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Seniors and Special Needs News - December 4, 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 Picking the Best Guardian

Note: There was no newsletter last week (Thanksgiving weekend.)

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. The [November 19, 2015](#) installment discussed the concept of Less Restrictive Alternatives in guardianship proceedings. Today's installment will discuss choosing the best guardian.

When the person's 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 two weeks ago. If the court determines incompetence, the court must then determine if there is a less restrictive alternative available, as discussed last week. If the court determines that the proposed ward is incompetent and that no less restrictive alternatives are available or will work with this proposed ward, the Probate Court must then determine who is the best available guardian.

When a proposed ward is determined to be incompetent and to have no viable "less restrictive alternative," the probate court must decide whether the applicant is the appropriate guardian. If the proposed ward's family has some

sort of internal strife, the choice of guardian is another point that is easy to contend. If the applicant cannot convince the probate court that he or she is the right person to be guardian, the court might consider another family member or another interested person. If no one with a prior connection to the proposed ward is both acceptable to the court and willing to serve as guardian, the probate court will turn to one of its local people (usually an attorney) to act as guardian. (If someone other than the original applicant is to be named guardian, that person may need to complete an application. The medical statement isn't necessary on this substitute application, so the new application is less time consuming than the original application.)

Acting as a guardian is no small undertaking. It requires a certain amount of training and time dedicated to visit the ward periodically. It also requires time to manage the ward's finances and property (if the guardian has responsibility for the estate) and to report to the probate court. Because of a series of articles in the "Columbus Dispatch" describing some of the practices of professional guardians and of the probate court in Franklin County, Ohio (the county that includes Columbus,) the state of Ohio has instituted rules requiring more training for guardians and mandating more visits with wards. Guardianship is not a responsibility to be taken lightly.

When a guardian is named, the guardian is put in charge of the ward's estate and the ward's person. The guardian being in charge of the ward's person means that the guardian is in charge of the ward's health and body. The guardian makes all health care decisions, and the guardian decides where the ward will live. If necessary, the guardian will decide what the ward will wear. (That is not an issue except in special circumstances, for example, when a ward wants to dress in summer clothes in the winter when an adverse health consequence might occur.) The guardian even decides who can visit the ward. (This is not usually an issue except when someone is trying to take advantage of the ward or when the guardian is the child of the ward and has some deeply entrenched rivalry with a sibling.) This guardianship of the person power is what allows a guardian to order that a ward must stay in a nursing home when the ward, left to his or her own choice, would leave the nursing home.

The guardian is also put in charge of the ward's estate. The ward's estate is

all of his or her possessions, money, and other assets. The guardian is now in charge of the ward's bank account, the ward's house, the ward's clothes, the ward's furniture, and everything else that the ward owns. The guardian must see that the ward's bills are paid and that the ward's income actually comes in. (As an example of how detailed the "estate" obligation can be, a friend of mine who acts as a guardian had to approve the removal of a dead tree from the ward's property.) The guardian must report periodically to the probate court to show proper management of the ward's assets. The guardian for acting as guardian from the ward's assets and income. If the guardian also acts as the ward's attorney (which sometimes happens with professional guardians,) the attorney fees are paid in addition to the guardianship fees. When the ward is married and the guardian is not the spouse (which happens sometimes,) the guardianship over the estate can become very tricky or even contentious because the spouse must share money management with the guardian, an outsider to the marriage.

In some circumstances, a guardian of the estate can be a different guardian than the guardian of the person. That is unusual and can cause disagreements between the guardians. For example, if a guardian of the person wants the ward to live in a particular community and the guardian of the estate does not like that community, the guardian of the estate has the power to withhold payment. As a result, split guardianships are rare.

If a ward is on Medicaid for long term care (which means that the ward has very few assets,) a guardian of the person can be appointed to make non-financial decisions. (Because of the few assets, the need for care, and the Medicaid system, the financial decisions pretty much sort themselves out.) Because of the ward's limited funds, such guardians-of-the-person only are volunteers. (In fact, I am a volunteer guardian for a gentleman on Medicaid.) A volunteer guardian may be necessary when the ward has no family or when the ward's family feels incapable of making difficult decisions.

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 since the last newsletter

12-03-2015 The emotions attached to the #Adoption of a Child with #SpecialNeeds <http://ow.ly/UDXAU>

12-02-2015 #FamilyCaregiver may also want/need an outside job. Here are #Jobs with #FlexTime <http://ow.ly/UVBsJ>

12-01-2015 #LongTermCareInsurance as a government #Entitlement is not likely in the foreseeable future <http://ow.ly/UVAME>

11-30-2015 #CareCommunities use #SensoryCues to help #Dementia sufferers feel at ease <http://ow.ly/UVCFt>

11-29-2015 What to consider before #Downsizing <http://ow.ly/UVDaz>

11-28-2015 Suggestions for the #Medicare payment system of the future <http://ow.ly/UVBTn>

11-27-2015 #VirtualDementiaTour shows what it's like to have #Alzheimer's or another #Dementia causing disease <http://ow.ly/UVBF3>

11-26-2015 November is #NationalCaregiverMonth. #CarePartners are a reason to #GiveThanks. <http://ow.ly/UVBjN>

11-26-2015 #Parents can't be the only advocates/care-partners for someone with #SpecialNeeds <http://ow.ly/UDX86>

11-25-2015 Join #TheGreatListen. Interview an #AgingParent or Grandparent & send to #LibraryOfCongress <http://ow.ly/UVAty>

11-24-2015 The pieces of a #LongTermCareInsurance policy <http://ow.ly/UVA95>

11-23-2015 While #Family is together for #Thanksgiving, discuss #LongTermCare issues <http://ow.ly/UVAZ3>

11-22-2015 Fake #Wal-Mart check gives access to depositor's Bank Account #Fraud #Scam <http://ow.ly/UEBYu>

11-21-2015 Approaches to manage #LongTermCare costs <http://ow.ly/UoDCL>

11-20-2015 #Legal Issues when someone has #Dementia – Examining #LessRestrictiveAlternatives in #Guardianship Proceedings <http://wp.me/p47F09-fp>

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

11-24-2015 Jim Koewler discussed 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 discussed 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 discussed Health Insurance for Families: The Affordable Care Act ("ObamaCare,") Medicaid, and Medicare at Nelson Stud Welding in Elyria, Ohio.

4-7-2016 Jim Koewler will discuss Ethical Issues in Case Management and Discharge Planning at Fairview Hospital in Cleveland, Ohio. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

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

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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