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Seniors and Special Needs News - June 26, 2015

1 message

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Fri, Jun 26, 2015 at 9:04 AM

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 DON'T Make General Power of Attorney "Springing"

Today's newsletter continues the discussion of Legal Issues when someone has Dementia. The introductory newsletter (May 1, 2015) put forth the issue of "Who can speak for someone with dementia?" The May 15, 2015 newsletter discussed the situation where the person with dementia has Advance Directives in place. The May 22, 2015 newsletter discussed the legal issues in determining whether a dementia sufferer can choose to have new Advance Directives prepared. The May 31, 2015 newsletter discussed options in preparing a Health Care Power of Attorney. The June 5, 2015 newsletter discussed how to decide whether to prepare a Living Will. The June 12, 2015 newsletter discussed the General Power of Attorney. The June 19 newsletter discussed the importance of making the General Power of Attorney "durable." To continue the discussion of which Advance Directives to prepare and how to prepare them, today's newsletter will discuss whether to make General Powers of Attorney "springing."

As we have in prior newsletters, let's first set our terminology (just in case you haven't read the prior newsletters.)

A "springing" General Power of Attorney does not give any authority to the agent until the principal lacks the capacity to make his or her own decisions.

Another way to describe "springing" is that the POA is dormant until the principal has a significant cognitive impairment or is unconscious. Within the parameters of this ongoing series about legal issues when someone has dementia, a "springing" Power of Attorney would not take effect until the

principal's dementia gets so bad that the principal no longer has the ability to make his or her own decisions because his or her mental connection to the world has been broken.

The determination whether the principal is still able to make his or her own decisions is usually required (1) from the principal's doctor, or (2) from the principal's doctor with a confirming second opinion from a separate doctor, or (3) from two independent doctors. The medical determination(s) need to be memorialized in a letter made available to the principal and the appointed agent (and perhaps to the principal's other family members.)

In the abstract, a "springing" POA seems to make a great deal of sense. The principal has a General POA drawn up in order to be prepared for a time when he or she can't make good decisions any longer, so there is no need to give actual power to the agent until that unfortunate time arrives. "There's no sense taking the risk that the agent 'messes with my stuff' while I can still manage it myself," a would-be principal might think. Sorry to say, though, but the implementation of a "springing" Power of Attorney often isn't as clean as it would seem in the abstract.

First, doctors try to avoid writing letters explaining that a patient (even a patient that is just seeking a second opinion) is not able to handle his or her own affairs. The doctor knows that the letter could lead to litigation and that the doctor could be forced to testify. Litigation is a time-sink, so doctors (who usually get paid based on the number of people that they see) try to avoid getting entangled in litigation. Litigation also can be emotionally charged, with someone (maybe everyone) left unsatisfied at the end.

In addition, doctors try to live in the world of diagnosis and treatment. An inability to make decisions isn't a treatable disease. The dementia might be treatable (more for management than for cure with our current medical knowledge,) but an inability to make decisions is not medically treatable. It is a legal judgment, not a medical judgment. (We all know people who have no dementia but have little ability to make decisions, don't we?)

Second, if the principal's family doesn't get along, the issue whether a springing Power of Attorney has "sprung" is a source for an argument and possibly for litigation, if the family discontent is harsh enough. Usually such disputes are between the children of the principal and a second spouse/step-parent (à la the Casey Kasem saga) or among the children themselves. Often, when there is bad blood within the family, any issue that can be argued will be argued. (Within a family, arguments often aren't really about money or about Mom or Dad's care. Arguments often are really about hurt feelings, sometimes decades old hurt feelings. For this reason, family disputes can look like ugly divorces.) Even if two doctors will testify that the principal's dementia has taken away the capacity to make decisions, the unhappy family members can probably find a doctor or two who will testify that the principal still has decision-making capacity. The principal would be caught in no-man's land between the warring factions of his or her family.

Because, in this series, we are discussing a principal who already has dementia (but, at this point in our series, the principal doesn't have advanced dementia yet,) a "springing" Power of Attorney is not an appropriate choice. Even if the spring hasn't yet sprung, it probably won't be long, so why take the chance on a dispute?

In my opinion, a "springing" Power of Attorney is rarely a good choice, whether or not the principal has dementia. Because doctor's have disincentives to opine on the principal's decision-making ability and because the spring itself can be a source of dispute in the principal's family, I suggest that principal's use an "immediate" Power of Attorney rather than a "springing" one.

If the principal doesn't trust his or her agent, the principal should not have appointed that agent. If the principal won't trust any agent, then the principal should not execute a POA at all. The principal has a choice between worrying about the agent that (in the principal's mind) is using the POA to steal from the principal and worrying about having someone ready to make decisions if, at some point in the future, the principal can't make decisions.

Each one of us has a different level of concern about being financially abused and about failing to get necessary long term care. As a result of those different worries, each of us has a different way of looking at the choice to prepare a General Power of Attorney. One size definitely does not fit all.

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

06-25-2015 #Pampering secrets from #Mother of child with #SpecialNeeds <http://ow.ly/OfOFr>

06-24-2015 #Laughter in the struggles of the #FamilyCaregiver <http://ow.ly/>

OiZcB

06-23-2015 A framework for deciding about #LongTermCareInsurance (and other big money issues) <http://ow.ly/OiSF1>

06-22-2015 Link between #NursingHome physical #Environment and engagement of #Alzheimer's sufferers <http://ow.ly/OiVLb>

06-21-2015 How to spot financial #ElderAbuse of an #AgingParent and what to do about it <http://ow.ly/OiXg8>

06-20-2015 #VA extends #Compensation (aka #VADisability) benefits to #AirForceReservists who worked on #AgentOrange planes <http://ow.ly/OiU6d>

06-19-2015 #LegalIssues when someone has #Dementia – Make General #PowerOfAttorney "Durable" <http://wp.me/p47F09-c5>

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

6-30-2015 Jim Koewler will discuss how elder law attorneys can help people who suffer from dementia and their caregivers at St. Bernadette's church in Westlake, Ohio.

7-30-2015 Jim Koewler will discuss the how elder law attorneys can help people who need long term care and people who have special needs as part of a panel presentation at Altercare of Wadsworth in Wadsworth, Ohio.

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 Chambrel of Montrose, a Brookdale Community, 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

6-26-2015 Eldercare Professionals of Ohio, Solon Pointe, Solon, Ohio, 9:00 a.m.

7-1-2015 Stark Senior Services Network, The Barrel Room, North Canton, Ohio, 4:00 p.m.

7-1-2015 Richfield Chamber of Commerce luncheon, The Taverne of Richfield, Richfield, Ohio, 11:45 a.m.

7-1-2015 Medina County Senior Services Network's Client Services Committee, Sully's, Medina, Ohio, 3:00 p.m.

7-8-2015 Medina County Senior Services Network, Willowood Care Center, Brunswick, Ohio, 8:00 a.m.

7-8-2015 Summit Senior Sales, Administrators and Marketers Association, Canal Pointe, Akron, Ohio, 2:30 p.m.

7-9-2015 Lorain County Senior Services Network picnic, Black River Reservation park, Elyria, Ohio

7-10-2015 UH Bedford Senior Network's Golf Outing, Briarwood Golf Club, Broadview Heights, Ohio

7-10-2015 Eldercare Professionals of Ohio, Arden Courts, Westlake, Ohio, 9:00 a.m.

7-15-2015 Geauga Professional Association Specializing in Seniors ("PASS"), Hamlet Retirement Community, Chagrin Falls, Ohio, 8:30 a.m.

7-20-2015 Medina County Senior Services Network's Education Committee, Tres Potrillos, Medina, Ohio, 11:30 a.m.

7-23-2015 Parma Hospital Senior Resource Network, Emeritus at Brookside Estates, Middleburg Heights, Ohio, 8:30 a.m.

7-23-2015 Portage Senior Services Network, Family and Community Services Building, Ravenna, Ohio, 8:30 a.m.

7-24-2015 Eldercare Professionals of Ohio, Walton Manor, Cleveland, Ohio, 9:00 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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