



Jim Koewler <jameskoewler@gmail.com>

Seniors and Special Needs News - December 18, 2015

1 message

The Koewler Law Firm <Newsletter@protectingseniorsnews.com>
 Reply-To: The Koewler Law Firm <Newsletter@protectingseniorsnews.com>
 To: Jim <protectingseniorsnewsarchive@gmail.com>

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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 with a Professional 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. The [December 11, 2014](#) installment discussed the difficulties that might arise for a family member acting as guardian. Today's installment will discuss the difficulties that a family might face if a professional guardian is appointed for a loved one.

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. While, after the discussion in last week's newsletter, a family member or friend may not wish to act as guardian, there can also be

difficulties for a family if an outsider is guardian.

An outside-the-family guardian is sort of like a new family member.

Everyone has to work at the relationship. It can't be one-sided and be successful. The family members (the real ones) must get used to the idea that a relative stranger will be making decisions for a loved one, OR the family members must make an effort (perhaps a great effort) to help the guardian be less of a stranger. The guardian won't automatically know the relationship that the family has had with the ward in the past. Neither will the guardian automatically know the relationship that the family wishes to have with the ward going forward. (Obviously, something has happened to the ward that has triggered the need for a guardian, and that same something that has happened to the ward will probably also affect relationships with family and friends.)

Unfortunately, to a professional guardian, the ward is part of the job. The guardian may have several wards at the same time. No one ward is enough to support a professional guardian. (If a professional guardian makes enough money to support himself or herself from just one or two wards, a close examination of the guardian's handling of the wards' money is in order.)

Because the guardian will have several wards, a close relationship with the wards' different families is difficult. (That being said, many if not most wards of professional guardians have no family remaining involved in their lives. The guardian is the closest thing that these wards have to family.)

The family may not agree with how the guardian handles the ward's money.

In fact, the family may be uncomfortable or even outraged that some of the ward's money is being used to pay the guardian for services. Well, that's just tough! No family member was both willing and able to serve as guardian. A professional guardian should not be forced to serve as guardian for free if the ward has money that must be managed. Handling the money is time-consuming. (If the ward has no money, a professional guardian may not be involved, but a volunteer guardian might.) Now, if the family has real concerns that the guardian is mishandling the ward's money, the family may monitor the guardian's work through the periodic account reports that the guardian must file with the Probate Court. If those account reports show excessive fees for the guardian or other money mismanagement, the family

may challenge the reports in a Court hearing.

Finally, the most difficult situation might be when the ward is married. The spouse might not be able to be the guardian. (Perhaps the spouse has his or her own health issues.) The guardian's duty to look out for the ward can be really tough on the spouse. A decision that the ward (before needing a guardian) might have made for the good of the marriage may not be the same decision that the guardian makes because the guardian isn't in a position to make sacrifices for the good of the marriage. The guardian might choose a care community that is not close to the spouse's home, making it harder for the spouse to visit. The guardian might have to take control of half of the couple's finances to make sure that the ward's needs can be paid for. It could be almost impossible to maintain the same relationship that the couple had before a guardianship became necessary.

While there are reasons that a family member may not wish to be guardian to a loved one, there are also reasons that the family member may not wish to have a non-family-member guardian for a loved one. That dilemma often leads to what amounts to almost a game of stare-down among family members. The guardian is the family member who "blinks" first.

Note: With Christmas and New Year's Day coming, I do not plan to publish a newsletter for the next two weeks. Happy Holidays!

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

12-17-2015 #SmartPhone App to help #NonVerbal people with #SpecialNeeds <http://ow.ly/VN833>

12-16-2015 Managing #Money for an #AgingParent who needs #LongTermCare <http://ow.ly/VN6kn>

12-15-2015 How #LongTermCareInsurance is part of a plan for #EarlyRetirement <http://ow.ly/VN7B6>

12-14-2015 Benefits of a small #CareCommunity for an #AgingParent <http://ow.ly/UVEot>

12-13-2015 #Retirement planning affects more than just retiree <http://ow.ly/UV3V3>

12-12-2015 Are #BackgroundChecks necessary for #NursingHome employees? <http://ow.ly/UV3Em>

12-11-2015 #Legal Issues when someone has #Dementia – Difficulties for a #Family member as a #Guardian <http://wp.me/p47F09-gu>

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

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

12-21-2015 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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