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## Seniors and Special Needs News - December 11, 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 Difficulties for a Family Member as Guardian

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. The [December 4, 2014](#) installment discussed choosing the best guardian. Today's installment will discuss the difficulties that might arise for a family member acting as 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. A family member offering to act as guardian should be aware of the expectations of a guardian and what challenges might be ahead.

In Ohio, a guardian needs training. The introductory guardianship course is 6 hours of training in a day-long course. The training requirements became tighter, especially for attorneys, in 2015 as a result of a scandal in Columbus when certain professional guardians were found to have responsibility for

more than 300 wards. After a series of newspapers articles on the county's guardianship program, questions arose regarding the level of involvement that a guardian could have with so many wards. (Because the training is so new and is supposed to apply to guardians already in service as well as to new guardians, the training requirements are only slowly being implemented. As a result, family members and friends volunteering to be guardians may not be required to undergo training immediately, especially in populous counties.)

In addition to spending time in training, the family member willing to be guardian has to undergo the examination of the court regarding his or her fitness to serve as guardian. That will include a background check tied to the would-be guardian's social security number.

If the guardianship is contested or there is a family fight over who should serve as guardian, the examination will go far beyond the background check. The prospective ward and the other family members who oppose the guardianship or the would-be guardian might pull out all the stops. There might be very demanding information requests during the "discovery" process. (Remember, this is court litigation.) There might also be very harsh testimony in the court's hearings. (Despite the oath to tell the truth, the whole truth, and nothing but the truth, do not be surprised if the testimony includes accusations, feelings, gossip, and exaggeration. A contested guardianship is very much like an ugly divorce trial. It's not just "the facts and nothing but the facts." There's lots of anger.)

If the family member becomes guardian, the guardian becomes responsible for all of the affairs of the ward. Unless the guardian is for the person only, the guardian is responsible for the ward's business affairs. Imagine balancing someone's checkbook and then having someone double-check your work. That's not far off from the court's oversight of a guardian's handling of the ward's money.

But the business affairs can go beyond just the checkbook. One friend of mine serving as a guardian had to determine whether to have a tree in the yard cut down. Guardianship is a real hands-on job.

In a particularly painful case that I've experienced, a daughter reluctantly agreed to be her mother's guardian. Her mother was in a nursing home. The guardian dutifully paid for the nursing home every month until Mom's money had all been spent. (The guardian had not talked with an elder law attorney about the possibility of sheltering any of Mom's life savings from the costs of long term care. Even if she had brought in an elder law attorney, the sheltering of assets within a guardianship is tricky because of the obligation to use the ward's assets only for the good of the ward.) When the money was gone, the daughter put Mom's real estate up for sale. (Unfortunately, this was during the recent real estate market meltdown, so no offers came.) At the same time, the daughter/guardian applied for Medicaid. The Medicaid caseworker, however, denied the application incorrectly. The guardian, not knowing what else to do and finding no one (including the nursing home's social worker) who would help, all but collapsed emotionally under the pressure. After more than two years of non-payment for Mom's care, the nursing home sued the guardian personally, alleging that she was negligent in managing her Mom/ward's affairs.

As if managing the ward's business affairs weren't difficult enough, the guardian (unless a guardian of the estate only) is responsible for the ward's personal affairs. That means that the guardian has to make choices on where the ward will live, who can visit the ward, whether a reluctant ward will be required to shower, and many other similar choices. Some of these can be pretty tough to handle emotionally. For example, the guardian might have to decide whether to maintain life support for a gravely ill ward. Even more often, a guardian must decide whether to keep up an active fight to maintain an aging ward's health or to adopt a symptom and pain management approach such as palliative care or hospice care. In other words, some of these decisions are life-and-death decisions.

It can be very hard to be the guardian for a loved one.

### **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**

12-10-2015 Advice for #Parents of Children with #SpecialNeeds on the Tough Days <http://ow.ly/UDXRI>

12-09-2015 Prepare before becoming #FamilyCarePartner <http://ow.ly/UVF7j>

12-08-2015 If #Employer offers #LongTermCareInsurance, take it (and other overlooked #FringeBenefits) <http://ow.ly/UVFnj>

12-07-2015 Signs that an #AgingParent needs a #CarePartner <http://ow.ly/UVDpa>

12-06-2015 #HomeCare workers need fair #Pay <http://ow.ly/UVDXD>

12-05-2015 #Holiday season top #SeniorFraud #Scams <http://ow.ly/UVDH2>

12-04-2015 #Legal Issues when someone has #Dementia – Picking the correct #Guardian <http://wp.me/p47F09-fu>

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

### **The Koewler Law Firm News**

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](http://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

12-14-2015 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](http://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](http://ProtectingSeniorsNews.com).

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