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Seniors and Special Needs News - May 15, 2015

1 message

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With help, seniors and people with special needs can keep some of their assets in the family rather than lose their entire life savings to the costs of long term care. They can use these protected assets to enhance their quality of life beyond what long term care alone will provide.

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The Koewler Law Firm
 JAMES L. KOEWLER, JR.



Seniors and Special Needs News

Legal Issues when someone has Dementia: Advance Directives are Done

This week's newsletter continues the discussion of Legal Issues when someone has Dementia. The introductory installment (May 1, 2015) put forth the issue of "Who can speak for someone with dementia?" This week's installment continues the discussion and addresses the situation where the person with dementia has Advance Directives in place.

In this discussion "Advance Directives" means a General Power of Attorney and a Health Care Power of Attorney. Advance Directives might also include a Living Will and possibly a Do Not Resuscitate order. The purpose of powers of attorney is to appoint someone to speak for us (to handle our affairs, so to speak) in our place. If the person who now has dementia has Advance Directives, the question "Who can speak for that person?" should be resolved. The Advance Directives provide the answer.

Before we go further, let's set out our terminology.

- A "power of attorney" is a legal document which appoints one or more people to handle the affairs of another person.
- The "principal" is the person who signed a power of attorney document, aka the person whose affairs will be handled by someone else. In our discussions, the "principal" will be the person who now suffers from dementia and for whom we are

trying to determine how decisions will be made.

- The "agent" is the person appointed through a power of attorney document to act for the principal.
- Note: People often use the term "power of attorney" to mean the agent, as in "I am Dad's power of attorney." Technically, the "power of attorney" is not a person but the legal document. I don't try to be a stickler about the use of terms, and I often refer to a person as the "power of attorney" when talking. In these newsletter articles, though, I will try to refer to the "power of attorney" as the document and the "agent" as a person.

If Advance Directives tell us who can make decisions for the person who now has dementia, isn't the issue done? These are legal issues, so of course the issue isn't done. There can be complications.

First, the agent appointed in the powers of attorney might have passed away or might now suffer from dementia. If so, the principal has no agent or effectively has no agent. The Advance Directives simply didn't get updated to keep up with changed circumstances. This is a frequent occurs when spouses appointed each other as agents in their respective powers of attorney but haven't revisited the power of attorney documents in years.

Second, a dispute about the Advance Directives might arise. Someone might claim that the agent exercised undue influence over the principal. This is a claim that the principal would have appointed someone different as agent if it weren't for the undue influence of the person actually named agent. Such a claim implies that the agent has some improper motive to want to be agent. If the power of attorney document is recent (recent enough to have been signed when the principal already suffered dementia,) undue influence could easily have occurred. Claims of undue influence are usually brought by a family member who feels that he or she should have been named agent.

Third, someone might claim that the agent was named by mistake, implying that the principal meant to name someone else. Using my family, for example, my Dad and his brothers (in birth order) are John, Joe, Jim, and Charlie. If Joe were named as his mother's agent, John could argue that it was a mistake because, as oldest, he was the logical choice to be agent. The fact that both names start with the letters "jo" makes the claim of mistake more plausible.

Fourth, the principal may have named more than one agent. (I do not mean a successor agent.) If two or more agents were named, either in the same power of attorney document or in separate documents, the agents could disagree. In the case of a disagreement, no decisions get made.

If the principal, who now suffers from dementia has previously appointed someone to act as agent through power of attorney documents, the principal planned ahead. That's great and it usually means that the person who can make decisions is easily identifiable. In some instances, though, complications arise that make it hard to determine who is in charge.

Suggest a Newsletter Topic

I try to write something new (and useful) in my newsletter every week. So, I know that I will sometimes have writer's block. I'd like your help, please.

If you have a topic for my newsletter that you'd kindly suggest, I promise to consider it. (I don't promise to pursue it. I just promise to consider it.) I try to write about issues concerning seniors, health care, long term care, special needs, Veterans Pension (aka Aid and Attendance) benefits, and Veterans Compensation benefits. Please keep your suggestions within or near to those topics.

Please submit your suggestion [here](#). If I use your topic suggestion, I'll put the content in both my blog and newsletter.

Thank you for your help.

Social Media Posts from the past week

05-14-2015 #Parent manual to handle #DisruptiveBehaviors of children with #Autism <http://ow.ly/MJWtp>

05-13-2015 Preparing for an #AgingParent to #AgeInPlace <http://ow.ly/MndiR>

05-12-2015 Check on your #LongTermCareInsurance now and then <http://ow.ly/MJQy4>

05-11-2015 Your #AgingParent should expect fair treatment in a #NursingHome or #AssistedLiving <http://ow.ly/MJvfY>

05-10-2015 #ObamaCare #HealthInsuranceMarketplace counted too much income for some children on #SocialSecurity <http://ow.ly/MJwff>

05-09-2015 Check your #EstatePlan now and then to adapt to family changes <http://ow.ly/MJuoi>

05-08-2015 Let people know about your #Planning for #LongTermCare <http://wp.me/p47F09-br>

Older social media posts can be found in the [social media post archive](#) on the firm's website, [ProtectingSeniors.com](#).

The Koewler Law Firm News

5-27-2015 Jim Koewler will discuss the legal issues that seniors face, especially focusing on preparing for possible long term care, at HCR ManorCare in Parma, Ohio.

6-9-2015 Jim Koewler will discuss Preventing Senior Fraud at The AbbeWood in Elyria, Ohio. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

6-10-2015 Jim Koewler will discuss Helping Seniors Pre-Plan their Funerals at UH Parma Medical Center in Parma, Ohio. Continuing education credit is available for social workers, counselors, and nurses.

6-16-2015 Jim Koewler will speak on planning ahead to protect your life savings against long term care costs at a meeting of the University Hospitals Bedford Medical Center SeniorNet at the Atrium of Anna Maria in Aurora, Ohio.

6-23-2015 Jim Koewler will discuss Helping Reluctant Seniors accept the benefits of Long Term Care at Medina General Hospital in Medina, Ohio with the Medina Senior Services Network. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

8-24-2015 Jim Koewler will discuss Advance Directives (General Power of Attorney, Health Care Power of Attorney, Living Will, etc.) at the Soprema Senior Center in Wadsworth, Ohio. Jim will provide help for a limited number of people to prepare and execute their Living Wills.

9-22-2015 Jim Koewler will discuss Money Management for Seniors at Brookdale Montrose, in Akron, Ohio.

Older items of firm news can be found in the [news archive](#) on the firm's website, [ProtectingSeniors.com](#).

Jim's available presentations

- Overcoming Seniors' Resistance to Long Term Care (Continuing Education credit available for social workers, counselors, nurses and Certified Case Managers)
- Preventing Senior Fraud (Continuing Education credit available for social workers, counselors, nurses and Certified Case Managers)
- My Care Ohio and Medicare/Medicaid "Dual Eligibles" (Continuing Education credit available for social workers, counselors, and nurses)
- Navigating Medicaid, Medicare, and the Affordable Care Act (Continuing Education credit available for social workers,

- counselors, and nurses)
- Government Benefits that can help Pay for Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Legal Issues for People with Dementia (Continuing Education credit available for social workers, counselors, and nurses)
- Protect your Life Savings from the Costs of Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Veterans Benefits for Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Advance Directives – Powers of Attorney, Living Wills, etc. (Continuing Education credit available for social workers, counselors, and nurses)
- Buying Long Term Care Insurance Wisely (Continuing Education credit available for social workers, counselors, and nurses)
- Planning Ahead to Protect against Long Term Care Costs (Continuing Education credit available for social workers, counselors, and nurses)
- Organizing for Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Pre-planning your Funeral (Continuing Education credit available for social workers, counselors, and nurses)
- Protecting your Money when you need Long Term Care and Essential Estate Planning Considerations (with free living wills for the audience)
- What people Know about Long Term Care that is Wrong
- Myths about Long Term Care Costs
- How to help your Parents Manage their Affairs

Upcoming meetings

5-18-2015 Medina County Senior Services Network's Education Committee, Tres Potrillos, Medina, Ohio, 11:30 a.m.

5-19-2015 UH Bedford Medical Center Senior Network, Light of Hearts Villa, Bedford, Ohio, 8:30 a.m.

5-20-2015 Geauga Professional Association Specializing in Seniors ("PASS"), West Geauga Senior Center, Chesterland, Ohio, 8:30 a.m.

5-21-2015 Portage Senior Services Network, Family and Community Services Building, Ravenna, Ohio, 8:30 a.m.

5-22-2015 Eldercare Professionals of Ohio, HCR Manorcare, Mayfield Heights, Ohio, 9:00 a.m.

5-26-2015 Summit County Senior Services Network, Anthony Kucko Kertesz Funeral Home, Akron, Ohio, 8:00 a.m.

5-26-2015 Professional Networking Group, DeJohn Funeral Home, Willoughby, Ohio, 8:30 a.m.

5-26-2015 Wayne Holmes Senior Service Coalition, Wayne County Care Center, Wooster, Ohio, 8:30 a.m.

5-28-2015 The Association of Specialists in Aging, Mentor Senior Center, Mentor, Ohio 8:30 a.m.

6-2-2015 Aging Services Network of Euclid, Euclid Hospital's Waltz Auditorium, Euclid, Ohio, 8:30 a.m.

6-3-2015 Stark Senior Services Network, Canton Baptist Temple, Canton,

Ohio, 9:00 a.m.

6-3-2015 Richfield Chamber of Commerce luncheon, Days Inn and Suites,
Richfield, Ohio, 11:45 a.m.

6-3-2015 Medina County Senior Services Network's Client Services
Committee, Sully's, Medina, Ohio, 3:00 p.m.

6-10-2015 Medina County Senior Services Network, Heimatland,
Brunswick, Ohio, 8:00 a.m.

6-10-2015 Summit Senior Sales, Administrators and Marketers Association,
Bath Manor, Akron, Ohio, 2:30 p.m.

6-11-2015 Lorain County Senior Services Network, The Northridge, North
Ridgeville, Ohio, 8:30 a.m.

6-12-2015 Eldercare Professionals of Ohio, Village of the Falls, Olmsted
Falls, Ohio, 9:00 a.m.

6-15-2015 Medina County Senior Services Network's Education Committee,
Tres Potrillos, Medina, Ohio, 11:30 a.m.

Newsletter Archive

Past issues of this newsletter can be found in the [newsletter archive](#) on the firm's
website, [ProtectingSeniors.com](#).

Contact Jim Koewler

If you'd like to contact Jim, this newsletter has a dedicated [contact page](#) on the
firm's blog site, [ProtectingSeniorsNews.com](#).

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