

Are You a Planner or a Gambler?

By **Robert Abrams**, Editor

Robert Abrams (BAbrams10@gmail.com) is a founding member and of counsel to [Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato, & Einiger, LLP](#). A former Chair of both the Elder and Health Law Sections of the New York State Bar Association, he has edited and/or written numerous books and articles for NYSBA including the treatise Guardianship Practice in New York State; The Legal Manual for New York Physicians; and the New York State Public Health Legal Manual. He is the author of Watered-Down Truth: A Flood of Lies More Deadly Than Hurricane Katrina and Be a Planner, Not a Gambler: What You Need to Know and Do to Prepare for the Elder Years, which will be released later this year. His first novel, Murder by Suicide, will be published in 2012. In 1995, he created Health Decision Making Day (renamed Mitchell Rabino National Healthcare Decision Day), which has successfully informed tens of thousands of people throughout New York and the United States about the importance of advance directives.

I have just celebrated my 55th birthday; I have become or soon will be an elder. Despite the irony that I've been an elder lawyer for more than 20 years, I decided it was time to prepare myself (and the rest of America) for the elder years.

As a lawyer and author, I logically began this endeavor by conducting research. Here's a small sampling of what I learned:

- In 2010, approximately 70 million Americans were 50 years of age or older, 40 million of whom were at least 65 years old.
- By the year 2030, one out of every five Americans will be at least 65 years of age.
- The life expectancy for Americans increases with age; individuals who are 65 years old can project that they will live into their late 70s or early 80s. Some will live well into their 90s and a few will become centenarians.
- Millions of Americans have or will suffer from temporary and/or permanent mental incapacity.
- More than five million Americans suffer from Alzheimer's disease and this number is expected to dramatically increase over the next three decades.
- Notwithstanding the prevalence of incapacity, millions of Americans do not have advance directives such as a power of attorney or health care proxy, or they possess documents which are outdated or were executed incorrectly.
- Due to the lack of advance directives and/or available resources, many Americans, notably some lawyers and judges, become the subject of expensive and contested guardianship proceedings.

- While the U.S. Centers for Disease Control and Prevention asserts that there is not necessarily a direct link between aging and poor health, there is no question that the prevalence of chronic health conditions and diseases as well as reliance on prescription and over-the-counter medications increases with age.
- Throughout the country, certainly in New York, millions of Americans have either failed to develop an estate plan and/or have an estate plan that is either incomplete and/or will not be implemented in accordance with their wishes due to non-compliance with and/or a lack of familiarity with the "operation of law."
- Family, and the complexities that result from familial relationships, are the centerpiece of American life. Many older Americans have been married two or more times. Many have concerns about other family members including adult children with special needs and their parents -- yes their parents!

While I could continue to document the impact of what some refer to as the "silver tsunami," suffice to say the exploding elder demographic will forever change the American way of life. Or, as Bob Dylan, who recently turned 70, said, "The times they are a-changinging."

My research also revealed that when it comes to preparing for the elder years there are three kinds of people: Geriatric Gamblers; Planning Procrastinators; and Pragmatic Planners.

Geriatric Gamblers: These are risk takers who opt not to plan for the elder years even though they know such inaction increases the likelihood that they and their loved ones will needlessly suffer adverse consequences when they encounter one or more of life's contingencies.

Planning Procrastinators: They recognize the importance of planning; they just believe that there's no reason to plan for the elder years today. Preparation for the elder years can wait till tomorrow - assuming, of course, there is a tomorrow. Unfortunately, some planning procrastinators have discovered that inertia can have adverse ramifications.

Pragmatic Planners: Although they cannot fully predict or control the future, they recognize that at least they can prepare for those issues they are likely to confront. The pragmatic planner's primary objective is to minimize the trauma to themselves and their family members when difficult challenges do arise.

Clearly, from both a personal and professional perspective, our loved ones and our clients, as well as ourselves, will best be served if we all become pragmatic planners. Hence, educating New Yorkers and our fellow citizens throughout the United States is of paramount importance.

Who better to encourage New Yorkers, and all Americans, to plan ahead than lawyers and judges? The Honorable A. Gail Prudenti, the presiding Justice of New York's Appellate Division, Second Department, with unequivocal candor and elegance, makes the following call to action in her article "Lawyer Plan for Thyself and the People You Love":

ABRAMS FENSTERMAN

Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP

Attorneys at Law

As members of the legal profession, we bear a special responsibility to our clients, to our colleagues, and to ourselves, to consider and implement those planning tools which will ease the burden on those who will care for us in our later years and those who will survive us.

Simple math illustrates that, if the legal community responds to Justice Prudenti's challenge, we can spark a national movement. There are approximately 150,000 attorneys in New York. Collectively, we touch the lives of millions of people each day both personally and professionally. Think of the power we have to encourage our families, clients, colleagues and communities to prepare for the elder years. We welcome and urge you to join us in this important endeavor to implement a national movement of planners - for the sake of our family, friends and society.

Before closing, I'd like to thank the current and past leaders of NYSBA who have provided me with the opportunity to participate in various projects, like this special *Journal* issue, which have touched and, hopefully, improved the quality of life for hundreds of thousands of people in New York and throughout the United States. I must also acknowledge David Wilkes, editor in chief of the *Journal*, Dan McMahon, director of CLE Publications, Joan Fucillo, assistant editor of the *Journal*, and Erin Corcoran, designer, for their guidance, support and collegiality. I also extend my gratitude, appreciation and respect to the dedicated authors who have contributed their expertise to this historic issue of the *Journal*. Finally, I thank my wife, Linda, and my daughters Dana and Tracey, who motivate me to live a long, productive and meaningful life.

Reprinted with permission from: New York State Bar Association *Journal*, July/August 2011, Vol. 83, No. 6, published by the New York State Bar Association, One Elk Street, Albany, NY 12207.