

A STEP AHEAD

AVOID GUARDIANSHIP - PLAN IN ADVANCE

Planning is an integral part of life. We plan to buy a house or car, to send our kids to college, or even a vacation! Have you planned for your care in the event you are in an accident, become ill or are unable to care for yourself? It is hard to imagine that, one day, we may be unable to handle our personal or financial affairs. Many people incorrectly assume that a spouse or "next of kin" will have legal authority to manage in the event of an emergency. Without proper planning, if you become ill or incapacitated, a Guardianship will be necessary to manage your affairs.

What is Guardianship?

Guardianship is the process by which a Court appoints a representative, called a Guardian, to make personal and property management decisions for an individual who is ill or incapacitated (the "IP") and has not done advance planning. It requires a Court proceeding. It is costly, time-consuming and intrusive on affairs that most of us would prefer to keep private. It restricts the legal rights of the IP. The Court declares that the IP is unable to handle personal and/or financial affairs and needs special protection. The process starts with the filing

of a Petition, with notice to family members and others. The Court appoints a Court Evaluator to conduct an investigation. A hearing is held to determine whether a Guardian is required and, if so, who should serve in that capacity - not necessarily the person whom the IP would have selected. The process ordinarily takes several months. An attorney customarily represents the Petitioner and an attorney may be appointed to represent the IP. Court fees, attorneys fees and the Court Evaluator's fee must be paid. A Guardian typically is required to post a bond or other security and to pay annual premiums to keep the bond current. A Guardian must file an accounting of monies collected and spent on behalf of the IP. The administration of the Guardianship is supervised by the Court. Frequently, a Guardian must obtain Court approval before acting on behalf of the IP.

What are the alternatives?

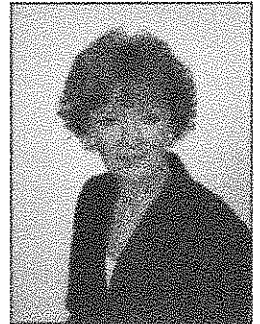
In order to authorize another to make medical, health or financial decisions on your behalf, you must do so, in advance, and in writing. The legal documents that establish how and by whom your financial affairs will be managed and health care

decisions made in the event of your incapacity are the Power of Attorney, Health Care Proxy and Living Will.

A Power of Attorney

(POA) permits you, the "principal," to name another, the "agent," to make financial and property management decisions for you. The NYS Legislature has recently propounded a new POA, effective on September 1, 2009. A POA executed before that date is still valid but may be difficult to enforce. The POA can be designed so that it remains in effect if you become incapacitated due to advanced age, illness or injury. It can authorize the agent to handle a wide range of matters or be limited to a single transaction. You may name more than one agent. You should always appoint a successor or back-up agent if your first choice cannot perform the required duties.

A Health Care Proxy (HCP) appoints an agent to make health and medical decisions. See **AVOID GUARDIANSHIP**, on Page 4



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HOLIDAY BLUES - DEPRESSION IN THE ELDERLY AND DISABLED

The holiday season is upon us. Care-givers for the elderly and disabled often notice a change in the attitude or mood of their loved ones at this time of year. Physical activity may diminish, symptoms of fatigue or sadness are exhibited, appetites abate, and interest in the holidays seems nonexistent.

According to the National Institute of Health, more than 20% of the senior population suffers from some form of depression. Depression in the elderly and disabled is difficult to diagnose and frequently untreated. The symptoms may be confused with medical illness, dementia, or malnutrition. Many sufferers refuse to acknowledge that they have depression and do not seek treatment.

The holidays do not cause depression. While the holidays may bring memories of earlier, perhaps happier times, illness, inactivity, the loss of a spouse or close friend, a move from home to assisted living, or a change in routine can also be factors. Depression may be a sign of a medical problem. Chronic pain or complications of an illness, memory loss and even diet, when proper nutrition and vitamins are lacking, can cause depression.

Common symptoms include: irritable mood, anxiety, feelings of worthlessness or sadness, loss of interest in daily activities, loss of weight and appetite, neglect of personal care and hygiene, fatigue, difficulty concentrating, irresponsible behavior, expressions of helplessness, death and suicide.

Depression and dementia share similar symptoms. Those who suffer from depression exhibit a rapid mental decline but retain an awareness of time, date and the environment. Motor skills may be slow and there may be an increase in concern about impaired memory. Dementia sufferers reveal a slow mental decline with confusion and loss of recognition of familiar faces and locations. Writing, speaking and motor skills can be impaired and memory loss is not acknowledged as a problem.

Whether it is depression or dementia, prompt treatment is recommended. If you are a care-taker, schedule a physical exam to rule out medical and nutritional causes. Implement a treatment program. Treatment may be as simple as relieving loneliness through visitations, outings and involvement in

family activities. In more severe cases antidepressant drugs have been proven to improve quality of life. Cognitive therapy sessions with a counselor may also be effective.

MISTAKES AND MISCONCEPTIONS

Estate planning, whether simple or complex, requires careful attention to details which, if overlooked or misunderstood, can undermine the plan's effectiveness. We will devote space in each issue to highlight common estate planning mistakes and misconceptions.

Most life insurance policies are tied to either the stock market or interest rates. Both are at historic lows. Have you inquired as to whether this has adversely affected your policy or its projections? Does your policy fund a life insurance trust? Life insurance is often an integral part of an estate plan. Don't ignore this important estate planning tool. Call us and inquire today.

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GRIEVING PROPERTY TAXES

If you are like many of our clients, property taxes constitute your most expensive house-related expense. Whether a village, town, county or school tax, even in good economic times, property tax increases can have a devastating impact on your budget. Each year, around this time, unsolicited offers may come from companies or law firms that offer representation in grieving property assessments in order to reduce these taxes. Understanding the process will assist you in deciding whether to grieve your taxes is something you wish to do.

Property taxes are based upon the value of your home. The greater its value, the higher the taxes will be. Each year, the value of property is reassessed. If the assessment is higher than it should be, your taxes will be higher, as well.

Grieving your property taxes is the process of establishing that the value of your property is less than the valuation assigned by your assessing district. Over assessment occurs for many reasons. The assessor may

have mis-measured your property or confused your property with another's. The assessor may not have taken into account changes in the neighborhood. Regardless of the reason, it is possible to petition the local authority to reduce your assessment, thus reducing your property taxes. If you believe that the assessment of your property is excessive, you have the right to file a "grievance" or complaint. Your grievance will be reviewed by an impartial party and, if he or she agrees, your taxes will be reduced. If they disagree, your grievance will be denied.

The new assessments are released in early January 2010. You must adhere to strict time guidelines if you expect to grieve the assessment on your property. Your complaint will not be considered unless it is timely filed. This year, Grievance Day, the last day to file your grievance for county, town and school property taxes, is March 1 for Nassau, May 19 for Suffolk and March 15 for New York City. Village taxes can also be grieved. However, as each village sets its own deadline, you must check

with your village to ascertain when to file.

Filing the grievance is only the first step in the process. When your grievance is heard, it will be necessary to appear and provide proof that the property assessment exceeds the property value. Your opinion will probably be insufficient to successfully challenge your assessment. Other, "impartial," evidence will generally be required to reduce the assessed value. For this reason, we strongly encourage our clients to retain a lawyer to assist them. Typically, the filing fees will be the only out of pocket expense because most attorneys agree to a contingency fee arrangement. That is, they generally receive a percentage of the tax reduction that results from a successful grievance. If they are unsuccessful, your cost is limited to the filing fee for the petition.

If you are interested in grieving your assessment, call us. We can refer you to attorneys who will be happy to assist you in maximizing your chances of reducing property taxes.

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This newsletter does not constitute the provision of legal or tax advice. It is to provide general information only and should not be acted upon without legal and/or professional assistance.

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AVOID GUARDIANSHIP - PLAN IN ADVANCE CONT...

for you if you are unable to communicate your wishes. The agent may be given authority to authorize or refuse surgery, antibiotics, cardiac and pulmonary resuscitation, respiratory support, and artificially administered feeding and fluids. In New York, you may only appoint one agent at a time, but may appoint successor agents. A Living Will (LW) contains information for your agent as to your end-of-life wishes. A LW and HCP help to avoid conflict among your family members. Armed with appropriate instructions, your agent can ensure that you receive only the treatment which you desire.

Proper planning in advance, and implementing a POA, HCP and LW, the "Advance Directives," can eliminate the need for a Guardianship proceeding. You can select your agent(s), direct their decision-making and, on most matters, avoid Court involvement.. Your health and financial matters remain private. Advance Directives enable us to plan for the possibility that we may become ill or incapacitated. By utilizing these effective tools, we can maintain control for as long as possible and then ensure that our wishes will be carried out by those we trust.

Advance Directives are sophisticated estate planning devices. While pre-printed forms are available in bookstores and on line, they are often outdated and sometimes inappropriate for the jurisdiction in which you reside or the goals you wish to accomplish. You should seek the assistance of a qualified estate planning attorney in preparing these documents. We will be happy to help you and afford counsel as to your choice of agent(s), the powers that are appropriate for your situation and the manner in which the various documents must be executed in order that they will be valid and enforceable.

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