

Advising *the* Older Client



The older adult today is faced with many decisions.

- Where will I live?
- Will I need assistance?
- Do I have enough money to maintain a comfortable lifestyle?
- Should I ask someone to look after my financial affairs?
- Who will make health care decisions when I can't?

Some seniors are interested in putting their affairs in order and having the planning tools in place for the time they may no longer be able to manage. This should be encouraged. Too many older adults avoid making crucial decisions; that can result in confusion and misunderstanding, especially when a crisis arises.

It is a good idea to explore the wise use of planning tools and consider the potential for misuse and abuse of those tools.

Too often, seniors seek advice from misinformed (but well-meaning) friends and family. Professionals, including health care professionals, social workers, and even some legal professionals, may not

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always have all the current and correct information about some of the issues seniors need to deal with.

It is important that seniors seek advice and guidance from financial advisors, Notaries, lawyers, and health care professionals that are knowledgeable about current legislation and current policies and issues.

Here are some of the legal issues for seniors to consider.

1. Enduring Power of Attorney or Representation Agreement?

There is still confusion about the enduring Power of Attorney and the Representation Agreement. Both are “legal”; many seniors consider having both documents in place to ensure that financial and legal matters and health and personal care decisions are dealt with appropriately when the senior is no longer able to manage his or her affairs.

Because the Power of Attorney can be easily misused, it is vital that the person you appoint as your attorney is someone you trust. The Representation Agreement has a few more safeguards in place: The senior can state when the powers in the Agreement begin and can also appoint a “monitor” to oversee the work of the chosen representative.

2. Are Living Wills Legal?

Many seniors still consider making “Living Wills,” even though those documents have no legal authority. Many people use them as a way to put their end-of-life decision-making in writing. As legal and medical professionals become more comfortable with patients exercising their rights, these Living Wills may be honoured. If a senior decides to make a Living Will, make sure that his or her family and doctor are made aware of the existence of this document.

3. Health Care Directives

Many people, whether old or young, have discussed their wishes about “end of life decisions” and “heroic measures” with their physicians. These directions can be entered into a patient’s medical file. It is important for seniors to discuss these instructions, not only with their physician but with their family members, to avoid any potential conflict should a decision be required.

Many health care facilities now require a senior or family member to complete a health care directive as part of an admission protocol. This informs the institution about the wishes of the patient. A number of Health Authorities are developing their own policies and protocols around advance planning for health care decisions and choices.

Because a number of tools are available to seniors who are considering putting plans in place, it is important to seek advice from a knowledgeable professional before deciding which tool to use.

4. Health Care Consent Act

This Act confirms the right of all adults over age 19 to make their own health care decisions. If the adult cannot make a health care decision, the Act formally recognizes the role of family and friends in supporting the adult who may need assistance with health care decision-making.

If there is no one to make this decision—and the adult does not have a Representation Agreement—the Act outlines the steps the health care provider must follow.

If you have no one in your life who could make these decisions or you **don't** want your family to make these decisions, it may be important for you to consider making a Representation Agreement.

5. Care Agreements

Seniors often make Care Agreements to have someone look after them when they no longer can manage alone. This may mean that someone moves into the senior's home to provide this care and support. The Care Agreement may involve the transfer of title to a house in exchange for a promise of care and support.

This kind of agreement must be in writing to be legally binding. It is difficult to anticipate all future possibilities so there are many things to consider before entering into a Care Agreement. Misunderstanding about what the caregiver promised and what

the senior expected can trigger problems. Both the caregiver and the senior can be protected by a properly drafted Care Agreement. Seek professional advice before entering into a Care Agreement!

6. Joint Accounts and Joint Ownership

Many seniors transfer bank accounts into joint names or transfer properties as a way of avoiding probate fees or to get assistance in managing their finances. This often involves family members

taking over the senior's banking and bill payments. The potential for financial abuse is great, so seniors need to consider these transactions very carefully and get proper legal advice before they proceed.

7. Assisted Living

Assisted living is a housing option for seniors who wish to continue to live independently. Whether the residence is funded by the provincial government or privately owned, the individual is required to sign a contract.

The senior may think he or she is in a rental situation that includes food and other services. The individual may not be covered, however, by any landlord-tenant legislation or licensing and will be asked to sign a complicated contract. Services and costs are not fixed and may be increased (or decreased).

Seniors may also be required to leave the assisted living premises if their health deteriorates and they are no longer able to care for themselves. It is important that seniors know what they are signing and to have the contract reviewed by a legal professional.

Seniors are individuals with many different wants and needs. It is important that the planning tools they use and the decisions they make about housing and health issues are honoured and that they reflect the seniors' own values and beliefs. There is no one-size-fits-all model. Professionals and service providers must become familiar with legislation, policies, and the current best practices so they can help seniors make wise and informed choices.

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For further information, see "Legal Information for Seniors: A Training Manual," at <http://www.bcceas.ca/lifs.shtml>.

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