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Elder Law: Introduction

*Alyssa A. DiRusso**

As editors, we decided on the Elder Law theme volume in the last month or two of 2019. It seems like a lifetime ago. Since then, the way we all think about elders has become more central and more complex. Despite many of us devoting a career to the idea that people will become incapacitated and die, things got a lot more personal with COVID-19. Age was no longer “just a number” but quite literally a risk factor, perhaps the worst risk factor.¹ And the response of many members of the public to the elevated threat faced by older Americans was – discouraging.²

Yet older people are not only the core of the trusts and estates client base, they are a growing demographic in society. The U.S. Census Bureau projects that by 2034 there will be approximately 77 million adults aged 65 and older—the first time in American history that older adults will outnumber children.³ By 2060, nearly a quarter of Americans will be age 65 and older and the number of people age 85 and older will triple.⁴ In recent years, nearly 75% of all deaths occurred after age 65

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¹ *People Who Are at Increased Risk for Severe Illness*, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html> [https://perma.cc/2HCD-JKE9] (last updated Sept. 11, 2020).

² Nina A. Kohn, *The pandemic exposed a painful truth: America doesn’t care about old people*, WASH. POST (May 8, 2020, 8:49 AM EST), https://www.washingtonpost.com/outlook/nursing-home-coronavirus-discrimination-elderly-deaths/2020/05/07/751fc464-8fb7-11ea-9e23-6914ee410a5f_story.html [https://perma.cc/54BT-6BGW].

³ Jonathan Vespa, *The U.S. Joins Other Countries With Large Aging Populations*, U.S. CENSUS BUREAU (Mar. 13, 2018), <https://www.census.gov/library/stories/2018/03/graying-america.html> [https://perma.cc/4SFC-CVJ8].

⁴ *Id.*

and 50% occurred after age 80,⁵ with modern average life expectancy at birth exceeding 76 years for men and 81 years for women.⁶

In a sense trusts and estates has always been about elder law; the practice area does tend to serve older clients. But perhaps trusts and estates lawyers (and academics) should incorporate an elder law orientation more consciously. The idea behind elder law is that the practice needs to focus on the needs of the person and not be tied to a doctrinal concept of law in silos. Trust law, tax law, yes – but in what other ways can the law support (and how does the law threaten) people who are aging and dying? And how can we adjust our perception of lawyering to recognize that we are *all* aging and dying? Elder law is all of us, extrapolated across enough time.

This volume helps shift the needs of the older client into the spotlight. Elder law is remarkably diverse and the articles that follow show that. Elder law is housing and divorce and special needs and retirement planning and managing real estate and tax planning and incapacity and so much more. Older people have such remarkable depth and so does the law to serve them. I hope you enjoy this theme volume and find something in it to help you help someone else.

⁵ *Leaving a legacy: A lasting gift to loved ones*, MERRILL 1, 10 (2019), https://images.em.bankofamerica.com/HOST-01-19-2701/ML_Legacy_Study.pdf (citing *Compressed Mortality File*, CTR. FOR DISEASE CONTROL, <https://wonder.cdc.gov/mortSQL.html> [<https://perma.cc/3DYQ-M335>]).

⁶ Elizabeth Arias & Jiaquan Xu, *United States Life Tables*, 2017, 68 NAT'L VITAL STAT. REP. 1, 3 tbl.A (2019), https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_07-508.pdf.