LAW OFFICE OF

KEITH R. MILES, LLC

2022-2023 Firm Brochure

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FIRM INTRODUCTION

The Law Office of Keith R. Miles, LLC works with its clients to find the best Estate Planning and Elder Law solutions for each client's unique situation and goals.

The Law Office of Keith R. Miles, LLC was founded in 2008 and has a focus on holistic estate and elder law planning for individuals and both traditional and "blended" families.

Estate Planning should be about much more than words on a document. It is about the hopes, wishes and desires of the individual who seeks to pass along property and/or protect important individuals in their lives such as children or a surviving spouse. We recognize the uniqueness of this endeavor and as such design customized estate planning solutions for each client.

The firm is particularly focused on Elder Law issues such as Long-Term Care Planning, Medicaid Planning and Special Needs Planning. In addition, there is a focus on "crisis planning" for those with a Terminal Illness or those who need to prepare in the short-term to qualify for benefits to due health or aging related issues.

The Law Office of Keith R. Miles, LLC operates throughout Georgia and North Carolina.

MEET KEITH R. MILES

Mr. Miles is originally from New York (Long Island). He arrived in Georgia in 2004 to attend the Full-Time MBA program at The University of Georgia. After graduating and started working in Atlanta, he was married in 2006. Mr. Miles opened an office in Gwinnett County and handled IRS tax controversies for clients.

At the end of 2008, his wife was diagnosed with pancreatic cancer. Over the next six months, he had to learn about estate planning to plan her estate with various types of trusts from revocable trusts to special needs. She passed away in June 2009. After that, Mr. Miles shifted his law practice focus from tax law to estate planning.

Over time Mr. Miles expanded his estate planning practice beyond wills, revocable living trusts, advance directives for healthcare and powers of attorney. The cases that his clients were bringing to the practice exposed more of the need to plan for long-term care expenses and the special rules to qualify for government benefits such as Medicaid.

Mr. Miles is a member of the National Academy of Elder Law Attorneys (NAELA), an WealthCounsel, ElderCounsel and a member of The Estate Planning Council of North Georgia.

He is an active member of the Georgia and North Carolina Bars.

Education:

University Of Alabama, LL.M.(Taxation), 2013

University of Georgia, M.B.A., 2005

University of Maryland, J.D., 1995

Carnegie-Mellon University, B.S., 1992

ELDER LAW: LONG-TERM CARE

More and more, elders and their families are painfully aware that the need for even a few months in a nursing home or other care facility could be a devastating financial setback.

People with very substantial assets can manage this cost — and those with very little money can often take advantage of federal resources (i.e. Veterans Aid and Attendance) or state resources (i.e. Medicaid). Families whose circumstances land them somewhere in the very large "middle" of this equation need counsel on their options.

Our Long-Term Care Planning practice take a consistently practical, cost-effective approach to problems such as:

- How to make sure you qualify for Medicaid and/or Veterans Pension-Aid and Attendance should you need it to pay for nursing home care or other service?
- How best to protect hard-earned assets to fulfill your own needs beyond what Medicaid and/or Veterans Pension-Aid and Attendance provides and still pass on as much as possible to your heirs?
- What types of trusts may be useful for maintaining control of your assets and property should major health issues arise (i.e., Medicaid Asset Protection Trusts and Veterans Asset Protection Trusts)?
- Whether "traditional" Long-Term Care insurance is within your means and likely to provide additional protection (i.e., state's Medicaid partnership program)?
- Whether you should pursue non-traditional Long-Term Care insurance (i.e. LTC "hybrids" and/or Life Insurance with LTC riders)?

NAELA™
National Academy of Elder Law Attorneys, Inc.
MEMBER

ELDER LAW: SPECIAL NEEDS PLANNING

The Law Office of Keith R. Miles, LLC focuses on providing Special Needs Planning for families with disabled children and adults along with anyone needing to qualify for Long-Term Care benefits such as Medicaid or Veterans Pension - Aid and Attendance.

Special Needs Trusts (also often referred to as "Supplemental Needs Trusts") have long been used by one person to set aside funds for the benefit of another person who is disabled. Parents often do this for disabled children, whether through life or through testamentary plans (i.e. their will or revocable trust).

A. Main Elements

The trusts are drafted to be completely discretionary so that the beneficiary has no legal right to demand distributions. As a result, for purposes of determining eligibility for public benefits, the trust funds are considered unavailable to the beneficiary, unless actually paid out directly to the beneficiary or in ways deemed to be "in kind" income. So, while the existence of any of these special needs trusts will not adversely affect the beneficiary's eligibility for public benefits, the use of the funds on his or her behalf might. basis.

B. "Self-Settled" Trusts

Special Needs Trusts can also manage and shelter funds belong to the disabled person himself or herself. Often these funds are available as the result of a personal injury award, an inheritance or life insurance.

For many years, a disabled individual under the age of 65 could fund a special needs trust only when established by his or her parent, grandparent, legal guardian or by a court and provide that at the beneficiary's death any remaining funds will first be used to reimburse the state for Medicaid paid on the beneficiary's behalf. This is known as a "Medicaid Payback" provision.

Due to Section 5007 of the 21st Century Cures Act entitled "Fairness in Medicaid Supplemental Needs Trusts", which was signed into law on December 13, 2016, disabled individuals can now create their own special needs trust.

If these requirements are met, the assets in the trust will not be countable if the beneficiary applies for Medicaid or Supplemental Security Income ("SSI") and transfers to the trust will not cause an eligibility period when applying for either Medicaid or SSI. The rules governing these self-settled supplemental needs trust are codified in 42 U.S.C. §1396p(d)(4).

C. Trusts to shield excess income to qualify for Medicaid

"In "income cap" states", like Georgia, qualified income trusts created to shelter the excess income of over-income institutionalized applicants for Medicaid will be permitted. These trusts follow the outline of those authorized in *Miller v. Ibarra*, 746 F. Supp. 19 (D. Colo. 1990).

D. Special Needs Trusts for those over the age of 65

For those individuals who are over 65, the only way to preserve his or her own assets to supplement Medicaid or SSI benefits is to place the funds into a pooled trust to be managed for many disabled beneficiaries by not-for-profit associations. (NOTE: This will probably cause a transfer penalty.) Unlike the individual disability trusts described above, these trusts may be for beneficiaries of any age and may be created by the beneficiary himself or herself. In addition, federal law does not require the state to be repaid for its Medicaid expenses on the beneficiary's behalf upon his or her death if the funds are retained in the trust for the benefit of other disabled beneficiaries.

E. Special Need Trusts to leave funds for others while trying to qualify for Medicaid

Finally, in addition to creating safe harbors for certain disabled Medicaid applicants to shelter his or her own funds, a Medicaid applicant can also avoid transfer penalties by transferring his or her assets into a trust "solely for the benefit" of a permanently disabled individual under the age of 65. 42 U.S.C. §1396p(c)(2)(B)(iii) and (iv). The beneficiary does not have to be a child, or even a relative, of the grantor.

ELDER LAW: GUARDIANSHIP/CONSERVATORSHIP

Guardianship is a legal relationship between a competent adult (the "guardian") and a person who because of incapacity is no longer able to take care of his or her own affairs (the "ward"). The guardian can be authorized to make legal, financial, and health care decisions for the ward. In many states, a person appointed only to handle finances is called a "conservator."

Some incapacitated individuals can make responsible decisions in some areas of their lives but not others. In such cases, the court may give the guardian decision making power over only those areas in which the incapacitated person is unable to make responsible decisions (a so-called "limited guardianship"). In other words, the guardian may exercise only those rights that have been removed from the ward and delegated to the guardian.

Generally, a person is judged to need guardianship when he or she shows a lack of capacity to make responsible decisions. A person cannot be declared incompetent simply because he or she makes irresponsible or foolish decisions, but only if the person is shown to lack the capacity to make sound decisions. For example, a person may not be declared incompetent simply because he spends money in ways that seem odd to someone else. Also, a developmental disability or mental illness is not, by itself, enough to declare a person incompetent.

In most states, anyone interested in the proposed ward's well-being can request a guardianship. An attorney is usually retained to file a petition for a hearing in the probate court in the proposed ward's county of residence. The proposed ward is usually entitled to legal representation at the hearing, and the court will appoint an attorney if the allegedly incapacitated person cannot afford a lawyer.

At the hearing, the court attempts to determine if the proposed ward is incapacitated and, if so, to what extent the individual requires assistance. If the court determines that the proposed ward is indeed incapacitated, the court then decides if the person seeking the role of guardian will be a responsible guardian.

A guardian can be any competent adult -- the ward's spouse, another family member, a friend, a neighbor, or a professional guardian (an unrelated person who has received special training). A competent individual may nominate a proposed guardian through a durable power of attorney in case she ever needs a guardian. In naming someone to serve as a guardian, courts give first consideration to those who play a significant role in the ward's life -- people who are both aware of and sensitive to the ward's needs and preferences. If two individuals wish to share guardianship duties, courts can name co-guardians.

LEGACY PLANS: WILLS

Wills are powerful, legally binding estate planning documents that can protect your loved ones and your assets after you pass away while ensuring that your final wishes are carried out. Whether you have a small or larger estate, or you are relatively young or are older, devising a will now is critical for the future.

The Law Office of Keith R. Miles, LLC is experienced at crafting comprehensive wills to meet our clients' needs, financial situations and wishes.

While our clients can always rely on us to provide them with customized solutions and personalized representation, they can also count on us to provide them the highest quality legal services for all of their wills and estate planning needs.

The wills-based estate planning services are focused on understanding our clients' needs, minimizing the potential challenges they (and their loved ones) may face if trying to qualify for government benefits like Medicaid, and maximizing the possible benefits of establishing a will (including many times a testamentary Special Needs trust) for their estate.

To this end, some of the specific wills-based services include (but are not means limited to):

- Appointing an executor and naming your beneficiaries
- Appointing a guardian for your minor children
- Setting up powers of attorneys beyond the standard formatting to include unlimited gifting powers, powers to create revocable and irrevocable trust to facilitate qualification for Medicaid, SSI, Veterans Aid and Attendance and other government benefits
- Devising advanced medical directives or end-of-life directives
- Assisting with obtaining a Long-Term Care Plan Directive
- Distributing your various assets
- Setting up special testamentary trusts for particular people (i.e., special needs individuals or spouses on Means-Tested Public Benefits)
- Modifying the terms of existing wills to allow for Long-Term Care and Special Needs Planning

Estate Planning Council of North Georgia

LEGACY PLANS: REVOCABLE TRUSTS

Legacy Estate Planning using trusts can be critical. It goes above and beyond the simple transferring of assets to another person or organization that a Will would normally do. Legacy estate planning using Trusts can be used to perpetuate family values and protect assets for the benefit of future generations. Trusts can be either Revocable or Irrevocable.

Revocable Trusts Can Usually Accomplish Legacy Planning Better than Wills

The revocable living trust (RLT) is a *will substitute* that can accomplish many estate planning objectives. It is an agreement established during the grantor's lifetime that may be amended or revoked at any time prior to the grantor's disability or death.

The primary advantages of the RLT include: (1) providing for the management of grantor's assets upon his mental or physical disability thus avoiding conservatorship proceeding; (2) reducing costs and time delays by avoiding probate; (3) reducing the chances of a successful challenge or election against a will; (4) maintaining confidentiality by not having to file a public will; and (5) avoiding ancillary administration of out-of-state assets.

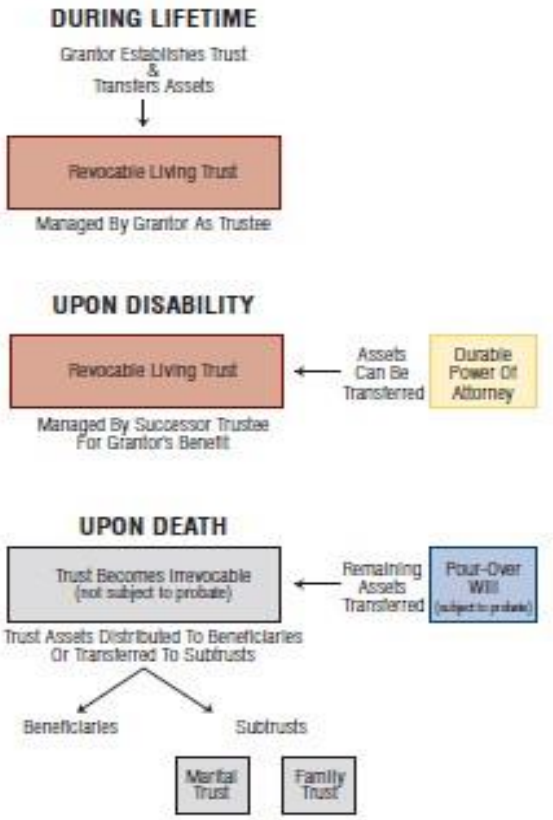
A simple revocable trust will allow your estate to avoid probate, but the Internal Revenue Service takes the position that you still own the assets you place into such a trust. You can revoke the revocable trust entity and take the assets back at any time. You remain in control of them.

DURING LIFETIME. The grantor establishes the RLT and typically names himself as the sole trustee. Following creation of the trust the grantor retitles and transfers his property to the trust. Because the grantor maintains full control over trust assets there are no income, gift, or estate tax consequences.

UPON DISABILITY. If the grantor becomes disabled due to legal incompetency or physical incapacity, a designated successor trustee steps in to manage the grantor's financial affairs. Disability is determined under trust provisions providing a standard of incapacity (e.g., certification by a physician that the grantor is unable to manage his financial affairs). Also, during the grantor's disability, the holder of the durable power of attorney may be authorized to transfer additional grantor-owned assets to the trust.

UPON DEATH. The RLT becomes irrevocable when the grantor dies. Under the grantor's pour-over will, any probate assets not previously transferred to the RLT during lifetime are transferred to the RLT as part of the grantor's residuary estate. Assets held in trust are then disposed of according to the terms of the trust. This can include an outright distribution to the trust beneficiaries, or the trust may contain provisions establishing separate tax-savings sub-trusts similar to the marital and family trusts under the exemption trust will.

Although the RLT is not for everyone, it clearly offers substantial benefits for many individuals. The utility of a funded revocable trust increases with the grantor's age when there is an increased likelihood of incompetency or incapacity and the need for asset management.



ELDER LAW: MEDICAID AND VETERANS ASSET PROTECTION TRUSTS

- **Medicaid Asset Protection Trusts (MAPT**) can be a valuable planning strategy to meet Medicaid's asset limit when an applicant has excess assets. Simply stated, these trusts protect a Medicaid applicant's assets from being counted for eligibility purposes. MAPTs enable someone who would otherwise be ineligible for Medicaid to become eligible and receive the care they require, be that at home or in a nursing home. Assets in this type of trust are no longer considered owned by the Medicaid applicant.
- **Medicaid Family Protection Trust (MFPT**) is a trust is similar to the MAPT, but it also offers more significant asset protection. MFPT protects the assets of the grantor, as well as the beneficiaries of the estate. This trust is a good option for younger retirees who want to protect themselves and their family in the event of an unforeseen scenario.
- **Veterans Asset Protection Trust (VAPT)** is an intentionally defective grantor trust or a trust that is used as an estate-planning tool to freeze certain assets for an individual for estate-tax purposes, but not for income-tax purposes. A VAPT trust should be considered if a client is a wartime veteran, or the surviving spouse of a wartime veteran, who is looking into long-term planning. The VAPT meets the requirements from the VA of a complete gift or complete relinquishment.
- **Parental Protection Trusts (PPT)** are an option for elder law clients in cases where traditional irrevocable asset protection trust planning isn't an option, and the best option is to divest themselves of assets by giving them away — usually to children. The children can then use those assets to establish a Parental Protection Trust. Essentially, this type of trust is a third-party special needs planning tactic that is established for the parent's benefit, with the client's children being the third party. When children establish a Parental Protection Trust, it allows them to donate whatever funds they wish into that trust to be set aside for the benefit of the parents. Assets are put into the trust and those funds are preserved until the parent's death. At that time, any remaining assets are distributed back to the children.

ELDER LAW: FINANCIAL MATTERS

Although most of us understand estate planning and administration as the planned distribution of our assets at death, "Elder Law" is a newer concept that encompasses a number of issues. Rather than focusing primarily on tax planning and post-mortem distribution of assets, Elder Law is largely concerned with planning for the care needs of seniors and the disabled.

Rather than being defined by technical legal distinctions, elder law is defined by the client to be served. In other words, we handle a range of issues but for each specific type of client (i.e., individuals who have specialized legal needs related to a medical illness or disability) we focus on the legal needs of the disabled and elderly using many legal tools and techniques to meet the goals and objectives of the disabled or elderly client.

Legal problems that affect the elderly are growing in number. Our laws and regulations are becoming more complex. Actions taken by older people regarding a single matter may have unintended legal effects in other areas. It is important for attorneys dealing with the elderly to have a broad understanding of the laws that may have an impact on a given situation, to avoid future problems. An Elder Law attorney needs a broad background in the law and the ability to work with families in crisis.

Elder Law related Financial Matters encompasses important areas including:

- **Employment and Retirement Advice**, including pensions, retiree health benefits, unemployment benefits, and other benefits.
- **Housing Counseling**, including reviewing the alternatives available and their financing such as: renovation loan programs, life care contracts, home equity conversion, reverse and other mortgage options.
- **Advice on Insurance Matters**, including analyzing and explaining the types of insurance available, such as health, life, long term care, home care, COBRA, medigap, long term disability, dread disease, prescription coverage, and burial/funeral policies.

ELDER LAW: LITIGATION, ADMINISTRATIVE AND RESIDENT RIGHTS ADVOCACY

The elderly and disabled communities are particularly vulnerable populations. Elder Law attorneys are capable of recognizing issues of concern that arise during counseling and representation of older and disabled persons or their representatives with respect to abuse, neglect or exploitation of the older or disabled person, insurance, housing, long-term care, employment, and retirement.

We are also familiar with professional and non-legal resources and services publicly and privately available to meet the needs of the older and disabled persons and can recognize the professional conduct and ethical issues that arise during representation.

As much as the law office would like to resolve all matters within the walls of our office, sometimes that is not possible. On those occasions, either court, government agency or facilities must be the location where a problem is solved.

This could often include the firm offer the following services, either handling the matter alone, in co-counsel relationship or sending over to another firm for referral:

- **Litigation and Administrative Advocacy** in connection with any of the above matters, including will contests, contested capacity issues, elder abuse (including financial or consumer fraud), fiduciary administration, public benefits, nursing home torts, and discrimination.

- **Resident Rights Advocacy**, including advising patients and residents of hospitals, nursing facilities, continuing care retirement communities, assisted living facilities, adult care facilities, and those cared for in their homes of their rights and appropriate remedies in matters such as admission, transfer and discharge policies, quality of care, and related issues

PROBATE COURT: PROBATE AND ESTATE ADMINISTRATION

Inevitably, we all have some mortality. Planning for this is part of both estate planning and elder law. When death does occur, our firm can assist with matters related to the estate of the decedent.

- **Probate:** The probate estate is the total amount of property that is owned by the decedent at his or her death and that has not already been set up to transfer automatically, such as transfer of a joint tenancy or payment to a named beneficiary of an insurance policy. Once a person dies, the estate is submitted to the probate court.
  If there is a will, the probate court will determine if the will is valid and then oversee the administration of the estate by the executor (the person appointed in the will by the decedent to oversee the estate).
  If there is no will or the will is determined to be invalid, the probate court will appoint an administrator and the decedent's property will be distributed according to the state's laws of inheritance.
- **Estate Administration:** refers to the process of probating the estate of a decedent, which generally includes collecting, inventorying and appraising assets; paying and collecting debts; filing and paying estate taxes; and distributing any remaining assets to beneficiaries.

Probate assets are subject to court administration. Probate can be an expensive and long process, and beneficiaries may have to wait anywhere from one to two years to receive the property left to them in the will. Probate assets include assets owned only by the decedent that do not have a named beneficiary.

Non-probate assets do not have to go through probate. These assets are typically distributed more quickly to the appropriate beneficiaries since a probate proceeding is not required. Non-probate assets generally include:

- Property owned in joint tenancy or tenancy by entirety with rights of survivorship
- Payment on Death (POD) bank accounts
- Transfer on Death (TOD) securities
- Life insurance policies that designate a beneficiary other than the decedent's estate
- IRAs, 401(k) accounts, and other retirement plans that name a beneficiary other than the decedent's estate