

## IN THIS ISSUE:

- Page 1
  - Welcome Matthew F. Penater
- Page 2
  - Planning for Digital Assets
- Page 3
  - Elville Center for the Creative Arts
- Page 4
  - Super Lawyers & Rising Stars
- Page 5
  - Protect Your Life's Work
  - The Story of Edward
- Page 6
  - The Story of Edward
  - Serving as a Trustee
- Page 7
  - Aid & Attendance
- Page 8
  - Spendthrift Clauses
- Page 10-11
  - Upcoming Events
- Page 12
  - Our Partners & Attorneys
- Page 13
  - Our Firm
- Page 14
  - Ten Things to Look for...
- Page 15
  - Vision, Mission & Philosophy

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## Elville and Associates Welcomes Matthew F. Penater, J.D., LL.M., to Firm, Partner and Leader of New Baltimore Office

Jeffrey D. Stauffer, Community Relations Director

In September 2014, Elville and Associates welcomed Matthew F. Penater to the firm as its newest partner. Mr. Penater is leading the firm's Baltimore office, which opened in December at The Rotunda, located at 711 W. 40th Street in the city's Roland Park neighborhood.

Mr. Penater practices primarily in the areas of Probate/Estate Administration, Estate Planning, Trust Creation/Administration, Business Law and Tax Law. In his Estates and Trusts practice, he assists clients from a broad spectrum of net worth in customizing estate plans that meet their specific family's needs while limiting their exposure to estate tax and gift tax when necessary.

The Baltimore office is in good hands with Mr. Penater, who was named to the 2015 Maryland Rising Stars List for a third consecutive year by Super Lawyers, a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement.

"I couldn't be more excited to lead the new office of Elville & Associates," remarked Mr. Penater. "As a boutique estate, trust, tax and elder law firm, we are looking forward to bringing our expertise to the residents of the greater Baltimore area. We selected The Rotunda as the base for our expansion into Baltimore as it is currently undergoing a massive revitalization, which will include luxury apartments, new restaurants and a parking garage. The new Rotunda will be easily accessible for clients with plenty of

parking and it will provide the energy and atmosphere to match our firm's character."

In his Business & Tax Law practice, Mr. Penater assists clients in structuring business transactions from both a tax-related and business organization standpoint, including company formation (including S-corporations, partnerships and LLC's) and the creation/implementation of business succession plans. Mr. Penater is particularly focused on physician and dental practice representation, addressing both the personal and business needs specific to those professions.

Mr. Penater, previously of Thomas & Libowitz, P.A., is a cum laude graduate of the University of Baltimore School of Law. Admitted to practice law before the United States Tax Court and the United States District Court, and a member of the Baltimore County and Maryland Bar Associations, he received his Bachelor's Degree from the University of Scranton, his J.D. from the University of Baltimore School of Law, and LL.M. [Masters of Laws in Taxation] from the University of Baltimore School of Law.

Mr. Penater may be contacted at 443-393-7696, ext. 121, or via email at [matt@elvilleassociates.com](mailto:matt@elvilleassociates.com).



# What Clients Need To Know – Planning for Digital Assets

By Stephen R. Elville, J.D., LL.M.



I think we can all agree about the following: technology has become a dominant force in our lives; most of us use one or more email accounts; many people participate on social media sites; many people use internet banking or brokerage services, and pay bills or make other financial transactions online; it is common practice to store photographs, documents, and information, both personal and financial, electronically; and most of us grapple with a host of user identification numbers and passwords to important online services. Because of these realities, clients need to be concerned about planning for their digital assets. There are two major reasons why – the first is financial, and the second practical. The financial aspect is self-evident. At our most recent Client Event, David Kauffman, Certified Financial Planner and national expert on the subject of digital assets, outlined that the average person’s digital assets are valued at \$55,000.00. For example, it is not uncommon for certain domain names to sell for astronomical prices. The inherent value of digital assets then spills over into the practical – the need for planning, not only for protection of these assets, but for the management and disposal of them. At this point, some readers of this article may find themselves doubting the real necessity of planning for digital assets. If so, I ask that you do as fiction writers ask us to do – temporarily suspend disbelief and accept as fact what I assert here, or at least consider the importance of such planning, for the following reasons. Our need is to plan for seamless access to our digital assets during a time of incapacity, and the same seamless access at death. The problem is that in Maryland no body of law currently exists to adequately deal with digital assets. This presents a multitude of problems, a few of which include third-party access to computers, smartphones and other hand-held devices, personal accounts and information of all kinds, including music, photographs, financial accounts, social networking, media accounts, tax accounts, online shopping accounts, and much more, during life and after death, along with how digital assets are to be managed and disposed of at death. Although beyond the scope of this article, special problems exist in the management of online accounts such as Yahoo, Gmail, MSN, Facebook, Twitter, LinkedIn, and Instagram, during the account holder’s lifetime, although a few of these companies have recently taken steps in the right direction.

Fortunately, the law of digital assets is currently under development and will eventually “clean the slate” and provide guidance. Until then, clients and their fiduciaries will remain in digital asset planning limbo. You can, however, be proactive and create a working plan or strategy for your digital assets, as follows:



- A. Identify and catalog all of your digital assets, including account names and numbers, usernames and passwords, answers to security questions, what the account is used for, and any other pertinent information.
- B. Consider who should have authority to access and manage the digital asset accounts and whether this person will be the same person as your personal representative.
- C. Provide broad authority for the agent under your power of attorney document to take any actions necessary concerning the management of your digital assets.
- D. Include provisions in your Will or Revocable Trust authorizing your personal representative or trustee to access, manage, and dispose of your digital assets.
- E. Determine how you will secure and provide this sensitive information for your fiduciary. Will you use a “master” password” and secure the information in an online vault or other storage site, or will you utilize a safe deposit box or traditional safe? Several online sites specialize in the storage and security of digital assets.

In addition to the practical life and death management of digital assets, there are many unique and difficult problems associated with the transfer of digital assets at death and their treatment in the administration and settlement of estates that are also beyond the scope of this article. Hopefully, this brief foray into the new world of estate planning for digital assets has raised your awareness and cleared a mental pathway enough for you to take the first step or steps towards including digital assets in your thought process - a new mental picture of your estate plan that recognizes, comprehends, and includes digital assets as a normal part of your estate and elder law planning. The attorneys at Elville and Associates can assist you through further counseling, planning, and updating for digital assets, and can make recommendations for secure storage and other digital asset-related issues, as your needs require.



## The Elville Center for the Creative Arts Continues to Grow, Offers Children Opportunities to Explore Music

Jeffrey D. Stauffer, Director – The Elville Center for the Creative Arts

Since its inception in mid-2014, The Elville Center for the Creative Arts, a 501(c)(3) non-profit corporation, has partnered with local and regional businesses such as Music and Arts, WBJC 91.5 FM, and recently The Columbia Orchestra and local schools, to provide musical instruments, musical instrument rental, music lessons, and participation in music-related activities to and for children of all ages throughout Maryland. The purpose of the Elville Center is to improve the quality of life of children of all ages by providing them the opportunity to learn music theory and application, experience cultural events related to the musical and creative arts, and to use music and the promotion of music-related activities to transcend social and economic divisions.

Over the past several months, generous donors have provided instruments ranging from clarinets to violins, flutes to celli, trumpets to guitars and even a rare Hawaiian ukulele and African flute. The Elville Center then takes these instruments to its Music & Arts Center partner and pays for their refurbishment so students receive an instrument in excellent condition that The Elville Center is proud to deliver and the students are excited to play.

On January 13th, Stephen R. Elville, President and Founder of The Elville Center, met with the administration and teachers of Benjamin Tasker Middle School to provide the first flight of musical instruments and music supplies to the school's students and music department. Plans are underway for future instrument donations as well as providing assistance for the school's spring musical.

"I hope this event sparks the imaginations of other donors," remarked Mr. Elville. "We are looking forward to continuing the project of re-equipping the Music Department at Benjamin Tasker and addressing the needs of music students throughout the region."

In March, The Elville Center partnered with The Columbia Orchestra to sponsor the purchase of 30 tickets for children to attend its popular Young People's Concert Series. The program included a "Carnival of the Animals," which featured a combination of music and dance as well as "The Thrill of the Orchestra," which introduced children to the various instruments and music from the hit Disney movie "Frozen." In between the performances, students were given the opportunity to participate in a musical instrument petting zoo where they could touch and try to play the various instruments.

Also in March, The Elville Center developed a partnership with Wiley H. Bates Middle School, an Annapolis school that integrates the arts in each area of its curriculum, a teaching technique that provides unique learning experiences for its students. Numerous supplies and musical instrument donations have already taken place with more to come, and plans for a fundraiser to benefit the school's music program are underway.

Dr. Maximus VanDerbeek, Band Director at Bates, has been thrilled with the developing partnership, noting, "The Bates Middle School is a program which serves the needs of a financially challenged local community. Many of these students need support in order to play music in band with expenses such as reeds, mouthpieces, instruments, sheet music, and more. In a timely manner, Elville and Associates has stepped in and provided outstanding support to our program to make band and the joy of music possible for our community."

In addition to individual and corporate donations, Elville and Associates contributes its own corporate funds to the Elville Center. It is the hope of Mr. Elville that this charitable initiative will continue to capture the imaginations and enthusiasm of our clients, business partners, and the community at large and will continue to grow in scope, culminating in the fulfillment of many dreams and a continuation of the music.

If you are interested in The Elville Center For The Creative Arts and would like to learn more, or if you would like to make a donation or pledge, please contact Jeff Stauffer at 443-393-7696 or via email at [jeff@elvilleassociates.com](mailto:jeff@elvilleassociates.com). Personal meetings with Mr. Elville for discussion of The Elville Center are available upon request.



# ELVILLE AND ASSOCIATES CONGRATULATES OUR ATTORNEYS FOR THEIR INCLUSION ON THIS YEAR'S MARYLAND SUPER LAWYERS AND RISING STARS LISTS.



**Stephen R. Elville, J.D., LL.M.**

Stephen R. Elville, Principal at Elville and Associates, has been selected to the 2015 Maryland Super Lawyers list. Each year, no more than five percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor.



**Barrett R. King, J.D.**

Barrett R. King, Partner at Elville and Associates, has been selected for the 2nd consecutive year to the 2015 Maryland Rising Stars list. Each year, no more than 2.5 percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor.



**Matthew F. Penater, J.D., LL.M.**

Matthew F. Penater, Partner at Elville and Associates, has been selected to the 2015 Maryland Rising Stars list, his third consecutive year attaining the award. Each year, no more than 2.5 percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor.



Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys. The Super Lawyers lists are published nationwide in Super Lawyers Magazines and in leading city and regional magazines and newspapers across the country.

For more information about Super Lawyers, visit [SuperLawyers.com](http://SuperLawyers.com).

*Planning for Life, Planning for Legacies*

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# The Need to Protect Your Life's Work

Barrett R. King, J.D.



No one starts a business (or a marriage, for that matter) with the intention of leaving it. Yet it does happen. Partnerships, like marriages, take quite a bit of work between the partners to maintain stability and a healthy dynamic. When clients come to Elville

& Associates for estate planning, we ask whether there are business interests in the portfolio. If so, we routinely review operating agreements, partnership agreements, and shareholders' agreements to determine the rights and responsibilities of the owners. We want to be sure that, in the event of death or disability, the client's estate is positioned to sustain the operation of, or transfer the business, as the client would desire.

Even if the event of death or disability is addressed appropriately by the written agreement, we also want to be absolutely sure that steps are taken to address any dispute or unexpected rift that affects the business and drives the partners to want to go their separate ways. A partner's departure from a business raises issues of business law such as adequate compensation, non-competition agreements, the protection of customer lists, as well as copyright and trademark law.

A unique example recently appeared in this writer's practice. Four musicians approached the office, seeking to protect themselves in the event their musical group ran into creative differences and a band member wanted to leave. Just like many traditional businesses, the plan of action was as follows. First, this band had a discussion about the direction they wanted to go in and how profits and losses would be shared. Then, we worked to create an agreement. We formed a

company and had the company own the group's name. The name was trademarked.

Next, we committed the notes from the above-mentioned discussion to writing in the form of a partnership agreement. We discussed what each member would bring to the company in terms of startup capital, equipment, and intellectual property as well as 'sweat equity' – in this case, who was the primary songwriter and how the royalties and other revenue would be attributed to each member.

Certainly the goal is to see that their business and their 'product' will succeed, but this foursome knew that the possibility that someone wanted to leave (or that the rest wanted to kick this person out) could arise at any time. So the agreement outlines how someone can leave or be forced to leave. It outlined what that person would take with them, which can be different depending on whether departure is voluntary or mandatory.

You may not be in the business of music, but even if your business is selling widgets to a manufacturer of equipment, or if you are a consultant along with one or more other partners, the need for a clear understanding of the possibilities, and the certainties such as death, is still there. Meet with an attorney. You will be advised as to whether the attorney will represent you or the actual company, and your attorney will explain that distinction and why it matters. Do not let your business collapse into ruin because you only envisioned the good times. Even the good times can cause partners to disagree about how revenue is shared. It is utterly cliché, but it applies in both estate planning and business planning: fail to plan, plan to fail.

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## The Story of Edward & Why You Should Have an Estate Plan (*A Cautionary Tale*)

Matthew F. Penater, J.D., LL.M.



The following short story is fictional, but it is based on a collection of actual estates administered within the State of Maryland.

Edward was a successful attorney employed by the Federal Government. Edward did not have a Will, Revocable

Trust, or any estate plan in place. He had an estate worth approximately \$1.6 million, but did not have a spouse, child, brother, sister, or living parent. Edward was approximately 60 years of age when he died suddenly in his home in Baltimore City. He was survived by 15 aunts, uncles, and cousins of varying degrees of familial closeness; and one life-long friend whom he often referred to as his "sister", named Lisa. Following is a short recount of the administration of Edward's estate.

The first order of business was dealing with Edward's body. Since Edward had left no direction as to his wishes, two of the family members argued about what to do with Edward's body. One family member attempted to secretly move the body to another funeral home for cremation, which prompted the other family member to get a Court Order prohibiting Edward's cremation until the matter had been resolved. After a week of emergency litigation and substantial legal costs, a Court ruled that Edward would be cremated. What to do with his ashes was another story, which I do not have sufficient time to address here...

As Edward had no Will and had not appointed a Personal Representative (Executor), Edward's next closest family member was entitled to serve in that capacity under Maryland law. This person turned out to be his great-aunt named Belle, who was 87 years old and lived in Mississippi. This alone



## The Story of Edward & Why You Should Have an Estate Plan (*A Cautionary Tale*) (continued)

caused some difficulties due not only to Belle's geographic distance, but her own questionable health and competency. Once Belle was appointed Personal Representative, all of the assets of the Estate needed to be identified. Edward had not prepared a list of his assets nor provided any written evidence of where one might search for such information. In addition to whatever bank accounts, retirement account, and investment accounts he owned, there was a 3 story Baltimore City townhome filled to the brim with personal possessions. These items included firearms, paintings, books, and collectibles of every kind. It was left to Belle (in Mississippi) and the law firm on her behalf to dig through the house over two days looking for items of value and documents showing his assets. Following the initial search, an auction company was brought in to catalog and secure all of his valuable items for subsequent auction. What was left in the house after the valuables were removed was cleaned out over a few days by a cleaning company that filled two dumpsters before they were done.

Over the next 2-½ years, the Estate dragged-on as the law firm continued to search for assets and slowly filled-in all of the missing information of Edward's Estate. Several IRAs

were located by the firm, but since Edward had failed to properly designate beneficiaries, those IRAs were all paid to his Estate in a lump-sum, fully taxable, payment. On top of everything else, since Edward had not made any specific provision regarding his home, it was determined that it needed to be sold so the proceeds could be distributed among the heirs. This resulted in \$65,000 in renovation costs and a year of renovation work followed by another six months of property listing before it finally sold.

Finally, all of the assets were collected, expenses paid, and it was time to distribute the Estate. When a person dies without a Will, his or her estate gets distributed to their next-of-kin in order of blood-line closeness (aka "consanguinity"). The law firm prepared a family tree showing distributions among the 15 aunts, uncles, and cousins. The percentage each person received was based on the closeness in relation such person was to Edward. For example, one cousin received \$273,422 while another received \$3,653. After everything was distributed and the Estate finally closed out, the entire process had taken almost three years, cost over \$50,000 in legal expenses, and Edward's "sister", Lisa, had received nothing.

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## Assuming the Role of the Trustee

Bridgette E. Becker, J.D.



Has a friend or loved one asked you to serve as trustee of their trust? If so, and if you agreed (or before you agree), it is important to understand what duties you will be expected to perform and the responsibilities you will undertake. A trustee has a fiduciary duty to administer a

trust in accordance with the grantor's wishes as expressed in the document, the grantor being the person who creates the trust (also known as the trustor, donor, or settlor), and the person who appoints the trustee(s). In a revocable trust, the grantor routinely serves as trustee during his or her lifetime, and appoints successor trustees to serve in the event they become incapacitated or die. Co-Trustees may also be appointed, either to serve with the grantor, or with another trustee, usually with one of the co-trustees continuing to serve in the event that the other co-trustee is unable to serve for any reason. The grantor may choose interested or independent trustees. Independent trustees may be chosen for various reasons, including longevity, independent special decision making, increased control, minimizing the potential for conflict, or enhanced asset protection. Trustee selection includes several factors, among them these: (1) trustworthiness and dependability, (2) experience, (3) sound judgment, (4) financial management skills, (5) knowledge of the grantor's situation and intentions, and commitment to carrying out the grantor's purposes, (6) age and health, and more. As

part of the evaluation process, it is wise for any trustee candidate to assess these factors in light of their own qualifications and determine whether serving as trustee is a good idea (a good fit).

A person assuming the role of the trustee must monitor, invest, and manage trust assets for the benefit of the beneficiary(ies), and has fiduciary responsibility. Depending on the nature of the trust and situation, the trustee will need to examine titling issues during the life of the grantor, and if possible, fund the trust if not fully funded. A trustee may have the authority to alter or amend the trust, deal with a trust protector, change location and state law of the trust, or even terminate a trust. Depending on the nature and extent of customized or contemporary trust provisions, the grantor may limit any such powers during the drafting process. Along these lines, when a person assumes the role of the trustee, it is oftentimes helpful to retain and consult with an experienced estate planning attorney to guide and assist in the process as the trustee not only acts in a fiduciary role, he or she is exposed to liability. Minimizing this inherent liability is not only prudent, but essential. After the death of the grantor, trust administration may continue for months or even years, although the idea behind the use of most trusts is to provide for the smooth and expeditious transition of assets to trust beneficiaries at the grantor's death without undue delay and administrative burdens. The trustee may need to determine date of death values, terminate an administrative trust, set up

## Assuming the Role of the Trustee (continued)

further trust(s), obtain employer identification numbers (EIN), pay expenses, file tax returns, open and close any probate estate if also the personal representative, settle the debts of the decedent, gather and/or retitle assets, deal with retirement plan assets, determine and pay any applicable inheritance tax, notify and deal with the beneficiaries, provide one or more comprehensive accountings, and much more. As mentioned above, the trustee must notify and account to the trust beneficiaries. Along these lines, the trustee must be prepared to account for all assets of the trust, and all transactions within the trust, during the accounting period (all income and expenses). Obtaining acknowledgements, consents, and waivers (and in some cases, refunding agreements) from each beneficiary prior to the distribution of trust assets is a wise practice.

While the complete scope of the trustee's role and the nature of his or her duties and responsibilities goes well beyond the confines of this brief article, it is important to understand that help is always close at hand. Your acceptance and assumption of the role of the trustee, while daunting, can be managed by and through the assistance of your planning team – your estate planning attorney, Certified Public Accountant (CPA), and Financial Advisor.

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## Aid & Attendance – The Secret Benefit for Aging Veterans and Their Spouses

Lindsay V.R. Moss, J.D.



Aid and Attendance Improved Pension Benefit, better known as A&A... never heard of it? If so, you are not alone. It's a little known benefit offered through the Veteran's Administration (VA) for Veterans and spouses of Veterans. A&A can be used to cover the cost of in-home

health care, or can be used to assist with the cost of Assisted Living. To qualify, a veteran does not need to have suffered a service-related injury. They need only to have served one day of a 90 day minimum active duty military service during a time of war, and also need caregiving for activities of daily living. The eligible wartime periods are:

- World War I (April 6, 1917 – November 11, 1918)
- World War II (December 7, 1941 – December 31, 1946)
- Korean conflict (June 27, 1950 – January 31, 1955)
- Vietnam era (February 28, 1961 – May 7, 1975 for Veterans who served in the Republic of Vietnam during that period; otherwise August 5, 1964 – May 7, 1975)
- Gulf War (August 2, 1990 – through a future date to be set by law or Presidential Proclamation)

*(If the active duty occurred after September 7, 1980, you must have served at least 24 months or the full period that you were called up)*

Other requirements include:

- Age 65 or older with limited or no income; or
- Totally and permanently disabled; or
- Receiving Social Security Disability Insurance; or
- Receiving Supplemental Security Income

A&A is a tax free monetary benefit through the VA that can supplement a family's income and enable the use of services that would otherwise be unaffordable.

For 2015, the maximum pension rates and income limits are:

- Veteran - \$1,788 per month, with an income limit of \$21,466 per year
- Veteran with one dependent - \$2,120 per month, with an income limit of \$25,448 per year
- Surviving/Sick Spouse - \$1,149 per month, with an income limit of \$13,764 per year
- Veteran Couple - \$2,837 per month, with an income limit of \$34,050 per year

Pension benefits are needs-based and the "countable" family income must fall below the yearly limit set by law. However, with the cost of in-home health care and Assisted Living increasing each year, it is often the case that the cost of one's health care expenses exceeds the family income.

One important thing to consider is that the income limit does not include medical expenses. For example, if a Veteran and spouse have a combined income of \$70,000 a year, but \$60,000 of their yearly income is going towards the expense of an Assisted Living (which equates to \$5,000 a month... a relatively average cost for an Assisted Living facility), then the Veteran would qualify for the full A&A amount of \$2,120 per month. That's about 40% of the cost of the Assisted Living! The additional income can make a huge difference in the quality of life for both the individual receiving the benefit and the community spouse. It could also mean the difference between a substandard Assisted Living facility and a more reputable one.

A&A can also be used towards the cost of in-home health care. For example, if a Veteran (or spouse) is living at home, but is racking up medical expenses utilizing a home health care agency, A&A can be used to supplement the cost. It can even be used to pay the adult child(ren) of a Veteran or spouse, if they are providing the care for their parent, and a valid caregiver agreement is in place.

## Aid & Attendance – The Secret Benefit for Aging Veterans and Their Spouses (continued)

There are several documents that are needed to start the application process. The application requires, among other documents, a copy of the Veteran's DD-214 (discharge paperwork), a medical evaluation from a physician, proof of current medical expenses, net worth and income information, and documentation of current out-of-pocket medical expenses.

The application process can be a very confusing and tedious journey. Both Stephen Elville, Esq. and Lindsay Moss, Esq. are VA Accredited Attorneys through the Veteran's Administration, trained in navigating the intricacies of the VA system. Call us if you or one of your family members is a Veteran, so we can ensure that you are aware of all benefits you may be eligible for under the law.

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### Spendthrift Clauses

Olivia R. Holcombe-Volke, J.D.



A spendthrift clause is a provision that protects assets or certain trusts against the creditors of a beneficiary of those trust assets. In practice, this means that a beneficiary of a trust containing a spendthrift clause can't buy a house using trust funds as collateral. Nor can a creditor force a payment from a life insurance policy with a spendthrift clause to the beneficiary (or itself) to pay a debt. In addition to protecting a beneficiary from his or her own financial improvidence, the modern concept behind a spendthrift clause is the idea that the grantor of a trust, or the owner of a life insurance policy, or the decedent of an estate, ought to be able to dictate the ultimate disposition of his or her assets.

The genesis of the spendthrift clause was the desire to protect a beneficiary from him or her self. According to the First Edition of Black's Law Dictionary, published in 1891, a "spendthrift" meant "[a] person who by excessive drinking, gambling, idleness, or debauchery of any kind shall so spend, waste, or lessen his estate as to expose himself or his family to want or suffering, or expose the town to charge or expense for the support of himself or family." Black's Law Dictionary 1115 (1st ed. 1891). One hundred years later, that definition had expanded to include someone "who spends money profusely and improvidently; a prodigal; one who lavishes or wastes his estate." Black's Law Dictionary 1400 (6th ed. 1990). The concept of a "spendthrift trust," therefore, arose as a method for ensuring that a spendthrift did not, in fact, "waste his estate" or "expose the town to charge or expense for the support of himself or family."

With the publication of the Second Edition in 1910, Black's Law Dictionary included the term "spendthrift trust," defined as "[a] term commonly applied to those trusts which are created with a view of providing a fund for the maintenance of another, and at the same time securing it against his improvidence or incapacity for his protection. Provisions against alienation of the trust fund by the voluntary act

of the beneficiary or his creditors are the usual incidents." Black's Law Dictionary 1101 (2nd ed. 1910). By the time of the Sixth Edition, that definition included "One which provides a fund for benefit of another than settlor, secures it against beneficiary's own improvidence, and places it beyond his creditors' reach. A trust set up to protect a beneficiary from spending all of the money that he is entitled to. Only a certain portion of the total amount is given to him at any one time. Most states permit spendthrift trust provisions that prohibit creditors from attaching a spendthrift trust." *Supra*.

One such state is Maryland, where the strength of protection contained in a spendthrift clause has been cemented over the past 126 years, beginning with the *Smith v. Towers* case in 1888 ("the founder of a trust may provide in direct terms that his property shall go to his beneficiary to the exclusion of [the beneficiary's] alienees, and to the exclusion of [the beneficiary's] creditors." 69 Md. 77, 90-91, 15 A. 92 (1888)). Despite various court battles and creditor efforts to pierce its protective shield, including challenges brought by tort creditors arguing the claims of a tort victim should be allowable claims against a spendthrift clause, the protection afforded by a spendthrift provision has maintained.

Statutorily on point is Section 14.5-504 of the Estates and Trusts Article of the Annotated Code (the "Maryland Trust Act, effective on January 1, 2015), which states, in pertinent part, that "[a] spendthrift provision is valid and enforceable", restraining "both voluntary and involuntary transfer of the beneficiary's interest", prohibiting "judicial foreclosure or attachment" by a creditor, and rendering "an attempt by a beneficiary to transfer an interest in a trust in violation of a valid spendthrift provision... void and of no effect." Section 14.5-504 goes on to provide that the protections afforded by a spendthrift provision also extend to the "use, occupancy, and enjoyment of residential real property and tangible personal property", which "may not be transferred... by a beneficiary whose interest is subject to a spendthrift provision..., [nor] subject to enforcement of a judgment against the beneficiary."



## Spendthrift Clauses (continued)

The exact wording of a spendthrift clause may look something like “no beneficiary may assign, anticipate, encumber, alienate, or otherwise voluntarily transfer the income or principal of any trust created under this trust. In addition, neither the income nor the principal of any trust created under this trust is subject to attachment, bankruptcy proceedings or any other legal process, the interference or control of creditors or others, or any voluntary transfer.” Although no specific language is statutorily required (in fact, Section 14.5-504 simply states that the protection applies where there is “[a] provision of a trust providing that the interest of a beneficiary is held subject to a “spendthrift trust”, or words of similar import...” (emphasis added)), it is advisable to have the spendthrift clause carefully worded to ensure the strength of its protection.

This does not mean that spendthrift provisions can protect against all creditors or all claims. Section 14.5-505 of the Estates and Trusts Article delineates “[a] allowable claims” to include “a child, spouse, or former spouse of the beneficiary that has a judgment or court order against the beneficiary for support or maintenance; a judgment creditor that has provided services for the protection of the interest of a beneficiary in the trust; or a claim of this State or the United States to the extent a statute of this State or federal law so provides;” with some limitations allowed based upon the support needs of the beneficiary him or herself. The distinction tends to fall along the lines of public policy considerations, that great determiner of what shouldn’t (equitably) be allowed.

Another important exception is that Maryland does not recognize the protection of a spendthrift provision in a self-settled trust, wherein the beneficiary is the same person as the grantor/settlor (“a person may not effectively create a spendthrift trust for his or her own benefit.” In *Re Robbins*, 826 F.2d 293, 294 (1987)). It is also advisable that there be an independent trustee for distribution purposes, to ensure one extra layer of creditor protection (versus a beneficiary who is also a trustee, and can, therefore, arguably distribute money to himself or herself whenever he or she wants to, and, therefore, can do so to satisfy a creditor’s claim). And of course, once a beneficiary actually receives a distribution from a trust or a payment from a life insurance policy, those funds or that asset are then available for the claims of a creditor – or, at least, are no longer protected by the spendthrift clause.

Unfortunately, it is impossible to fully protect a person against him or her self. Nor is it possible to fully control what happens to one’s assets after their distribution to another. However, a spendthrift clause is an extremely powerful protection mechanism and an indispensable planning tool.

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## On the Radio

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# Upcoming Events And Speaking Engagements

Please visit our website, [www.elvilleassociates.com/news-events](http://www.elvilleassociates.com/news-events), for frequent updates on our events and speaking engagements.

## **“Estate Planning Lite” Luncheon**

Wednesday, March 4<sup>th</sup>, 12:00 p.m. – 1:15 p.m.

The Office of Matthew R. Horowitz, C.P.A., 10015 Old Columbia Rd. Suite B-215, Columbia, Maryland 21046

## **Estate Planning Essentials Workshop**

Thursday, April 2<sup>nd</sup>, 12 p.m. – 1:15 p.m.

The North Star Group, 801 Pennsylvania Avenue Northwest #700a, Washington, DC 20004 ([www.northstargroupllc.com](http://www.northstargroupllc.com))

## **A Conversation about Life Planning**

Saturday, April 18<sup>th</sup>, 10 a.m. – noon

Metropolitan United Methodist Church, 548 Queenstown Road, Severn, Maryland 21144

Open to the public. Questions? Please contact Melvin Kelly at Metropolitan UMC at 443-928-0105, [melvinkelly937@msn.com](mailto:melvinkelly937@msn.com) or Jeff Stauffer at Elville and Associates at 443-393-7696, [jeff@elvilleassociates.com](mailto:jeff@elvilleassociates.com)

## **VA Benefits Seminar for Seniors and Their Families**

Tuesday, April 21<sup>st</sup>, 5:00 p.m. – 6:30 p.m.

Harmony Hall Assisted Living – Day Room, 6336 Cedar Lane, Columbia, Maryland 21044

Seating is limited! Please RSVP by April 17th to Calli Peacock at 410-531-6000 or [cpeacock@LorienHealth.com](mailto:cpeacock@LorienHealth.com)

## **Elville and Associates Presents The Advisors Forum**

Wednesday, April 22<sup>nd</sup>, 12:30 p.m. – 2:00 p.m.

Linden Hall, 4765 Dorsey Hall Drive, Ellicott City, Maryland 21042 ([www.Dorseysearch.columbiavillages.org](http://www.Dorseysearch.columbiavillages.org))

## **Workshop: Understanding the Nuances of the Advanced Medical Directive & Powers of Attorney – the Origin and Evolution of This Critical Personal Management Tool**

Thursday, April 23<sup>rd</sup>, 2:00 p.m. – 3:30 p.m.,

Riderwood Village, 3140 Gracefield Road, Silver Spring, Maryland 20904

## **Estate Planning Essentials Workshop, with Navy Federal Credit Union**

Thursday, April 23<sup>rd</sup>, 6:30 p.m. – 9:00 p.m.

Navy Federal Credit Union, Rockville Pike branch, 12248 Rockville Pike, Rockville, Maryland 20852

## **Financial Planners Association of Maryland Spring Symposium**

Thursday, May 14<sup>th</sup>, 11:15 a.m. – 12:15 p.m.

Doubletree by Hilton Baltimore North, 1726 Reisterstown Road, Pikesville, Maryland 21208

## **Elder Law and Estate Planning Essentials Workshop**

Wednesday, May 20<sup>th</sup>, 1 p.m. – 3 p.m.

Pikesville Senior Center, 1301 Reisterstown Rd., Pikesville, Maryland 21208 ([www.baltimorecountyMaryland.gov/agencies/aging/centers/pikesville.html](http://www.baltimorecountyMaryland.gov/agencies/aging/centers/pikesville.html)). To RSVP please contact Karen Bowley at the Center at 410-887-1245 or contact Jeff Stauffer at Elville & Associates at 443-676-9691 or [jeff@elvilleassociates.com](mailto:jeff@elvilleassociates.com)

## **Elder Law and Estate Planning Essentials Workshop**

Thursday, May 21<sup>th</sup>, 1 p.m. – 3 p.m.

Holiday Park Senior Center, 3950 Ferrara Drive, Wheaton, Maryland 20906 ([holidaypark.us](http://holidaypark.us))

To RSVP please contact Dori Morper at Holiday Park at 240-777-4999, [dori.morper@montgomerycountyMaryland.gov](mailto:dori.morper@montgomerycountyMaryland.gov) or Jeff Stauffer at 443-393-7696 or [jeff@elvilleassociates.com](mailto:jeff@elvilleassociates.com)

## **Elville and Associates Presents The Advisors Forum**

Wednesday, May 27<sup>th</sup>, 12:30 p.m. – 2:00 p.m.

Linden Hall, 4765 Dorsey Hall Drive, Ellicott City, Maryland 21042 ([www.Dorseysearch.columbiavillages.org](http://www.Dorseysearch.columbiavillages.org))

**Elder Law and Estate Planning Essentials Workshop**

Thursday, May 28<sup>th</sup>, 10:30 a.m. – 12:30 p.m.  
Annapolis Senior Center, 119 South Villa Avenue, Annapolis, Maryland 21401

**Workshop: Elder Law – What Is It and Why Is It Important?**

Tuesday, June 16<sup>th</sup>, 2:00 p.m. – 3:30 p.m.,  
Riderwood Village, 3140 Gracefield Road, Silver Spring, Maryland 20904

**Elville and Associates Presents The Advisors Forum**

Wednesday, June 24<sup>th</sup>, 12:30 p.m. – 2:00 p.m.  
Linden Hall, 4765 Dorsey Hall Drive, Ellicott City, Maryland 21042 ([www.Dorseysearch.columbiavillages.org](http://www.Dorseysearch.columbiavillages.org))

**Essentials of Estate Planning**

**Bloomberg BNA (National Telecast)**  
Monday, June 29<sup>th</sup>, 12:00 p.m. – 1:00 p.m.

**Estate Planning and Elder Law Essentials Seminar**

Sunday, July 26<sup>th</sup>, 2:00 p.m. – 3:30 p.m.  
Pikesville branch of the Baltimore County Public Library, 1301 Reisterstown Rd., Pikesville, Maryland 21208

**Estate Planning Luncheon**

Tuesday, July 28<sup>th</sup>, 11:30 a.m. – 1:00 p.m.  
Collington Life Care Community, 10450 Lottsford Road, Mitchellville, Maryland 20721 ([collington.kendal.org](http://collington.kendal.org))

**Estate Planning / Elder Law Essentials Luncheon**

Wednesday, July 29<sup>th</sup>, 11 a.m. – 1:30 p.m.  
The Village at Rockville, 9701 Veirs Drive, Rockville, Maryland 20850 ([thevillageatrockville.org](http://thevillageatrockville.org))

**Workshop: Asset Protection – Why You Should Care About Protecting the Assets of Your Loved Ones in the 21st-Century**

Thursday, August 20<sup>th</sup>, 2:00 p.m. – 3:30 p.m.  
Riderwood Village, 3140 Gracefield Road, Silver Spring, Maryland 20904

**Elville and Associates Presents The Advisors Forum**

Wednesday, September 23<sup>rd</sup>, 12:30 p.m. – 2:00 p.m.  
Linden Hall, 4765 Dorsey Hall Drive, Ellicott City, Maryland 21042 ([www.Dorseysearch.columbiavillages.org](http://www.Dorseysearch.columbiavillages.org))

**Workshop: Traditional Estate Planning Versus Legacy Planning – What Is the Difference?**

Thursday, October 15<sup>th</sup>, 2:00 p.m. – 3:30 p.m.  
Riderwood Village, 3140 Gracefield Road, Silver Spring, Maryland 20904

**Elder Law and Estate Planning Essentials Workshop**

Wednesday, October 21st, 1:00 p.m. – 2:15 p.m.  
Howard County Public Library East Columbia Branch / East Columbia Senior Center, 6600 Cradlerock Way, Columbia, Maryland 21045 ([www.hclibrary.org](http://www.hclibrary.org))

**Elville and Associates Presents The Advisors Forum**

Wednesday, October 28<sup>th</sup>, 12:30 p.m. – 2:00 p.m.  
Linden Hall, 4765 Dorsey Hall Drive, Ellicott City, Maryland 21042 ([www.Dorseysearch.columbiavillages.org](http://www.Dorseysearch.columbiavillages.org))

**Workshop: Charitable Giving - Why Is Philanthropy So Attractive – on Both a Personal and Financial Level?**

Thursday, December 17<sup>th</sup>, 2:00 p.m. – 3:30 p.m.  
Riderwood Village, 3140 Gracefield Road, Silver Spring, Maryland 20904



# Elville and Associates' Attorneys



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# Ten Things to Look For In An Estate Planning Or Elder Law Attorney

by Stephen R. Elville, J.D., LL.M.

1. Provides warm, empathetic approach and caring environment.
2. Attorney is a counselor and not just a technician.
3. Clients are provided with a unique estate planning or elder care planning experience and not just a transaction.
4. Provides an interactive planning process in partnership with the client and with emphasis on client goals (not a paternalistic approach).
5. Ensures financial advisor/C.P.A. friendly approach with goal of inclusive total team effort; works in good faith with Financial Advisor and/or C.P.A. to implement all appropriate solutions in best interests of the client.
6. Timely and structured process – encourages clients to complete the planning process and discourages procrastination.
7. Trust funding – planning attorney and firm’s funding coordinator oversee and ensure proper funding of all estate and elder law plans (client not abandoned with unfunded plan).
8. Client education and understanding – to the extent possible, attorney ensures that client understands their planning documents and choices.
9. Follow-up – maintains ongoing contact with clients via annual continuing education and maintenance & updating programs to encourage clients to meet with attorney at least once every other year, and facilitates client-attorney contact throughout the years via quarterly newsletter and other notifications.
10. Value-added services – provides client access to latest in on-line document storage, and all available contemporary recommendations for “complete” estate planning.



# Elville and Associates' Purpose Statements

## VISION STATEMENT

To become the leading estate planning, elder law and special needs planning firm in Maryland through the relentless pursuit of and adherence to the fundamental firm values of educating and counseling clients and constant recognition that the firm exists to exceed our clients' expectations; in an environment that encourages and facilitates constant learning, improvement, and professional advancement for all employees, and where all members of the firm are respected and encouraged to utilize and develop their own unique talents and abilities.

## MISSION STATEMENT

To provide practical solutions to our clients' problems through counseling, education, and superior legal technical knowledge.

## PHILOSOPHY STATEMENT

Elville and Associates engages clients in a multi-step educational process to ensure that estate, elder law and special needs planning works from inception, throughout lifetime, and at death. Clients are encouraged to take advantage of the Planning Team Concept for leading-edge, customized planning. The education of clients and their families through counseling and superior legal-technical knowledge is the mission of Elville and Associates.

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## Advocates Trust Services

Elville and Associates is a member of Advocates Trust Group, LLC, a Delaware Trust Company. Through this affiliation, Elville and Associates provides clients access the finest leading edge Delaware tax-advantaged trusts and trust services, including dynasty trusts, directed trusts, asset protection trusts, and the advantages of the Delaware court system. Delaware is one of the nation's leading domestic asset protection jurisdictions.



# Services Offered By Elville and Associates

## ESTATE PLANNING AND TAXATION

- Wills
- Trusts
- Powers of Attorney
- Advance Medical Directives
- Estate Administration (Probate)
- Trust Administration
- Fiduciary Representation
- Estate Tax Planning
- Asset Protection
- IRS Tax Controversy
- State of Maryland Tax Controversy
- Personal and Business Tax Planning
- Business Law
- Business Succession Planning
- Charitable Giving and Philanthropy

## ELDER LAW

- Medical Assistance
- Long-Term Care Asset Protection
- Long-Term Care Planning
- Nursing Home Selection
- Assisted Living Issues
- Guardianship
- Veterans Benefits
- Social Security
- Senior Housing

## SPECIAL NEEDS PLANNING

- Special Needs Trusts
- Public Benefit Preservation
- Supplemental Security Income (SSI)
- Social Security Disability (SSDI)
- Funding of Tort Recoveries
- Financial and other Planning for Special Needs Children and Adults
- Health Care Decision Making
- Fiduciary Services



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