

SMART PLANNER

Useful Tips for a Better Tomorrow

Aug/Sept 2014



Standing up for a Nursing Home-Sweet-Home Environment

By Carmine Perri

If you or your loved one is in a nursing home, you need to know your rights! Once you understand what they are, you can better stand up for them.

Just as you are protected in your own home by a set of laws, residents of nursing homes are protected by Federal and Connecticut laws. These laws ensure that residents' rights are promoted and protected.

Unfortunately, there are times when this does not happen. And when this is the case, you need to make your voice heard. But first, you must know your rights. Take a look below at some key resident rights that are often challenged. And let us know if you think they are being violated, we can help you.

1. Access to records

When residents or their advocates request records pertaining to treatment sometimes they are told to put their request in writing and that it will take days to get their records. In fact, the nursing home is obligated by law to provide residents and their advocates with access to all their records within 24 hours.

2. Filing complaints

Residents are supposed to be given a statement explaining that they or their advocates may file a complaint about their facility with the state or certification agency concerning abuse, neglect, misappropriation of resident property and non-compliance with advance directives requirements. Facilities must provide residents with the names, addresses and telephone numbers of all state client advocacy groups where complaints can be filed. Don't be shy, make your complaints known.

3. Free from restraint or mistreatment

Residents have the right to be free from any physical or chemical restraints for purposes of discipline or convenience that are not required to treat the resident's physical symptoms. They also will be free from verbal, sexual, physical, and mental abuse, corporal punishment and involuntary seclusion. The facility must ensure that all violations are reported immediately and evidence must be shown that all alleged violations are thoroughly investigated and that corrective action is taken to prevent future abuses.

4. Freedom to choose

Residents should be given the freedom to choose activities, schedules and health care consistent with his or her interests, assessments, and plans of care. They must be able to interact with members of the community, including family and friends,

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Thought for the Day

"How old would you be if you didn't know how old you were?"

– Satchel Paige

Join Us For A Walk

To End Alzheimer's



We are putting together a team for Walk to End Alzheimer's to raise awareness and funds for Alzheimer's care, support and research. Would you like to join our team on September 21st at Bushnell Park in Hartford? Or make a donation to our team? Find out more at:

www.tinyurl.com/p5ofjyh

or contact Nadine:

Nadine@ctseniorlaw.com

860-837-0494.



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It's Time. Plan Today for Your Tomorrow.

Will Your Family Know What to Do With Your Collectibles?

So you have an art collection, or antique dolls, or maybe you collect wine. If you were to die tomorrow, what would happen to these things you've spent so much time and money investing in? Unless you include specific instructions in your estate planning documents (your Last Will and Testament or living trust), they may not end up where you had hoped. And they may be way undervalued.



That's right. Your collection is part of your estate. It may considerably increase your net worth; possibly help to pay for your care when you get older. For example, collecting coins could be part of your retirement planning strategy. Your hope would be that the coins will appreciate enough in value to supplement your retirement income down the road.

Or your collection may have little monetary value, but high sentimental or emotional value. It may be something that you'd want to pass along to someone who would appreciate your interests.

Either way, if you don't include your collection in your estate planning documents, there's no telling how it will be valued, or where it could end up after you die.

SPELL IT OUT

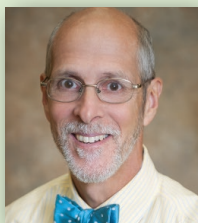
Here are some suggestions for making sure your collectibles go to the right person and that they are valued accurately:

1. Include a complete list of all your collectibles in your estate planning documents
2. Identify where you would like them to go when you die
3. Use a qualified appraiser to ensure the collection's worth is valued correctly
4. Include, with your documents, the appraisal, a list of appraisers and places where the items can be sold or auctioned off at the best prices
5. Request a report from the appraiser that gives a fair market value that complies with the IRS requirements
6. Update the appraisal every few years
7. Reach out to estate planning attorneys who will help you make sure your wishes are honored and who can minimize the potential conflict among heirs

UNCLE SAM IS INTERESTED

If you're not sure where your collectibles should go, you may want to consider gifting them to a charity. Collections, no matter what the value, must be reported to the IRS. Including them in your Will or living trust can reduce taxes on the collection if the proceeds from the trust eventually go to charity. If you've spent a lot of time and money building your collection, it's a no-brainer that you should also spend time planning what will happen to them when you die.

WHAT'S UP WITH US



Paul Czepiga and **Brendan Daly** have, for the 4th consecutive year, been named Super Lawyers in the elder law practice area by *Super Lawyers Magazine*.



Al Gatti, our Law Firm Administrator, was named Chairman of the Board of The Alzheimer's Association Connecticut Chapter.



Carmine Perri for the 3rd year in a row and **Wendy Borawski** for the 2nd year, are recognized by *Super Lawyers Magazine* as Rising Stars, lawyers under the age of 40 or who have been in practice for 10 years or less.



Home-Sweet-Home

(Continued from page 1)

both inside and outside the facility. Some facilities limit visitations but this is contrary to the law. Visitors should have open and free access to residents at all times.

Long-term care facilities are, in fact, the home of their residents. They should be safe, clean and comfortable environments where residents can use their own belongings, count on clean linens, private closet space, and comfortable lighting, temperature, and noise levels. This is not a lot to ask.

Regardless of whether the facility tells you or not, residents of nursing homes have many rights. But they don't mean a thing unless you or your loved one stands-up for them. Know your rights – you'll be in a better position to make your voice heard when and if your rights are violated.



How Long do I Need to Work in Order to Qualify for SSDI?

Social Security Disability Insurance (SSDI) is a federal insurance program that provides a cash benefit and eventual Medicare eligibility to people who are unable to work due to serious and ongoing disabilities. Since SSDI is an insurance program and not a means-tested benefit, it does not matter how much money a worker has in the bank when he or she becomes unable to work. However, in order to qualify for SSDI benefits, a worker has to not only meet stringent medical requirements, but he must also have worked for a certain amount of time prior to becoming “disabled.”

An SSDI applicant must pass two different work-related tests in order to potentially receive benefits. The first test is called the recent work test, and it requires an applicant to have actually worked for a certain number of years during the period immediately prior to becoming “disabled.” Applicants under the age of 24 must have worked for at least 1.5 years after turning 21 in order to pass the recent work test, while applicants between the ages of 24 and 31 must have worked for half of the time beginning when they turned 21. For example, if an applicant is 29, she must have worked for four years in order to pass the recent work test. Finally, applicants aged 31 and over must have worked for 5 out of the 10 years prior to becoming disabled.

The second work-related test is called the duration of work test. This test measures the amount of work an SSDI applicant has performed over the course of her lifetime. In general, if a beneficiary under the age of 42 passes the recent work test, she is likely going to pass the duration of work test. However, once a beneficiary turns 42, she must add one quarter of work per year in order to pass the duration of work test. For instance, a 46-year-old beneficiary must have worked for 6 years since turning 21 in order to pass the duration of work test and a 50-year-old beneficiary must have worked for 7 years. (In each case, a beneficiary must have earned at least 5 of those years within 10 years of becoming disabled.)

While these requirements may seem onerous, there is one bright side. The Social Security Administration calculates time spent working based on a quarter system, and that measurement is based on the amount of money an individual makes during a calendar year. For 2014, a worker earns one quarter of coverage for every \$1,200 he makes, up to a maximum of four quarters a year. So in order to earn a full “year” of work, i.e., four quarters, a worker needs to earn \$4,800 in

2014, and it does not matter when he earns it. So a high-income worker who makes \$4,800 in January 2014 will have earned his full year by the end of the first month.

The SSDI work tests are complicated, and the Social Security Administration does not always calculate benefits properly. If you think you qualify for SSDI, or if you want more information about the program, give us a call.

We invite you to submit your questions to us at plantoday@ctseniorlaw.com.

SOCIAL SECURITY

The National Academy of Social Insurance has released a toolkit to help Social Security beneficiaries sort through their claiming options.

Go to www.nasi.org/when-take-social-security-it-pays-wait to watch a video and download a 16-page publication titled *When Should I Take Social Security? Questions to Consider*.

WELLNESS CORNER



7 Foods to Keep You Young Put the fountain of youth in your grocery cart...

- 1 OLIVE OIL – contains powerful antioxidants
- 2 YOGURT – good for bone health and intestinal illness
- 3 FISH – omega-3 fats that prevent cholesterol build-up
- 4 CHOCOLATE – good for blood pressure
- 5 NUTS – shown to increase longevity
- 6 RED WINE – may activate genes that slow cellular aging
- 7 BLUEBERRIES – helps mitigate inflammation and oxidative damage

GOOD TO KNOW

A DNR order (do not resuscitate) is NOT included in your Living Will.

It's a separate order signed by a doctor which indicates that you should not be resuscitated. A Living Will states whether or not you wish to be kept alive by artificial means.

We're Hiring!

Our Litigation Department is looking for a **Legal Secretary**. If you know of anyone who may be interested, please send them our way at www.ctseniorlaw.com/careers.

It's Time. Plan Today for Your Tomorrow. Call us at (860) 236-7673.

ATTEND OUR ADULT EDUCATION CLASSES

	Protect Yourself from Financial Exploitation	What's an Estate Plan? Don't Make These Mistakes	Strategies that Prevent You from Going Broke in a Nursing Home	Planning for Children with Special Needs
Wethersfield (860) 571-8250		September 23	October 1	
Farmington (860) 404-0290	October 2	October 29	November 5	
Manchester Community College (860) 512-2842		October 7	October 28	
Vernon (860) 870-6060 x10		October 8	November 12	
Newington (860) 667-2000	November 19	October 9		
Berlin (860) 828-8135		October 14	November 6	October 16
Simsbury (860) 658-3870	October 15	October 21	November 18	
Glastonbury (860) 652-7253	October 16	October 23	November 18	

Call the sponsor town to register for these classes



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Special Insert For Legal, Financial and Healthcare Professionals

The POA Flaw: Jumping Through Hoops to Get 3rd Parties to Accept Them

By Paul T. Czepiga

Our state legislators had it within their power to make sure that people who have legitimately attained Power of Attorney (POA) have their power recognized by all entities with which they conduct business. But our Connecticut state legislators failed to make it happen. They did not successfully fight for the passage of Raised Bill No. 5215, An Act Concerning Adoption of the Connecticut Power of Attorney.

Why was this bill needed? It would have united the spirit of the law with the letter of the law. People are granted POAs because they have been deemed to have the full, total and complete trust by people who need their assistance. But too often third parties, especially financial institutions, don't accept POAs. As a result POAs often are forced to jump through hoops to get important matters taken care of in a timely fashion.

Here's an example of what frequently now happens to POAs in Connecticut:

A son who is a trusted family member holds the POA for a disabled parent. He tries to use the POA for the first time at a bank by asking the teller to make a withdrawal from the parent's account to pay a legitimate bill for the parent.

The bank teller, not knowing the son making the withdrawal request, is leery of honoring an old piece of paper (the

POA) and either denies the request or makes the POA jump through hoops before the bank honors the POA.

These hoops may include asking the son to return to the attorney's office that drafted the POA to get the attorney to certify in writing that the POA is still valid and has not been revoked; or having the son get his parent to sign a new POA on the bank's own form. The latter often is not feasible if the parent no longer possesses the requisite mental capacity to sign a legal document.

To avoid these types of runarounds, back in 2003 and again in 2004, Bills were introduced in the Connecticut Legislature to mandate that financial institutions honor a POA unless the institution had express knowledge of its revocation. The Banking Committee killed the Bill each of those two years. Connecticut last successfully tinkered with its POA laws in May 1990 when it added health care decision-making authority and again in 2006 when it removed health care decision-making (replacing health care with something called a "health-care representative").

If signed into law this year, Bill No. 5215 (An Act Concerning Adoption of the Connecticut Power of Attorney), would have clarified under which specific circumstances a financial institution would be allowed to refuse the POA as well as how to

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Annuities Purchased by a Medicaid Applicant Must Name State as Remainder Beneficiary

Reversing an appeals court decision, Georgia's highest court rules that because it finds that the federal statute is ambiguous, annuities benefitting a Medicaid applicant need to name the state as a remainder beneficiary in order to avoid a transfer penalty. *Cook v. Glover* (Ga., No. S13G1127, July 11, 2014).

Jerry Glover purchased an annuity for himself shortly before applying for Medicaid. When he refused to name the state as a remainder beneficiary on the annuity, the state approved his application but assessed a seven-month transfer-of-assets penalty against him.

Mr. Glover appealed, arguing he wasn't required to name the state as a remainder beneficiary. After a hearing, an administrative law judge upheld the penalty, and a trial court affirmed the decision. The Georgia Court of Appeals reversed. Although agreeing that a plain reading of 42 U. S. C. § 1396p (c) (1) (F) standing alone clearly required that the state be named a remainder beneficiary of any annuity, the Court of Appeals interpreted subsection (G) to unambiguously remove actuarially sound annuities benefitting Medicaid applicants from the requirements of subsection (F) by removing them from the definition of "assets" with respect to a transfer of assets.

The Georgia Supreme Court reverses, holding that the penalty period is valid. The court examines the statutory language regarding annuities and finds that the relationship between the two subsections is not clear and unambiguous. Therefore, the court rules that the state Medicaid agency's interpretation, which it notes is consistent with the Centers for Medicare and Medicaid Services' interpretation of the statute, is "reasonable and entitled to deference."

[ElderLaw Answers]

Heir Liable for Reimbursement of Mother's Medicaid Expenses

A California appeals court rules that the heir of an estate who sold her interest in her mother's house to her brother is liable to the state for reimbursement of her mother's Medicaid expenses. *Estate of Mays* (Cal. App., 3d, No. C070568, June 30, 2014).

Medi-Cal (Medicaid) recipient Merver Mays died, leaving her house as her only asset. Ms. Mays' daughter, Betty Bedford, petitioned the court to be appointed administrator of the estate, but she was never formally appointed because she didn't pay the surety bond. The state filed a creditor's claim against the estate for reimbursement of Medi-Cal expenses, and the court determined the claim was valid. A dispute arose between Ms. Bedford and her brother, Roy Flemons, over ownership of the house. After the court determined Mr. Flemons owned a one-half interest in the property, Ms. Bedford and Mr. Flemons entered into an agreement in which Mr. Flemons paid Ms. Bedford \$75,000 and transferred the house to his name.

The state petitioned the court for an order requiring Ms. Bedford to account for her administration of Ms. Mays's estate. The court determined Ms. Bedford was liable to the state for the amount she received from Mr. Flemons because although she wasn't formally appointed administrator, she was acting as administrator. Ms. Bedford appealed.

The California Court of Appeal, 3rd Appellate District, affirms on different grounds. The court rules that Ms. Bedford cannot be held liable due to her failure as administrator of the estate because she was never formally appointed administrator. However, the court holds that Ms. Bedford is liable as an heir of the estate who received estate property. According to the court, Ms. Bedford's settlement with Mr. Flemons was "essentially an end-run around the creditor's claim and the estate process" and "the \$75,000 payment represented proceeds of the estate that would otherwise be available to satisfy creditors' claims."

[ElderLaw Answers]

WACKY TAX LAW

Questionable Family Loan? Put it on Paper

Capital loss rules dictate that if you make a legitimate loan to someone with an official note, even if it's your brother-in-law, you can write the money off if you don't get paid back, up to \$3,000 a year with a maximum of \$10,000 total. Caveat: If they do pay you back, you'll have to pay taxes on the interest.

What's Up With Us

Carmine Perri has been appointed to the Connecticut Bar Association Board of Editors. He is also now a member of their Estate and Probate Section.

Claudia Englishby has been named co-chair of the Hartford County Bar Association's Elder Law Committee.

CTNAELA: Inside our office and out, our attorneys are actively advocating for the elderly and people with disabilities. Here are the committees we are active in this coming year for the Connecticut Chapter of NAELA (National Association of Elder Law Attorneys).

- **Brendan Daly** – Programs, Litigation and Publication Committees
- **Carmine Perri** – Public Policy, Programs, Litigation and Nominating Committees
- **Sharon Pope** – Public Policy and Membership Committees
- **Paul Czepiga** – Publications Committee

POA Flaw *(Continued from front)*

determine a POA's proper revocation.

The Act is a "uniform act," which means that it was drafted by a team of volunteer attorneys from around the nation as a public service. The uniform act version can be adopted by State legislatures if so desired. Fifteen states have adopted the uniform act version to date. In addition, the Bill before our State legislature was vetted by and had the approval of the Connecticut Bar Association with the support of its Elder Law and Estates and Probate committees.

Our state needs to join the ranks of the other 15 states, which have had the wisdom to give the holders of a Power of Attorney the power they deserve.



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