TAX, ESTATE & FINANCIAL PLANNING FOR THE ELDERLY

VOLUME 1

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Dedications

Dedicated to my husband, Jay, for yesterday, today and tomorrow.

Rebecca C. Morgan

Dedicated to Noel and Rachel English.

David M. English

This is dedicated to the memory of my son, Christian, who continues to inspire me to listen and help before talking.

H. Amos Goodall, Jr.

Rededication

To John J. Regan: leader in elder law, scholar, and friend.

January 1996

Preface

Until recently, the elderly with sizable estates or in poverty were the primary clients for professional legal and financial counseling. Estate planners and legal services attorneys frequently represented elderly clients, but the general practitioner seldom encountered such clients. Today, however, that experience is changing. Many attorneys and accountants encounter a growing demand from elderly clients of all income levels for advice on issues as diverse as pension planning, entitlement to Medicare benefits, and the right to die. Similarly, the families of an elderly parent are seeking help for their parents in making the legal and financial decisions prompted by retirement or admission to a nursing home.

This book aims to provide the practitioner with clear, up-to-date information about the major areas of law affecting the elderly and to offer practical techniques for dealing with the elderly client's legal and financial problems. The emphasis throughout is on knowledge of the law for its practical benefit to the client. Although its coverage is comprehensive and detailed, this volume is not a legal treatise, nor is it policy-oriented. Rather, the text is replete with examples, planning notes and forms aimed at quick understanding and easy application of the legal principles involved.

The subject areas covered are often not familiar to the average practitioner. Government-benefit programs, private pensions, decision-making during incapacity, and some areas of tax generally are not covered in the formal education of the practitioner nor frequently encountered in his or her professional experience. This book fills that gap for the general practitioner, while it provides a useful starting point in research for the specialist.

The dominant theme of this volume is empowerment of the client-enhancing the individual's right of self-determination in financial, health care, and property management matters in later life. The approach of old age sometimes causes an individual to fear that he or she is losing control over one's life. The individual feels at the mercy of impersonal government agencies, institutions and strangers. The practitioner can alleviate that fear of dependence and help restore self-confidence through a knowledgeable and sensitive representation of the client's interests.

Acknowledgments are in order. I am grateful for the sabbatical leave and technical assistance provided by the administration of Hofstra University and the School of Law. I appreciate the research efforts of several students at Hofstra Law School, particularly Susan Britt, Pauline Constantino, James Leech, and Janet Weintraub. I am also especially indebted to Elena Milack for her invaluable secretarial assistance.

John J. Regan
Hempstead, New York *November 5, 1985*

About the Editorial Board

DAVID M. ENGLISH

David M. English is the William Franklin Fratcher Missouri Professor of Law and Earl L. Jenkins Professor of Law at the University of Missouri. Professor English, an expert in the fields of both elder law and estate planning, is the Chair of the ABA Section of Real Property, Trust & Estate Law, the former Chair of the ABA Commission of Law and Aging, the former Co-Chair of the National Conference of Lawyers and Corporate Fiduciaries, and an Academic Fellow of the American College of Trust and Estate Counsel. He is a co-author of the LexisNexis companion volumes, *Tax, Estate & Financial Planning for the Elderly* and *Tax, Estate & Financial Planning for the Elderly: Forms & Practice*.

Professor English has written on a wide range of issues within his areas of expertise, including numerous articles on trust law, guardianship, health-care decision making, long-term care, and federal income tax. He served as the Reporter for the Uniform Trust Code, the Uniform Health-Care Decisions Act, and the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, was the Chair of the drafting committee for the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, and was formerly the Executive Director of the Joint Editorial Board for Uniform Trust & Estate Acts. He received his B.A. from Duke University and his J.D. from Northwestern University.

REBECCA C. MORGAN

Professor Morgan is the Boston Asset Management Faculty Chair in Elder Law and Director of the Center for Excellence in Elder Law and the Director of the LL.M. in Elder Law at Stetson University College of Law. Professor Morgan teaches a variety of elder law and skills courses, and oversees the Elder Law concentration program for JD students. She is a co-author of *Tax, Estate & Financial Planning for the Elderly* and its companion forms set, *Tax, Estate & Financial Planning for the Elderly: Forms & Practice* (LexisNexis), and a co-author of *Planning for the Elderly in Florida* (LexisNexis).

She is a Past President of the National Academy of Elder Law Attorneys and Past President of the Board of Directors of the National Senior Citizens Law Center. Professor Morgan is a member of the academic advisory board for the Borchard Foundation Center for Law and Aging, an academic fellow of the American College of Trusts & Estates Counsel, and a past chair of the American Association of Law Schools Section on Aging and the Law and of the Florida Bar Elder Law Section. She served as a special advisor to the ABA Commission on Law and Aging, was the reporter for the Uniform Guardianship and Protective Proceedings Act, and was on the Faculty of the National Judicial College. She served on the Florida Attorney General's Task Force on Elder Abuse and the Legislative Guardianship Study Commission.

Professor Morgan was the recipient of the 2003 Faculty Award on Professionalism from the Florida Supreme Court Commission on Professionalism. She received the NAELA Unaward in November 2004 for her accomplishments in the field of elder law. Professor Morgan, along with Professor Roberta Flowers, received the 2005 Project Award on Professionalism from the Florida Supreme Court Commission on Professionalism for their video series on ethics in an elder law practice. She was the 2009 recipient of the National College of Probate Judges Treat Award for Excellence. She has authored a number of articles on a variety of elder law issues and has spoken a number of times on various subjects of elder law.

H. AMOS GOODALL

H. Amos Goodall, Jr. is an attorney in private practice in State College, Pennsylvania.

With a JD from Fordham Law, an LLM from Stetson, and certification as an Elder Law Attorney (CELA®), was admitted to practice in New York and Pennsylvania and has been in practice since 1974. Past President of the National Elder Law Foundation, he is a Fellow of the American College of Trust and Estate Counsel and a Fellow of the National Academy of Elder Law Attorneys. He is also a member of the Special Needs Alliance, a affiliated practice group of lawyers focused on helping persons with special needs and their families. He is a co-author of *Tax, Estate, and Financial Planning for the Elderly* and its companion set, *Tax, Estate, and Financial Planning for the Elderly: Forms & Practice*.

An adjunct professor of Law at Stetson, he is a frequent writer and lecturer for the Pennsylvania Bar Institute, Stetson Special Needs Trust Conference, other law schools the College of Lifelong Learning and a variety of other professional and community organizations o elder law, estate planning and legal ethics. He was a judge on the Pennsylvania Court of Judicial Discipline and is a member of the PA General Assembly—Joint State Commission on Decedents' Estates Laws; and Lawyers Concerned for Lawyers, Inc., Board of Directors.