SMART PLANNER

Useful Tips for a Better Tomorrow — Spring 2016

Is Your Family Having Difficulty Making Decisions?

Try Family Mediation

By Amy Sereday

As we age, our roles within the family change. Children become caregivers. Parents need more assistance. Siblings must work together in new and different ways. We often hear from our clients about the stress this can create.

From parents…

"I've been diagnosed with Alzheimer's and I want to have a voice in my future plans. My children mean well but they have their own ideas and I don't want to be a burden to them."

From adult children…

"I moved in with my father to help with his care. He would like to give me the house but I am worried this will upset my siblings."

From caregivers, friends and family…

"It may be time for my aunt to stop driving but I don't know how to talk to her about it."
"My siblings don't understand how stressful caregiving can be."

From family of the deceased…

"It is upsetting to hear my children bicker about the future."
"Who should get grandpa's gold watch?"
"How do we share the family vacation home fairly?"

These are difficult conversations to have and overwhelming decisions to make. In even the most loving of families, disagreements can cause undue stress on seniors and adult children.

The good news is that there is a better option. There is a service available to help families have these conversations and make decisions together, as a family. That service is called Elder and Adult Family Mediation.

How does it work?

In adult family mediation, a trained professional serves as a neutral "middle-man," guiding the discussion. The process begins with individual, one-on-one conversations with the mediator.

Parents, children, caregivers — everyone gets an opportunity to speak with the mediator, by phone or in person, to voice his or her concerns privately. The mediator then evaluates the conversations and creates a list of topics to be discussed at a family meeting.

During the family meeting, the mediator helps everyone to listen to one another and brainstorm solutions. The family leaves with a Memorandum of Understanding that highlights their agreements and next steps.

(Continued on page 3)

GOOD TO KNOW

Debts After Death

Debts don't necessarily go away when you die. But what happens to them depends on the type of debt, whether anyone cosigned the loan, where you live, and the size of the estate you leave behind. Your surviving spouse is responsible for any outstanding debt if he or she cosigned the loan.

Children aren't liable unless they inherit assets tied to the debt or anything that could be used to pay it off. For other debts, like credit cards and medical bills, creditors usually can't hold heirs responsible unless the loans are cosigned, but they can make a claim on the estate.

Mistakes That Could Invalidate A Will

You want to make certain that your Will is effective when you die. That is, you want to be sure that your estate assets will pass to the people you choose. Your Will is an extremely important document and you want to watch for issues that could invalidate it in court.

The law requires that important formalities be followed when executing and probating a Will.

1. The original Will must be filed in court.
2. The testator, the person who signed the Will, must have it signed in the presence of two witnesses.
3. The testator also must have expressed to the witnesses, in some way, that he or she was signing his or her Last Will and Testament, though he didn't have to share the contents with them.
4. And finally, the witnesses must be disinterested — if the Will says the witnesses share in the estate, their testimony won't count.

Here are a few other things to watch out for:

- **The language in your Will must be clear!** If your intentions are not stated with absolute clarity, the Will could be misinterpreted, easily contested and become the cause for serious family strife.
- If you're a Connecticut resident, **don't create a holographic will**, which is one that you prepare in your own handwriting without the presence of witnesses. Although it is permissible in some jurisdictions, holographic Wills are invalid in Connecticut.
- **Do not use a do-it-yourself, canned Will kit!** First, it may not meet the Will signing requirements in Connecticut. And, without proper legal training, you're taking the risk that your Will contains language that could lead to an unintended result. ■

8 Tips to Become a Painter at any Age

The benefits of art making are too numerous to list here. So give it a try, and get ready for some wonderful surprises! Here is some practical advice for getting started.

1. Join an Organized Group

Your town may have an art association or community center you can become part of.

2. Go Back to School Inexpensively

Check with local colleges about non-credit course offerings you could take.

3. Scout the Art Stores

Craft and art supply stores frequently host painting demonstrations or lessons.

4. Visit Museums and Galleries

Review the web sites of museums and art galleries to learn about special programs for art classes.

5. Hire a Pro

Many artists supplement their income by teaching private or group lessons. Ask the local art association for a list of instructors or call the high school and speak to an art teacher about getting taught. Or create your own class with friends and hire a professional artist to teach you in your home.

6. Paint-N-Sip

One of the country's booming franchises is the "paint-and-sip" business and it's a fun way to get started. They orchestrate parties where friends gather for a few hours sipping wine and painting.

7. Search Online

Lots of inspiration and even lessons can be found by using the Internet. From YouTube videos to the Artists Network University.

8. Create a Painting Club

Like a book club, form a painting group.

Applying for Medicaid?

BEWARE of companies that *process* Medicaid applications

There are many companies, agencies, or departments within hospitals and nursing homes which may offer to prepare and submit the application for you — for free or for a low fee.

Using these services instead of an elder law attorney could expose you and your family to great risk!

WHAT IF . . .	NON-ATTORNEY	ELDER LAW ATTORNEY
A nursing home refers you to a non-lawyer?	Possible conflict of interest. Would a nursing home protect your assets or rather have you spend down on them?	Attorneys don't work for nursing homes. They have an ethical duty to advocate for you and your interests.
Your application is denied?	You're out of luck. They can't take your case to court.	Attorneys can prepare for an appeal to superior or federal court, they can fight for you to get the denial overturned.
You have a spouse?	They might not advise you about your spouse's rights, and they might instruct you to spend down all your money for care when you could have protected some or all of your assets for your spouse – including your home.	Attorneys can protect assets for your spouse, including your home, by making changes to your spouse's estate plan. They can also advise your spouse about Medicaid planning strategies.
You have IRAs, 401ks and annuities?	They are not qualified to provide legal advice about the complex tax consequences of liquidating these assets.	With estate planning techniques, attorneys can help you minimize or avoid tax consequences.
What if there's a mistake in the application?	Bad news. Non-attorneys may or may not provide a refund of your application fee. And, they may not take responsibility for your nursing home bill. You might end up paying the nursing home more than you have to.	Attorneys by law are held fully responsible for any mistakes.
You have assets in excess of the eligibility threshold?	They can't provide legal advice about asset protection.	Attorneys can assist with asset protection planning so your assets don't all go to the nursing home.
You like the low fee?	You get what you pay for. Your risk is too high to shop the lowest price, especially if you're told to spend down all of your money.	Is this really an area you want to cut costs? Attorneys have you covered – legally and financially. Their biggest concern is protecting as much of your money as possible — for you, not the nursing home.

Family Mediation *(continued from front page)*

If your family isn't ready for mediation, or you would prefer not to include everyone, an individual session with a mediator is a good alternative. A mediator can help you to clarify your goals, articulate your concerns, and consider decisions in a way that feels less overwhelming.

When is it a good time to use mediation?

A stitch in time saves nine! Mediation is often most effective early on, when you are researching options, struggling with decisions, feeling overwhelmed, or just plain stuck.

If you are in the midst of the Medicaid process, or facing other changes to health and living arrangements, you may benefit greatly from mediation.

Another good time to consider mediation is prior to updating your estate plan. Through mediation, you can make your wishes known and set clear goals for your future. Ultimately those clear goals will help your estate planning attorney to make sure your estate plan reflects your wishes.

How do I find a mediator?

Just like an attorney or a doctor, it is important to find a mediator who is highly qualified. Look for someone with a Masters or Doctorate degree in conflict resolution, social work, or law. We recommend using a mediator with specific training in elder and adult family mediation.

If your family is struggling with making decisions, give us a call. We would be happy to refer you to a qualified mediator.

*(Amy Sereday, of Compass Mediation, can be reached at (860) 480-8175 • **www.compass-mediation.com**)*

April 29	Paying for Long-Term Care: Ways to Keep from Going Broke – East Hartford Senior Center
May 11	What You Should Know About Estate Planning and Long Term Care Planning – VNA Northwest Torrington
May 11	Estate Planning: Don't Make These Mistakes! – The Residence at Brookside, Simsbury
May 11	Paying for Long-Term Care: Ways to Keep from Going Broke – Farmington Bank, West Hartford
May 15	What is a Power of Attorney and a Healthcare Directive? – Armenian Church of the Holy Resurrection
June 16	Paying for Long-Term Care: Ways to Keep from Going Broke – Calendar House, Southington
June 16	Estate Planning: Don't Make These Mistakes! – Duncaster, Bloomfield

To see our Adult Education schedule, go to www.ctseniorlaw.com

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(860) 236-7673
www.ctseniorlaw.com
Email: info@ctseniorlaw.com

SMART PLANNER

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Special Insert For Legal, Financial and Healthcare Professionals

LATEST NEWS:

Uniform Power of Attorney Act Means Greater Protection

by Taylor Equi

Effective July 1, 2016, Connecticut will do away with the statutory short form power of attorney act, replacing it with the Uniform Power of Attorney Act (UPOAA). The UPOAA both clarifies and modernizes Connecticut's principal-agent laws, and affords incapacitated principals (the individuals who sign Powers of Attorney) greater protection under the law from exploitation.

Here are some highlights of the changes:

1. Powers of attorney (POA) are automatically durable, which means if the principal becomes incapacitated, the POA is still valid.
2. The principal can appoint whom he wants to serve as his conservator.
3. The UPOAA creates liability for agents who misuse or abuse their position in several ways:
   a. **First,** the UPOAA gives more people access to the probate courts to seek the court to order an accounting of the agent's actions while acting under a POA;
   b. **Second**, the UPOAA gives courts the ability to order an agent who has misappropriated funds to repay the money, and to reimburse the principal for attorney's fees, costs, and interest; *and*
   c. **Third**, the UPOAA grants the probate court jurisdiction to determine the duties of and limitations on an agent, and allows an interested party to petition the probate court to determine:
      i. whether the principal had capacity to execute the POA;
      ii. whether the principal was unduly influenced to execute the POA; and
      iii. whether the POA was executed with adequate formalities.

So what does this mean? Essentially, the UPOAA creates an accessible way for those who are close to the principal to get into court to ensure that an agent is not abusing his power under a POA, which will ultimately help to protect principals from misuse and exploitation.

SSA Directs Local Offices to Give Specifics When Rejecting Trusts

The Social Security Administration (SSA) recently issued an Emergency Message to all personnel requiring workers to specifically inform SSI applicants or beneficiaries of the reasons a special needs trust has been rejected by the agency.

In the past, when the SSA determined that assets in an SSI beneficiary or applicant's trust were countable, the agency would frequently send a notice to the beneficiary or applicant telling him that he was ineligible for benefits because his assets exceeded the resource limit. However, this notice almost never explained the reasoning behind the SSA's rejection of the trust.

The new Emergency Message, which went out to all field level SSA personnel, requires caseworkers to spell out exactly what portion of the Program Operations Manual System (POMS) applies to the trust being rejected. Unfortunately, the Emergency Message does not tell field workers that they have to explain their reasoning in plain English – merely citing the appropriate section of the POMS appears to be enough. While this will make it relatively easy for professionals to determine what went wrong with a trust and whether an appeal is in order, it will likely give the layperson little if any guidance about his or her trust.

Resident's son who made improper transfers did not owe nursing home fiduciary duty

A Massachusetts appeals court rules that the son of a nursing home resident who breached his fiduciary duty to his mother by transferring assets to himself is not liable to the nursing home for his mother's unpaid bill because he did not owe the nursing home a fiduciary duty. *Merrimack Health Group v. Heroux* (Mass. App. Div., No. 15–ADMS–10024, Feb. 25, 2016).

Muriel Heroux named her son, Robert, as her agent under a power of attorney and he transferred money to himself. When Ms. Heroux entered a nursing home, she applied for Medicaid. The state denied benefits based on the transfers to her son.

After Ms. Heroux died without paying the nursing home for two months of care, the nursing home sued Mr. Heroux for breach of contract and breach of fiduciary duty, arguing that he was liable for the nursing home's unpaid expenses. The trial court dismissed the breach of contract claim, holding that there was not a contract between the nursing home and son, but it found that Mr. Heroux breached his fiduciary duty to the nursing home by transferring money from his mother's account to himself. Mr. Heroux appealed.

The Massachusetts Appellate Division reverses, holding that Mr. Heroux is not liable for breach of fiduciary duty because he did not have a fiduciary relationship with the nursing home. According to the court, while Mr. Heroux breached his fiduciary duty to his mother, the nursing home must show that Mr. Heroux owed it a fiduciary duty in order to succeed.

(elderlawanswers.com)

UPCOMING EVENTS

Financial Planner's Conference

Date: April 27

Location: Aqua Turf, Plantsville

Paul Czepiga to talk about the dilemma posed by unequal federal and state estate tax exemptions.

Hartford County Bar, Elder Law Section

Date: May 5

Location: HCBA Conference Center, Hartford

Sharon Pope will participate in a panel about public benefits and catastrophic cases.

CBA Annual Meeting

Date: June 13

Location: Hartford Convention Center

Carmine Perri to address legislation and litigation affecting Connecticut elders in 2016

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