

Attorney Timothy P. Crawford, CPA, CELA*, CAP**
wanted to share this information with you.

Dementia and the Vanishing Legacy

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The symptoms of dementia – memory loss, confusion and wild mood swings, among others – are widely known and discussed. One potentially devastating side effect of dementia is that it can cause people to make terrible financial decisions. This problem extends far beyond the loss of the ability to balance the checkbook. Family members report that people with dementia have misread what they owe in taxes, watched as their investments plunged in value, and have told their brokers to “buy” when they meant “sell.” There have been increasing cases of seniors with dementia who are investing in risky financial products or trading stocks to their detriment.

This problem could get much worse for the baby boomers. A Duke University study estimates that 14% of people over the age of 70 years have dementia in some form. If this trend continues, more than 11 million baby boomers could develop dementia. Couple this statistic with the fact that the baby boomers control over \$19 trillion in assets, and experts fear that many baby boomers could unwittingly destroy their nest eggs. Unfortunately, there are few laws, policies or standards to handle this situation.

Some financial planners and brokers try to talk with family members if they suspect that their clients are suffering from dementia. On the other hand, many financial advisers have little contact with their aging clients, and thus they may not notice shifts in behavior. Regulating how securities are sold to seniors can be difficult, in part because dementia can be hard to prove. The client can be confused one minute and lucid the next.

The Financial Industry Regulatory Authority, the broker-funded agency that oversees brokers and securities firms, has guidelines on working with clients with diminished capacity, but they are only guidelines. Brokers are required only to sell clients “suitable” products, unlike financial advisors who are legally bound to act in a client’s interest first and foremost. Brokers and financial advisors have to tread cautiously; they do not want to stereotype seniors, but they do not want to be subject to strict limitations on working with seniors.

The current trend is to educate rather than regulate. The Senate Committee on Aging and the Securities and Exchange Commission are considering various ideas, but no clear plans have emerged regarding legislation or regulations. AARP released a booklet with the Financial Planning Association regarding aging clients, but AARP has no new policy positions.

Under the existing rules, it can be difficult for a broker to work with a client to do what is "suitable," if the client wants to do something different. Some brokers have said that if they are too forceful with senior clients, then the clients become angry or go to a different broker. On the other hand, there are many seniors who are healthy, active traders.

What can seniors and their families do to prevent these problems? One suggestion is to follow the 70-40 rule; when an investor turns 70 or a child turns 40, they should discuss options such as a general durable power of attorney, or specific powers of attorney required by the senior's financial institutions.

Family members may want to agree to be present at meetings with the broker or financial advisor, or at least agree to draft a document setting out specific investment goals. As time goes on, the family may want to hire a money manager to make sure the bills are paid, or the family may handle these duties. If these measures do not work, for example, if the parents refuse to execute powers of attorney, then the children may have to resort to court-ordered guardianship and conservatorship. Open communication among seniors and their children is the first step.

**“Those Who Plan Ahead Win.
Those Who Don’t Plan Ahead Lose.”**

This article is not intended as legal advice. It is basic information. I would recommend that you call Attorney Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Timothy P. Crawford can be reached toll-free at 1-888-634-6675. When you call in, please mention the fact that you have read this article.

*Attorney Timothy P. Crawford is a Board Certified Elder Law Attorney(CELA). He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

**Timothy P. Crawford was invited to join the Council of Advanced Practitioners of the National Academy of Elder Law Attorneys (NAELA) in August of 2005. The Council of Advanced Practitioners (CAP) is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated the top in the nation by Martindale Hubbell. A Service that provides an independent rating of the quality of attorneys.

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"A majority of the text of this article has come from an article prepared by Attorney Andy Hook, a friend of Attorney Timothy P. Crawford, and is used here with permission."