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Seniors and Special Needs News - November 20, 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
"Less Restrictive Alternatives" analysis in
Guardianship Hearing**

This week's newsletter continues the discussion of Legal Issues when

someone has Dementia. The introductory installment ([April 30, 2015](#)) put forth the issue of “Who can speak for someone with dementia?” The [May 14, 2015](#) installment discussed the situation where the person with dementia has Advance Directives in place. The [May 21, 2015](#) installment discussed the legal issues in determining whether a dementia sufferer can choose to have new Advance Directives prepared. The [May 30, 2015](#) installment discussed options in preparing a Health Care Power of Attorney. The [June 4, 2015](#) installment discussed how to decide whether to prepare a Living Will. The [June 11, 2015](#) installment discussed some of the basic issues in preparing a General Power of Attorney. The [June 18, 2015](#) installment discussed the importance of making the General Power of Attorney "durable." The [June 25, 2015](#) installment discussed the importance of NOT making the General Power of Attorney "springing." The [July 2, 2015](#) installment discussed revoking prior Powers of Attorney. The [July 9, 2015](#) installment discussed Do Not Resuscitate orders. The [July 16, 2015](#) installment discussed the Right of Disposition designation. The [July 23, 2015](#) installment discussed the Will (or Last Will and Testament.) The [July 31, 2015](#) installment discussed beneficiary designations on life insurance policies, IRAs, annuities, etc. The [August 6, 2015](#) installment discussed whether to pre-plan a funeral. The [August 14, 2015](#) installment discussed choosing a final resting place. The [August 27, 2015](#) installment

discussed pre-planning a funeral ceremony. The [September 3, 2015](#) installment discussed when and how to pay for the pre-planned funeral. The [September 10, 2015](#) installment discussed medical insurance choices. The [September 17, 2015](#) installment discussed long term care insurance. The [September 24, 2015](#) installment discussed obtaining the services of an elder law attorney. The [October 1, 2015](#) installment introduced the topic of guardianship. The [October 8, 2015](#) installment discussed the guardianship application. The [October 22, 2015](#) installment discussed the family conflicts that can arise during a guardianship proceeding. The [November 13, 2015](#) installment discussed the determination that someone is legally incompetent as part of the guardianship proceedings. Today's installment will discuss the concept of Less Restrictive Alternatives in guardianship proceedings.

When a person's dementia-causing disease has taken away the decision-making ability and the person has not prepared advance directives appointing someone else to make decisions, the next legal alternative is guardianship.

To establish a guardianship, a Probate Court must determine that the proposed ward (the person with the dementia-related disease) is, in fact, incompetent (i.e., unable to handle his or her own affairs because of a mental impairment) as discussed last week. If the court determines incompetence,

the court must then determine if there is a less restrictive alternative available.

The probate court looks for alternatives because, frankly, managing a guardianship relationship can be a pain in the butt for the guardian, the ward, the ward's family, and the probate court. Imagine balancing your checkbook and then having the probate court double-check your work. That is a fair description of the financial side of a guardianship. (As a practical matter, the probate court might start with the "less restrictive alternative" analysis because it's easier and less emotionally charged than the incompetency decision.)

The classic example of "less restrictive alternative" is the existence of valid Powers of Attorney, both for business decisions and health care decisions. If the proposed ward had planned ahead for his or her own possible incompetency, he or she might have put in place these Powers of Attorney (as discussed in the [May 14, 2015](#) installment.) If, however, as discussed previously, there are disputes on the validity of the Powers of Attorney, the probate court may have to rule that they are not good alternatives, even if less restrictive than a guardianship. (These disputes can be especially ugly when the Powers of Attorney were prepared only recently (i.e., at a time when the

proposed ward was probably already suffering from the dementia-causing disease.) Perhaps the ugliest version of these disputes is when the recent Powers of Attorney replace and revoke older Powers of Attorney, from obviously long before the dementia-causing disease had started.)

In a more frequent, and difficult, situation, the dementia sufferer resides in a secure dementia unit but has not adapted to staying on the unit. Perhaps the resident frequently tries to elope and does not respond to distraction or redirection techniques. Perhaps, the resident becomes belligerent and physical or exhibits other difficult behaviors. As a matter of law, unless a probate court has declared that resident to be incompetent, the resident has the legal right to leave. Leaving, however, may not be a safe situation for the resident. Even if the resident has Powers of Attorney in place, the Agent named in those Powers of Attorney does not have the legal authority to make the resident (the Principal in the Powers of Attorney) stay on the dementia unit. The Powers of Attorney do not take away the Principal's legal authority to make his or her own decisions. The Powers of Attorney merely empower the Agent to make certain decisions in the place of the Principal or for the convenience of the Principal. If the Principal makes a different decision (wanting to leave a secure unit, for example,) the Agent is not legally authorized to overrule the Principal. In such a situation, existing Powers of

Attorney do not provide a sufficient alternative to a guardianship. A guardian has the legal authority to make the ward (the person with dementia) stay on the secure unit.

NOTE: Do not expect a newsletter next week (the day after Thanksgiving.)

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

11-19-2015 Do #Children with #SpecialNeeds suffer more #ChildAbuse and #ChildNeglect than other Children? <http://ow.ly/UDWGK>

11-18-2015 #SeniorCenters benefit #AgingParents and their #FamilyCaregivers <http://ow.ly/U5tZJ>

11-17-2015 U.S. Federal #LongTermCareInsurance Partnership provides for #SameSex and opposite sex #DomesticPartners <http://ow.ly/UoEoL>

11-16-2015 Understaffing and poor work conditions affect both #NursingHome staff and #AgingAdults <http://ow.ly/UnIDF>

11-15-2015 Should we be angry at #Congress rather than at the #VA? <http://ow.ly/UnJRk>

11-14-2015 #AgingAdults on #Medicaid fail to keep up #Dental care <http://ow.ly/UnJqk>

11-13-2015 #Legal Issues when someone has #Dementia – Determining #Incompetence in #Guardianship Proceedings <http://wp.me/p47F09-fe>

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

11-11-2015 Jim Koewler was elected Treasurer of the Summit County (Ohio) Senior Sales, Admissions, and Marketing Association.

11-13-2015 The Koewler Law Firm had a table display at the Wadsworth Community Center Field House & Soprema Senior Center in Wadsworth, Ohio for the Senior/Caregiver Expo and, as part of the event, made a free chair massage available to care partners.

11-17-2015 Jim Koewler spoke on changes to the VA Pension (Aid & Attendance) benefit to the Bedford UH SeniorNet at the Solon Senior Center in Solon, Ohio.

11-24-015 Jim Koewler will discuss What Seniors "Know" about Long Term Care that is Wrong at the Summit County Senior Services Network in Akron, Ohio. Continuing education credit is available for social workers, counselors, and nurses.

11-25-2015 Jim Koewler will discuss Ethical Issues in Case Management and Discharge Planning at Medina General Hospital in Medina, Ohio. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

11-30-2015 Jim Koewler will discuss Health Insurance for Families: The Affordable Care Act ("ObamaCare,") Medicaid, and Medicare at Nelson Stud Welding in Elyria, Ohio.

4-14-2016 Jim Koewler will serve as Master of Ceremonies for the Senior Citizen Prom sponsored by the Soprema Wadsworth Senior Center at the

high school in Wadsworth, 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)
- Ethical Issues in Case Management and Discharge Planning (Continuing Education credit and Ethics credit available for social workers, counselors, nurses, and Certified Case Managers)
- Preventing Senior Fraud (Continuing Education credit available for social workers, counselors, and nurses)
- 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)
- What people "Know" about Long Term Care that is Wrong (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)
- Veterans Benefits that Help with 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 Final Arrangements (Continuing Education credit available for social workers, counselors, and nurses)
- Elder Law: A Primer (Continuing Legal Education credit available)
- Protecting your Money when you need Long Term Care and Essential Estate Planning Considerations (with free living wills for up to 20 audience members)
- Health Insurance for Families: The Affordable Care Act ("ObamaCare,") Medicaid, and Medicare
- Myths about Long Term Care Costs
- How to help your Parents Manage their Affairs
- Legal Lessons for Life

Upcoming meetings

11-20-2015 Eldercare Professionals of Ohio, Cornerstone of Hope, Independence, Ohio, 9:00 a.m.

11-24-2015 Summit County Senior Services Network, Anthony Kucko Kertesz Funeral Home, Akron, Ohio, 8:00 a.m.

11-24-2015 Professional Networking Group, Hospice of the Western Reserve, Cleveland, Ohio, 8:30 a.m.

11-24-2015 Wayne Holmes Senior Service Coalition, Wayne County Care Center, Wooster, Ohio, 8:30 a.m.

12-01-2015 Aging Services Network of Euclid, Euclid Hospital's

Waltz Auditorium, Euclid, Ohio, 8:30 a.m.

12-01-2015 Summit Senior Sales, Administrators and Marketers Association
social worker dinner, Rosemont Country Club, Fairlawn, Ohio, 5:00 p.m.

(registration at 4:30)

12-02-2015 Stark Senior Services Network, Canton Regency, Canton, Ohio,
3:00 p.m.

12-02-2015 Richfield Chamber of Commerce luncheon, Days Inn and Suites,
Richfield, Ohio, 11:45 a.m.

12-02-2015 Medina County Senior Services Network's Client Services
Committee, Sully's, Medina, Ohio, 3:00 p.m.

12-09-2015 Medina County Senior Services Network, Medina County Office
for Older Adults, Medina, Ohio, 8:00 a.m.

12-09-2015 Geauga Professional Association Specializing in Seniors
("PASS"), Care Corp, Chardon, Ohio, 8:30 a.m.

12-09-2015 Summit Senior Sales, Administrators and Marketers Association
holiday party, West High Apartments, Akron, Ohio, 2:30 p.m.

12-10-2015 Professional Networking Group Holiday Luncheon, Grande
Village, Twinsburg, Ohio, 12:30 p.m.

12-14-2015 Medina County Senior Services Network's Education
Committee, Yours Truly, 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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