

**Retirement planning**

Elder law basics  
Documents for delegating  
Living trust candidates

**Estate planning**

The end of a 92-year wait

**Tax currents**

The top 400  
Homebuyer tax credit follow-up

# Trusted Advisor

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## Elder law basics

A new specialty in legal practice has emerged over the past couple of decades: “elder law.” Retirees and senior citizens have some special laws and programs that apply only to them, and the laws that apply to us all may take on a new aspect when applied to the unique circumstances faced by the elderly. The core areas that elder law attorneys provide advice about include the following:

- health and long-term care planning;
- access to public benefits, including Medicare, Medicaid and Social Security;
- surrogate decision-making, including both medical and property management decisions;

- older persons’ legal capacity;
- wills, trusts, and estates.

Although any attorney may include elder law advice in his or her practice, some are now becoming specialists in this field, and national organizations have been created for specialist certification. To achieve a specialist designation, an attorney must be able to help with insurance, housing, long-term care, employment, and retirement issues.

### Planning for health care needs

Most retirees will not need to consult an attorney to secure their routine Medicare benefits or Social Security payments. Medicaid benefits are another matter and are subject to an array of complex rules that an attorney can help sort through.

The elder law attorney should also be consulted for drafting a living will, to provide guidance on making medical decisions when one is terminally ill. These are among the questions to consider before executing a living will:

- How do you feel about ventilators, surgery, drugs, or tube feeding if you become terminally ill? If you are unconscious and not likely to awaken? If you develop Alzheimer’s?

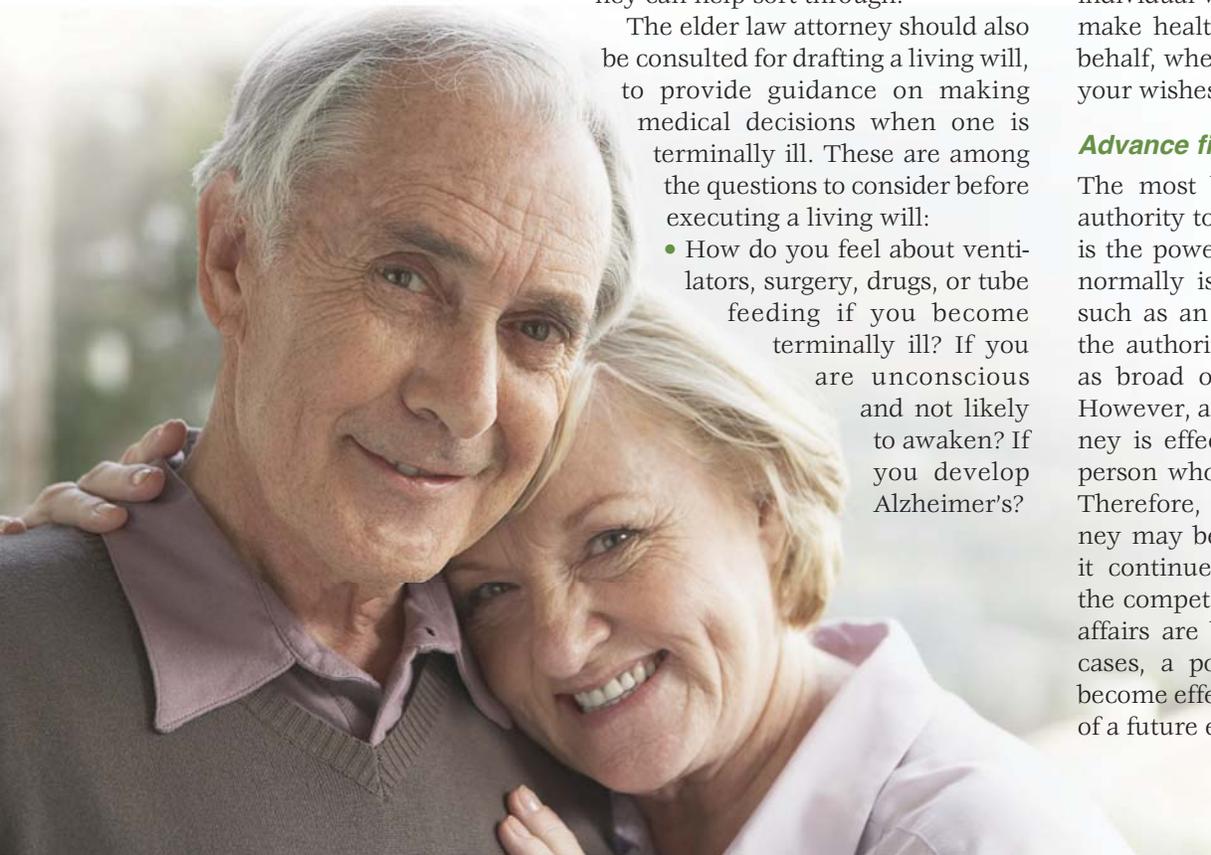
- What kind of medical treatment would you want if you had a severe stroke or other medical condition that made you dependent upon others for all your care?

A living will tries to answer such questions, yet one can readily see that answers are almost impossible. No one can guess what medical emergency might be faced in the future, nor what medical advances might be made in the coming years to deal with it. In fact, some studies have shown that similarly situated patients tend to get the same care whether or not they have living wills.

That’s why most experts advise having a durable power of attorney for health care, in addition to a living will. This document identifies an individual whom you have chosen to make health care decisions on your behalf, when you are unable to make your wishes known.

### Advance financial directives

The most basic tool for delegating authority to make financial decisions is the power of attorney. The power normally is drafted by an attorney, such as an elder law specialist, and the authority that it creates may be as broad or as narrow as needed. However, a traditional power of attorney is effective only so long as the person who created it is competent. Therefore, a durable power of attorney may be a better choice because it continues in force, regardless of the competence of the person whose affairs are being managed. In some cases, a power of attorney doesn’t become effective until the occurrence of a future event, such as the onset of



## Documents for delegating

Planning at the end of life involves the delegation of various responsibilities to others, who must act on behalf of the one doing the delegating. Here are the types of documents that one may encounter.

DOCUMENT	WHAT IT DOES
<b>MEDICAL:</b>	
Living will	Provides guidelines for medical decisions when an individual becomes terminally ill.
Do not resuscitate order (DNR)	Specifically requests that cardiopulmonary resuscitation not be used if one's heart or breathing stops.
Power of attorney for health care	Identifies an individual to make medical decisions when one is unconscious or incapacitated.
<b>FINANCIAL:</b>	
Power of attorney for financial matters	Delegates authority to an agent to make financial decisions. The agent's authority ends when the principal is incapacitated.
Durable power of attorney	Delegates financial decision power to an agent even if the principal is incapacitated. In some cases, the power "springs" into being upon incapacity or other identified event.
Revocable living trust	Transfers assets and full financial management authority to a trustee. The trust may continue into incapacity, even beyond the death of the trustor.

Source: Merrill Anderson Company

a disability. Such an approach is called a springing power of attorney.

The more comprehensive approach to financial management at the end of life is the revocable living trust. Investment assets are placed in the care of a trustee, who manages them in a way that's consistent with the terms laid out in a trust agreement. The trustee may be empowered to handle routine financial chores, such as paying bills and taxes, as well as the more demanding duties associated with portfolio management.

A living trust provides continuous financial protection in the event that the trust grantor becomes incapacitated. There's no need to involve a court in a public proceeding for a guardianship or conservatorship to handle financial matters.

### Wills and estate planning

Everyone needs a will to provide a plan for the final distribution of his or her property. That is the primary function of a will, together with designating a person or an institution (such as us!) to supervise the process of

estate settlement. An estate plan may include trust planning to handle longer term wealth management issues.

A variety of tax issues may also be addressed in the estate planning process. Federal estate taxes have receded in importance for all but the wealthiest families, at least for this year and next, given the \$5 million federal estate tax exemption. However, many states continue to levy estate taxes, inheritance taxes, or both at the deaths of their citizens, often with much lower exemptions than the federal government provides. What's more, the federal exemption is scheduled to fall to just \$1 million in 2013. Given the chronic federal budget deficits, there is a chance that the tax increase will go forward. Accordingly, planning for death taxes will remain an essential part of estate planning.

### Are you ready?

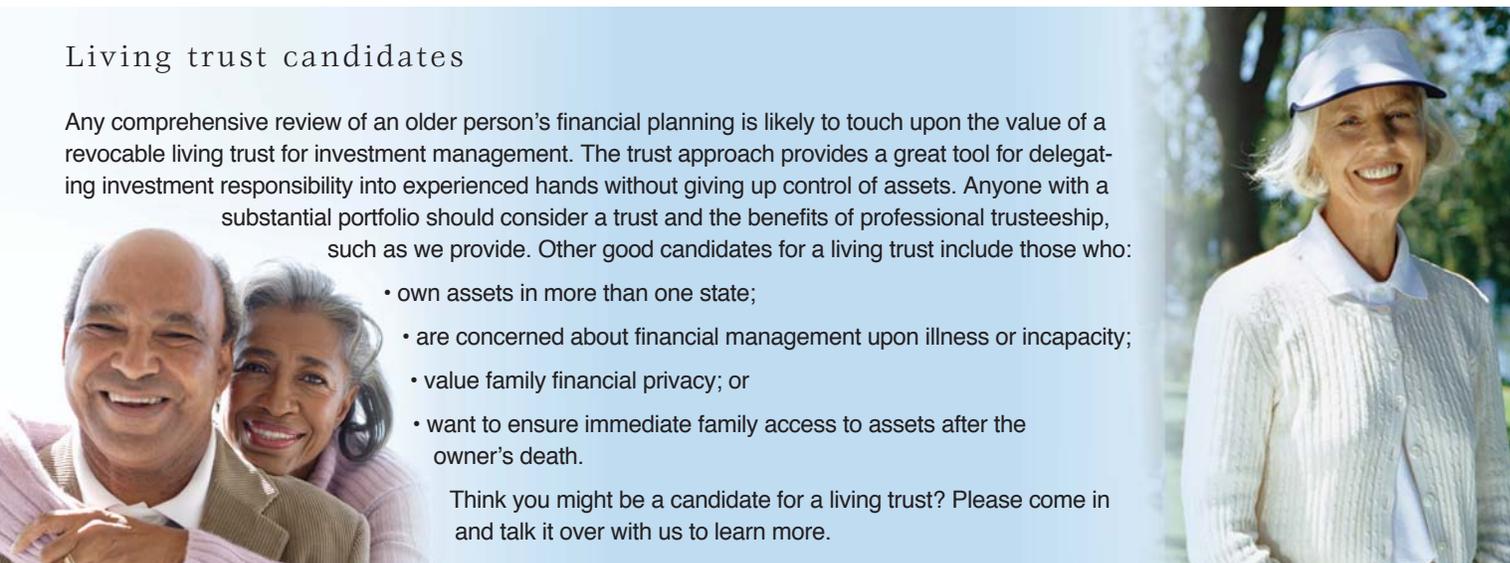
We don't practice law — elder law or otherwise. For that, you must seek advice from an attorney. We do provide investment management and trusteeship services. One of today's most cherished luxuries is attentive, personalized service from people who not only know their business but also enjoy helping others. We work hard to provide our living trust customers with that standard of service. You can gauge our capabilities by talking over your own plans with one of our asset managers. Why not make an appointment this month? ☐

## Living trust candidates

Any comprehensive review of an older person's financial planning is likely to touch upon the value of a revocable living trust for investment management. The trust approach provides a great tool for delegating investment responsibility into experienced hands without giving up control of assets. Anyone with a substantial portfolio should consider a trust and the benefits of professional trusteeship, such as we provide. Other good candidates for a living trust include those who:

- own assets in more than one state;
- are concerned about financial management upon illness or incapacity;
- value family financial privacy; or
- want to ensure immediate family access to assets after the owner's death.

Think you might be a candidate for a living trust? Please come in and talk it over with us to learn more.





## The end of a 92-year wait

### ***Having skipped several generations, a 1919 trust terminates.***

Wellington R. Burt was reputedly once the eighth-richest man in America. He was born in 1831 near Rochester, New York, the ninth of 13 children. After completing college and spending three years abroad, Burt settled in Michigan and built his fortune in timber. He expanded his forest holdings into other states, including Minnesota. There, it turned out, Burt's trees were atop a major iron ore deposit, which he eventually sold to U.S. Steel. Burt went into politics, becoming mayor of East Saginaw, Michigan, in 1867. He ran for governor in 1888 but was defeated.

Toward the end of his life, Burt apparently had some disagreements with his children. He also had a run-in in 1915 with the assessor for Saginaw, who wanted to boost his personal property assessment from \$400,000 to \$1 million. Burt objected, and, according to *The Saginaw News*, he warned the city council that they'd "be killing the goose that laid the golden egg" if the assessment wasn't changed. The city council upheld the assessment, and Burt eliminated charitable legacies for the city from his will.

### ***The 1917 will***

Burt wrote out his last will and testament by hand in August 1917, when he was 86 years old. At his death in 1919, the bulk of his fortune was placed in trust, managed by a bank trust department. His children received annual stipends ranging from \$1,000 to \$5,000, though one son received \$30,000 per year. (\$1,000 in 1919 would be equivalent to \$13,000 in 2011.) Burt's secretary received \$4,000 per year from the trust, while four other servants received \$1,000 each.

The trust income was doubtless much larger than needed to cover these annual distributions. Any excess would be added to the trust principal. Demonstrating a canny understanding of the rule against perpetuities, Burt provided that the trust would last until 21 years after the

death of all of his grandchildren who were alive at the time of his own death. The last grandchild died in November 1989. Thus, the trust ended in November 2010.

There are now three great-grandchildren, seven great-great-grandchildren, and two great-great-great-grandchildren eligible to inherit a share of the trust, now worth some \$100 million. They live in eight different states, and they range in age from 19 to 94. They do not share equally. The most remote descendants get the smallest shares, and those with the fewest siblings get larger ones. The legacies are estimated to be worth from \$2.6 million for the youngest heirs to as much as \$16 million. A team of lawyers came up with the final distribution scheme, and the distributions were expected at the end of May.

### ***Observations***

The Burt estate plan likely would not be recommended by many estate planners today. The idea of holding the family fortune tantalizingly just out of reach from one's descendants is strange. Twenty-four of Burt's descendants died before they could collect a share of the trust. Still, some lessons may be drawn.

- We don't know how the trust assets were invested, but we do know that the trust fund survived the Great Depression.
- Because it was created so long ago, this trust avoided the generation-skipping transfer tax. A similar trust created today would be subject to this special supplement to the estate tax, but it would be eligible for a \$5 million exemption from that tax.
- One's money is one's own to distribute after death. No matter how eccentric the plan may be (provided it is legal), a corporate fiduciary, such as a trust department, will work tirelessly and for generations to implement the plan according to the testator's wishes. □

## The top 400

The IRS issued a report in May on the top 400 taxpayers by adjusted gross income (AGI) each year for the years 1992 through 2008. This club gets a new membership every year. According to the report, 73% of the people who fell into this group were there for only a single year during the study period. Another 12% appeared in only two years. These could be situations in which a business owner has sold a business or someone has converted valuable real estate holdings to cash. Only four taxpayers appeared in the top 400 in every single year.

The report demonstrates that top incomes are derived from investments, not wages. Here are the relative contributions to AGI for sample years:

### Components of income for the top 400 taxpayers

	1992	2000	2008
Salaries	26%	17%	8%
Taxable interest	7%	4%	7%
Dividends	6%	3%	9%
Capital gains	36%	72%	57%
Partnership and S corp. income	18%	8%	19%

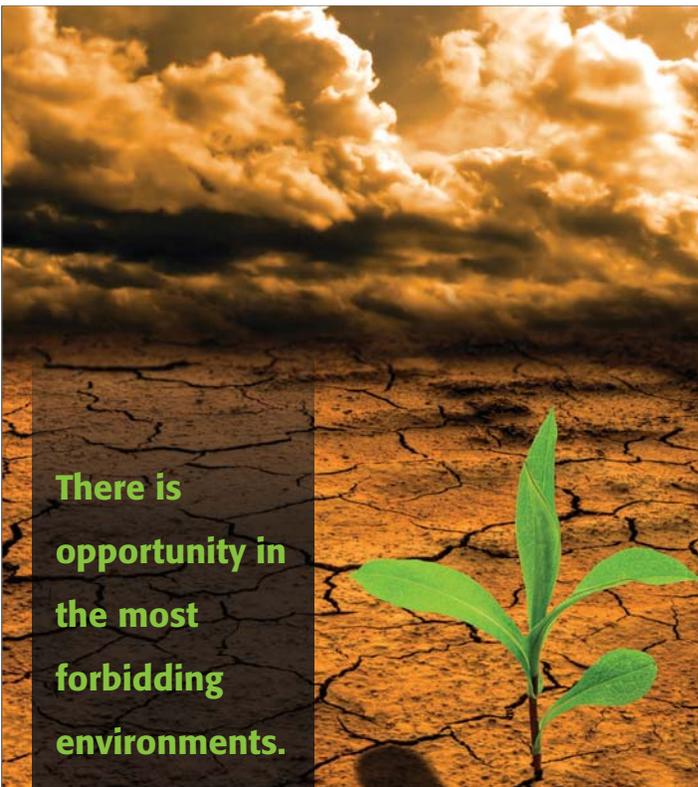
Source: Internal Revenue Service

Capital gains fell sharply from 2007 to 2008, as the recession got under way. Still, in 2008, the top 400 taxpayers collected 13% of all net capital gains reported to the IRS for the year, their highest share during the study period.

Most of the top 400 taxpayers did not pay the Alternative Minimum Tax. Until 2005, fewer than 25% of these taxpayers had any AMT liability. The high water mark came in 2007, when 36% of this group were snared in the AMT web.

## Homebuyer tax credit follow-up

A recent item on SmartMoney.com suggests that the now-expired \$8,000 tax credit for homebuyers probably cost these buyers about \$15,000. That's because the median home value fell to \$170,000 in March from \$185,000 a year earlier, according to Zillow.com. However, averages don't mean much when it comes to setting the value for a particular home. Many homebuyers likely have experienced no real change in their home's value. Still, it is fair to say that the homebuyer tax credit did not achieve its purpose of stabilizing the market for house prices. According to Zillow, average home prices have declined steadily since June 2006, and additional modest declines are forecast for this year. □



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opportunity in  
the most  
forbidding  
environments.

Inflation. Deflation. Interest rates. Economic growth. Taxes. Currencies. Natural disasters. There sure seems to be an extraordinary number of conflicting factors to take into account in portfolio management these days.

Would you appreciate hearing the opinion of an experienced professional concerning your investments? Arrange this month to meet with one of our officers.

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