

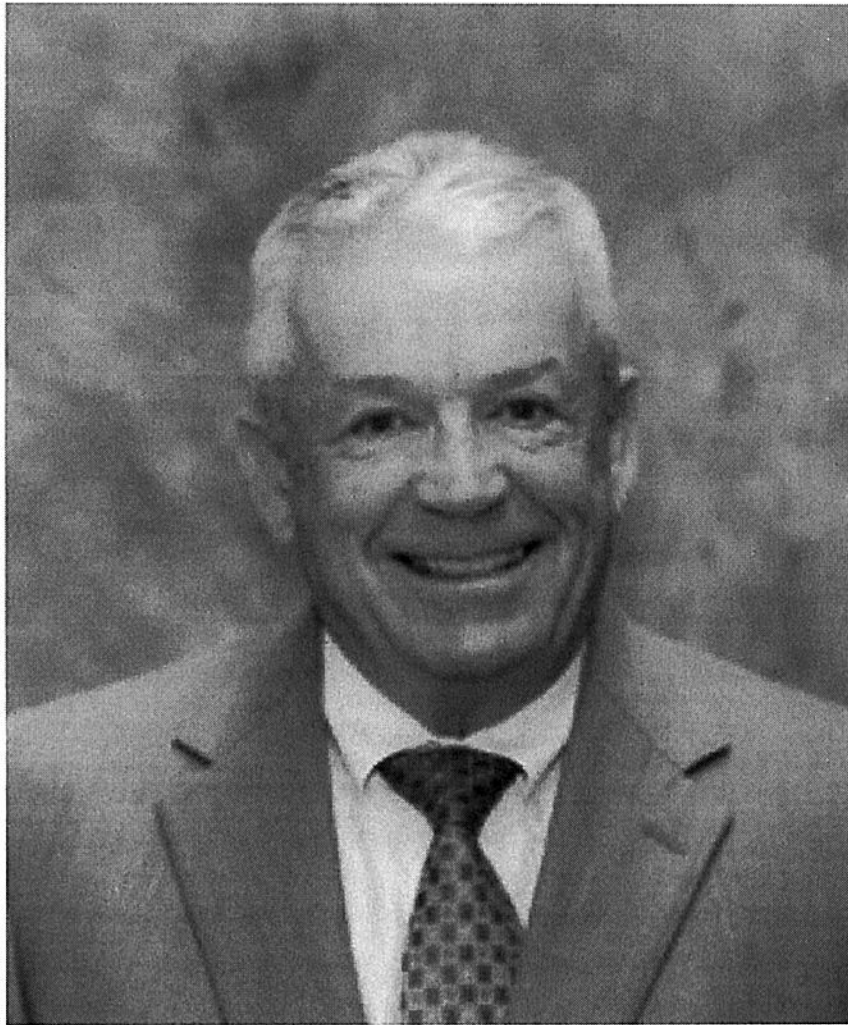
# Why an 'I love you will' may not be the best treat for your Valentine

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**ST. LUCIE WEST** - An "I love you will" is a relatively simple will which says: "I love you, darling, and I leave my entire estate to you."

The reason that this may not be a good idea for your Valentine and especially those elderly Valentines, it becomes more apparent when one understands the basics of long-term care planning. To get that discussion started, let's make a couple of comments about the purposes

of long-term care planning.

When a spouse becomes ill and starts incurring expense for long-term care services (home healthcare, assisted living, or skilled nursing facility), a qualified elder law attorney wants to help position the patient for qualification for/access to public benefits (Medicaid or VA Pension with Aid and Attendance, for example) as soon as practical by divesting the patient of assets in a qualified way. The divested assets would then be held in a trust or by other members of the family in a way that those funds would be available to pay for what the public benefits will not pay for.

As these public benefits consume a larger and larger percentage of the governmental budget, increasingly strict laws have been and will continue to be enacted which, among other effects, will reduce the benefits that are available from the public benefit program.

For example, under current law, the patient's income under Medicaid generally goes to the nursing facility, with Medicaid paying the rest of the bill. The patient is allowed to retain from their income only \$35 per month. This is enough for me to get a haircut, but it is not enough for our female clients or patients. This provides no money whatsoever for any other needs that are not covered by the government.

If the patient is on Medicaid and has spent all of their funds and needs extra care above what Medicaid will provide, without prior planning, the patient is stuck and has no options and cannot get the additional care which would improve the quality of life.

Therefore, it is exceedingly important, in order to maintain the highest quality of life for the longest possible period of time, to retain some funds in a format accessible to the family so as to be able to pay for the additional services, equipment, or other needs that the patient is going to require from time to time in the future.

We also want to concentrate very carefully on the financial security of the surviving spouse. But, perhaps, that could be the subject of a future article.

With regard to the "I love you will", the reason that this is important is generally when we have married clients, the ill client is divested of assets so as to qualify for Medicaid by transferring those assets to the well spouse.

What happens now if the well spouse predeceases the Medicaid spouse? If there is an "I love you will," then all of those assets immediately pass back to the Medicaid spouse, immediately disqualifying the Medicaid spouse from benefits and putting us in a position where further planning to try to requalify for Medicaid is much more difficult (partly because we then do not have a spouse to which exempt transfers can be made).

If we don't want an "I love you will," what do we want? We want each spouse to have a will setting up a special needs trust for the surviving spouse. As a testamentary special needs trust, the assets in the trust would not be considered to be available resources for Medicaid purposes, and in the situation mentioned above, we would not be disqualifying the surviving spouse from continuing to receive the benefits for which we had undertaken the planning in the first place.

Furthermore, we would have a fund (the special needs trust) which would be available to pay for necessary items that are not covered by Medicaid and, hence, would be putting this family in position to maintain the highest quality of life for the surviving spouse for the longest possible period of time.

If you really want to show your Valentine that you love them, revoke those "I love you wills," and have a special needs trust set up within your Last Will & Testament.

Contact The Estate, Trust and Elder Law Firm, P.L. for a free information packet on Estate and Long-Term Term Care Planning. To request free material, please call 772-878-7271 or by email at [info@etelf.com](mailto:info@etelf.com) (<mailto:info@etelf.com>).

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