IRC § 2032A(b),(c)).

Practice tip: For elder clients with agriculture or small-business holdings, pre-death compliance and heir continuity planning are essential if this special rule is used. Failure to do so can result in significant adverse consequences.

IRC § 691(c) – Income in respect of a decedent (IRD) deduction. Income earned but not received before death—such as retirement distributions, deferred compensation, or installment payments—may qualify as IRD. Beneficiaries reporting this income can deduct the portion of estate tax attributable to it under § 691(c).

Practice tip: When an estate includes retirement assets or deferred income, coordinate estate and income tax filings to ensure the § 691(c) deduction is not overlooked. Otherwise, there may be an estate tax on the value of the benefits, yet no corresponding income tax deduction taken.

IRC § 2053 – Deductibility of administration expenses and claims. Valid, enforceable claims and administration expenses reduce the taxable estate. Proper documentation is critical; personal expenses or post-death obligations without consideration are not deductible. (IRC § 2053(a),(b)).

Practice tip: Review long-term care liabilities, litigation expenses, or contractual debts for § 2053 deductibility.

IRC § 6166 – Estate tax deferral for closely held business interests. This provision allows estates with closely held business interests to defer estate tax payments over 14 years and nine months. It applies when such interests comprise at least 35% of the gross estate's value. (IRC § 6166(a)).

Practice tip: For elder clients owning active businesses, confirm eligibility and make the election on a timely filed Form 706.

IRC § 1014(e) – The one-year gift-and-die rule. If a donor gifts appreciated property, the donee dies within one year, and the property returns to the donor, no step-up in basis occurs. (IRC § 1014(e)). This is true even if there is no estate tax due nor an estate tax return filing required.

Practice tip: Avoid "deathbed gifting" basis step-up at death strategies that might not work under § 1014(e). However, if the donee lives for more than one year or if the gift "returns" to another family member, § 1014(e) is avoided.

IRC § 2503(e) & § 129 – Direct payments for tuition, medical expenses, and certain employer-provided dependent care. Payments made directly to medical or educational institutions are excluded from gift-tax treatment under § 2503(e). Employer-provided dependent-care benefits for adult dependents may also qualify for exclusion under § 129, allowing the employee recipient to avoid paying income tax on the payments.

Practice tip: For elder clients supporting dependents, direct payments can preserve annual gift-tax exclusions and reduce adjusted gross income.

Why did I include this in the not as common section? While wasting the lifetime gift exemption amount is rarely a good idea, for most of our clients the annual gifting exclusion and the direct payments for tuition and medical expenses will not add up to enough that it will save an estate tax. Most clients' estates will never be that large. However, who knows what the law will be in the future, or for a certainty, the size of the client's estate at their death? Why waste the exemption?

Practice tip: The § 129 exclusion can even be helpful in providing a benefit to the elder law attorney's staff, while still being deductible to the paying attorney.

IRC § 642(c) & § 663(b) – Charitable deductions and the 65-day rule. Trusts and estates may deduct charitable distributions under § 642(c) and may treat distributions made within 65 days of year-end as occurring in the prior tax year under I.R.R. 1663(b)-1.

Practice tip: Timing charitable gifts and distributions can reduce overall income-tax liability for estates and trusts. This allows for some "whoops" planning.

Advanced estate-tax tools – Crummey powers and GST inclusion. Crummey withdrawal powers and generation skipping trust (GST) inclusion ratios often appear in dynasty-trust multigenerational planning. Even elder law attorneys should note these when trusts are being funded late in life or for multigenerational transfers.

Practice tip: Always confirm the inclusion ratio and proper Crummey notice when Crummey powers are used. Remember that the Crummey powers are great for creating a current gift for gift-tax annual exclusion purposes. They do not necessarily also avoid GST exemption allocations.

706-GST-T generation-skipping transfer tax return for terminations. This topic could be a standalone article or presentation. The 706-GST-T form is used to compute and report any tax due from certain trust terminations that are subject to the generation skipping transfer (GST) tax. This form is not one that even tax attorneys regularly encounter. Unfortunately, it is also a form that otherwise quality tax preparers might miss, resulting in penalties on the taxpayer client (which the professional often ends up paying).

A taxable termination is the conclusion of an interest held in trust, unless (1) immediately after the termination, a non-skip person has an interest in the property, or (2) at no time after the termination may a distribution be made from the trust to a skip person. There are numerous exceptions and special rules. The issue is often apparent early on in an estate administration. Where I have seen it arise in my tax controversy practice is in a long-established trust where, many years after establishment, a termination occurs. The tax preparer may miss it, simply (and incorrectly) preparing the return as in prior, correct years, and not realizing that the 706-GST-T form is required.

Planning for existing life insurance policies: Tax and strategic options

As clients age, life insurance policies—both term and permanent (whole life or universal life)—may become unnecessary, too expensive, or near expiration. While the policy can be lapsed, often there are viable choices. In addition, sometimes the client would like to access the policy's cash value or even a portion of the death benefits. These policies can carry hidden tax and planning opportunities and traps.

Term life policies conversion or sale: A term policy nearing expiration may have conversion rights to permanent insurance. Conversion can be especially useful if the client's health has declined and estate-liquidity planning is needed.

Practice tip: As a general practice, ask about conversion privileges when the client has a term life insurance policy. The client may need to check with the insurance company or their insurance agent.

Life settlement option: The policyholder may sell the term policy (if convertible or with life-settlement value) to a third party. Sometimes even a term policy without a conversion provision can be sold. Under Rev. Rul. 2009-13 and IRS guidance (Notice 2009-48) (dealing with employer-owned life insurance), the gain on sale equals the proceeds received minus the adjusted basis (premiums paid minus any cost of insurance previously deducted).

Tax treatment: Proceeds above basis from the sale of a life insurance policy during an individual's lifetime are taxable as capital gain. If the policy is simply allowed to lapse, there is generally no tax event unless there is outstanding debt (policy loans) forgiven on the policy. This is not common for a term policy.

Practice tip: Remember to ask if the client has any loans on the policy or has previously withdrawn funds from the policy. Again, this is not common on a term policy.

Permanent life policies (whole life, universal, variable universal) cash surrender: When a client surrenders a policy for its cash value, gain is taxable as ordinary income to the extent proceeds exceed basis (total premiums paid less loans and other distributions on the policy). (IRC § 72(e)).

Policy loans: Outstanding loans reduce the cash value received but can trigger unexpected taxable gain if the policy lapses or is surrendered with debt outstanding.

Practice tip: As noted above, ask about policy loans, withdrawals, changes in the death benefit, etc.

Section 1035 Exchanges: Policies may be exchanged tax-free for another life or annuity contract under § 1035. This can reposition coverage or defer tax recognition.

Practice tip: IRC § 1035 exchanges can move old, expensive policies into new,

continued, next page

lower-cost annuities without immediate taxation.

Life-settlement transactions (permanent or convertible term) sale of policy: The sale to a third-party buyer results in gain measured as the amount realized minus adjusted basis. (IRC § 1001(a)).

Tax treatment: The portion up to the policy's cash value is ordinary income; any excess is capital gain. (Rev. Rul. 2020-5).

Practice tip: Some elder law attorneys use irrevocable assignments of life insurance policies to a provider of services under a personal services contract. This is essentially a sale of the policy to the service provider.

Reporting: Commercial buyers must issue Form 1099-LS to the seller and the IRS.

Gift or donation of life-insurance policies. Donating a policy to a qualified charity yields a charitable deduction equal to the lesser of the policy's fair market value or the donor's basis. (Reg. § 1.170A-4(a)(1)). If a policy is gifted to a family member, the transfer is a completed gift subject to gift-tax rules, with the carryover basis transferring to the recipient.

Medicaid and elder care considerations countable asset: The cash value of permanent insurance may be countable (with some exceptions) for Medicaid eligibility unless ownership is properly transferred or reduced below exemption thresholds.

Irrevocable life-insurance trust (ILIT): Existing policies may be repositioned into an ILIT to remove them from the taxable estate (subject to a three-year look-back period under § 2035(a)/2035(d) (referencing IRC § 2042) procedures of life insurance. Of course, Medicaid look-back periods will also need to be considered.

What about buying the life insurance policy (either by a true third party or by a family member—not the attorney)? The tax consequences to the buyer of an existing life insurance can be significant. For example, suppose the client has a $1 million convertible term life insurance policy. The client is going to let the policy lapse. (Perhaps it is too expensive. Perhaps the client has no spouse or child.) Another family member offers to pay the client $10,000 and pay the future premiums if they are listed as the policy's beneficiary.

To begin, this is $10,000 of gross income to your client as a transfer for valuable consideration. You take the gross amount and subtract your client's basis in the policy. Usually, the basis is the total of all of the premiums paid. Therefore, there is a good chance that the client has no gain. I.R.R. 1.101-1(f)(5). If there was not enough basis, the gain would normally be long-term capital gain.

How is the purchaser of the policy taxed if the client dies within the term of the policy? While normally the death benefits are tax free, IRC § 101(a)(1), here the policy was purchased for valuable consideration. IRC § 101(a)(2). The proceeds, less the amount the buyer paid for the policy plus the premium paid by the buyer, is ordinary income, not capital gain. Rev. Rul. 2009-14 (addressing an employment context).

What if your client outlives the policy? Most likely the buyer would not have a taxable loss nor deduction for premiums paid. No sale. No exchange. All that happened is that the mortality loss occurred. Rev. Rule 56-634.

Practice tip: There are some exceptions to the transfer for value rule, generally for transfers to a partner or to a partnership or corporation for which the insured is a partner, shareholder, or officer, as applicable. IRC § 101-(a)(2)(B).

Special rules for a terminally ill or chronically ill insured. IRC § 101(g) addresses treatment of certain accelerated death benefits. This allows amounts received by a terminally ill or chronically ill person to be treated as if the insured person had died. This is true for a sale to a viatical settlement provider, as well as most payments by the life insurance company. This can allow benefits to be paid to the client policy owner income tax free, thereby enhancing the client's quality of life.

Practice tip: In some cases, the terminal client wants to take the current available policy benefits to pay existing debts. Review whether these debts would be uncollectable at the client's death (and how collectible they are during the client's life), when the death benefits could be paid to the surviving spouse or other family member outside the reach of the policy owner's creditors.

Practice checklist for life insurance review

1. Identify type: term, whole, universal, or variable.
2. Obtain an in-force illustration for each policy showing cash value, loan balance, and premium projections. This can also assist the client in making business decisions regarding the policies.
3. Evaluate alternatives: maintain, reduce face value, surrender, use lifetime benefits if available, sell, exchange, or donate.
4. Quantify tax impact of each choice (basis vs. surrender value vs. sale price).
5. Check for Medicaid/estate inclusion or transfer penalties.
6. Address need for policy relative to overall situation. Estate taxes, liquidity, funds for special needs family member, resources for surviving spouse due to, for example, loss of pension income.
7. Document rationale and when appropriate, address client in writing.

Note: ChatGPT assisted with the drafting of this article. I personally checked all of the citations.

***Michael A. Lampert, Es**q., is a board certified tax lawyer and past chair of The Florida Bar Tax Section. He regularly handles federal and state tax controversy matters, as well as exempt organizations and estate planning and administration.*



Case Law

by Elizabeth J. Maykut

Summary of selected case law

by Elizabeth J. Maykut

Widow holding a life estate in house was not entitled to proceeds from sale of house and was not entitled to convey house absent a Lady Bird Deed

Verano v. Verano, 415 So.3d 1100 (Fla. 4th DCA June 11, 2025)

Issue: Whether a widow who sold the house in which she had a life estate interest was entitled to the proceeds from its sale and whether she had authority to sell the house as trustee of a trust that held a one-half remainder interest in house.

Answer: No, the widow had no right to the proceeds as she did not have fee simple interest and she had no right to sell the house as trustee for the trust that held a one-half remainder interest because the sale of the house presented a conflict of interest and was therefore voidable by the trust's beneficiary.

Before he died, the decedent and his wife (the widow) signed a deed conveying to themselves a life estate in their homestead with a one-half interest remainder to the widow's children and a one-half interest remainder to a trust for the decedent's son, Vincent (the trust). The deed did not provide the widow with authority to sell the home. The trust initially named the decedent's other son, Steven, as trustee, but a later amendment named the decedent as trustee and the widow as successor trustee.

After the decedent's death, the widow signed a contract to sell the homestead, but Vincent opposed the sale and filed suit. That suit was settled with an agreement to sell the house with the widow receiving 50% of the proceeds, the trust receiving 22%, and 28% of the proceeds deposited into escrow. The widow filed a declaratory judgment action seeking a determination she was entitled to the funds held in escrow.

Steven, who alleged he was still trustee, counterclaimed arguing the widow did not have a right to sell the property and had no interest in the proceeds. The widow responded that she was entitled to the proceeds because her life estate had a value and she had a right to sell the house as trustee of the trust and because her children had given her consent.

The trial court rejected the widow's argument that her life estate had value in these circumstances and concluded the trust was entitled to one-half the proceeds, including the 28% in escrow. It also held the widow had no right to sell the house because she was either not the trustee or, if she was, had a conflict of interest.

The Fourth District agreed with the trial court, finding the widow had no fee simple interest in the property and that the property's deed, unlike a lady bird deed, did not reserve unto the widow the right to sell the home. Further, a life tenant can only sell what she owns and cannot convey property without joinder of remaindermen. Even if she was trustee of the trust, she lacked authority to bind the trust because the sale presented a conflict of interest, which made it voidable under § 736.0802, Fla. Stat. Thus, the trust was entitled to one-half of the sales proceeds.

Practice tip: If you're handling a settlement, deal with the hard questions during that process rather than putting funds into escrow so that parties can fight over them later. Further, always clarify your client's wishes when creating a life estate interest and analyze each potential outcome before advising your client.

Florida court had jurisdiction and venue over probate case where decedent, a former New York resident and current resident of Jamaica, owned Florida real property.

Markes v. Markes, 412 So.3d 767 (4th DCA April 30, 2025)

Issue: Whether the decedent, a resident of Jamaica, was domiciled in New York (his former place of residence) or in Florida (where he had stated an intention to reside) and whether the court had jurisdiction and venue over the decedent's Florida real property or whether the case should be transferred to New York.

Answer: The decedent was a domiciliary of Jamaica at death, not New York or Florida, but the Florida court had jurisdiction over the distribution of the decedent's Florida property and the venue was proper in the county where it was located, but the Florida court had no authority to "transfer" probate case to New York.

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The decedent was from Jamaica, but had resided in New York City (NYC) for many years. The decedent frequented Florida on vacation and owned 10 Florida real properties. The decedent had made known that he planned to retire to Florida or Jamaica. When the decedent became incapacitated, a guardian of the property was appointed for him by a NYC court. In 2020, the decedent moved back to Jamaica and resided there until his death in 2023.

Upon the decedent's death, appellants initiated probate proceedings in Florida alleging the decedent was domiciled in Florida. The appellants were appointed as co-personal representatives of the decedent's estate. The appellee, who was disinherited by the decedent's will, intervened, arguing that the decedent's will should be revoked and proceedings should be transferred to New York because the decedent was domiciled in New York at death, as evidenced by the NYC guardianship.

The trial court found the decedent lived in Jamaica when he died and Florida was not the decedent's domicile at death as he had not visited in recent years. Finding that the decedent's last domicile in the United States was in New York, the trial court ordered that the probate proceeding be transferred to New York.

The Fourth District found competent, substantial evidence to support the factual finding that the decedent was not domiciled in Florida, but it disagreed with the lower court's interpretation of the Florida Probate Code, holding:

1. A Florida court has jurisdiction over a decedent's estate if the decedent owned property in Florida at death (even if the decedent was not domiciled in Florida at death). However, such jurisdiction is not necessarily exclusive; both states may have jurisdiction if a decedent died a domiciliary of another state, but owned personal property in Florida.
2. The trial court had venue in this case because, for a non-Florida domiciliary, venue is proper in any county where the decedent's property is located. § 733.101, Fla. Stat. Guardianship over the decedent in NYC did not control the issue of domicile.
3. Florida has authority to determine the validity of any will executed by a decedent, even if he was not domiciled in Florida. § 732.502(2), Fla. Stat.
4. The trial court had no authority to transfer this proceeding to New York as no authority exists under Florida law for such a transfer.

Practice tip: Analyze the issue of jurisdiction over a probate case separately from the question of venue for a particular case, keeping in mind that more than one court may have jurisdiction. Gather all the facts related to the decedent's current residence at time of death as well as his intentions before coming to a conclusion as to the decedent's domicile.

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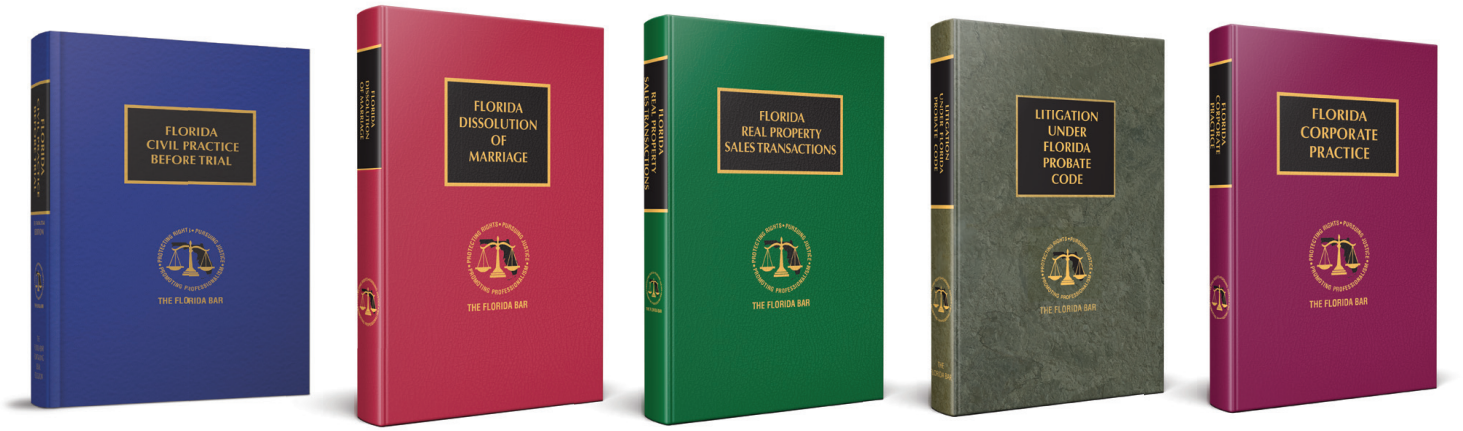
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