

HOW CAN WE HELP?

Estate and Long Term Care Planning

Guardianship

Estate and Trust Administration

Probate Litigation

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The Ins and Outs of Guardianship

You may wonder about who is going to care for a disabled child when something happens to you; or, what to do when grandma develops Alzheimer's Disease and is no longer able to make decisions for herself. Understanding the "Ins and Outs of Guardianship"—when is it appropriate and what are the alternatives, may become very critical for the well-being of those you love!

- **So what is guardianship and when is it needed?**

A guardian is needed when a person cannot manage his or her own affairs, or care for himself/herself because of a mental or physical condition. A petition must be filed with the court, requesting the appointment of a guardian. Medical evaluations are

necessary to establish the person's condition. Notice is given to all next of kin who have a



Protect What Matters.

right to participate in the proceedings, and an attorney (sometimes court appointed) will prepare a report for the court. A judge will hold a hearing to determine if a guardian should be appointed and who the guardian should be.

- **What authority does a guardian have?**

Unless limited by the court, the guardian has total control over the finances and the personal decisions of the incompetent. For medical decisions regarding extraordinary care or for the sale of real estate, the guardian must obtain court approval.

- **What are the responsibilities of a guardian?**

The guardian must account carefully for all income and expenses, and must file an inventory listing assets as of the appointment date, and annual accountings, detailing all income received and expenses issued. A final accounting must be filed when the guardianship is terminated.

See Guardianships on page 2.

Managing the Medication Maze

Overmedicating, simply put, is taking too many medications simultaneously for symptoms that are not clinically indicated, or taking too much of a single medication.

Increased drug interactions and other harmful responses can occur, including death. Often those with dementia are especially vulnerable! They may not

remember what they are taking to tell their doctor, so often more drugs are prescribed. They forget to take their medications and often antipsychotic medications can make them worse, and may make them more confused.

The availability of more consumer ads, over-the-counter medicines, and "natural or alternative" herbs and nutrients can

add to the problem.

Review all you are taking with your doctor or pharmacist, and educate yourself! Use the same pharmacy and notify your primary care physician of any new medications added by anyone.

<http://medlineplus.gov>



Call 630-377-3241 to schedule a **FREE** one-hour consultation!

“In the arena of human life, the honors and the rewards fall to those who show their good qualities in action.”
Aristotle

Once a disabled child attains the age of 18 years, his or her parents no longer have decision making authority.

Guardianships *Continued from page 1.*

- **What are the alternatives to guardianship?**

A guardianship is time consuming, expensive, and a potential loss of privacy. You can protect yourself in the case of physical disability and mental incompetence through the use of a Durable Power of Attorney. Without a legal Power of Attorney or court appointed guardian, even a spouse does not have the authority to sign the other spouse's signature.

- **What is a “Durable Power of Attorney”?**

A Standard Power of Attorney is good only as long as the principal is not incapacitated. A Durable Power of Attorney remains in effect after incapacity, but must be drawn up before the principal is deemed incompetent.

- **What powers does an agent have using a Power of Attorney?**

A Power of Attorney must specify what powers are given

(and not given) to the agent and may contain a broad list of specific duties.

- **Can a principal revoke a Power of Attorney?**

Yes, by sending a letter to the agent telling him/her that the Power of Attorney has been revoked.

- **Can an agent act under a Power of Attorney after the death of a principal?**

No. A Power of Attorney becomes ineffective at death.

Decision Rights and Capacity Issues

Most state laws use “incapacity” rather than “incompetency”, though both words are used interchangeably. The key distinction now is between clinical and legal incapacity. Those who have both clinical and legal capacity have the right to make health care decisions, including refusal of medically necessary care, even if death may result.

Clinical capacity to make health care decisions is the ability to understand the benefits and risks, possible alternatives and ability to communicate his/her wishes. Healthcare practitioners determine this type of capacity, limited to a particular health care decision. Capacity can be intermittent, variable and affected by the environment. To obtain consent to treat a person who lacks clinical capacity, health care practitioners must con-

tact that person's agent under the power of attorney for health care or another legally authorized surrogate. If emergency care is needed and there is no designated surrogate (or that surrogate is unavailable), “presumed consent” applies - consent is presumed for any necessary treatment.

Legal capacity, also called competency, cannot be determined by health care practitioners. A person is considered legally capable until a judge declares them incapacitated with respect to some or all areas of functioning. Substantiation of the following is typically required: a disabling condition (e.g., mental retardation, a mental disorder, dementia, altered consciousness, chronic use of drugs); inability to receive and evaluate information or to make or communicate decisions; and inability to meet

essential requirements of physical health, safety, or self-care without protective intervention. If physicians question a person's legal capacity, they may seek a court's determination. They may be asked to testify and provide documentation for a hearing to determine that legal capacity.

Support National Healthcare Decisions Day on April 16th, 2010!

Celebrating the 20th anniversary of the enactment of the Patient Self-Determination Act!

Let your wishes be known!

Linda's List of Who's Who at the Firm



Linda M. Strohschein

In an effort to help you get to know us, this column will focus on one of our team members each issue. You may know me as your lawyer, but this bio adds some detail about me

personally.

I have been in practice since 1996 and owned this business since 2004. I started my legal career handling Probate Litigation in a suburban law firm. After three years, I decided that there must be a better way to avoid Will and Trust conflicts by drafting the documents correctly in the first place.

I then proceeded to law firms in Chicago, where I learned extensively about drafting Wills and Trusts, especially for Special Needs families. Then, my own family brought my focus back to the St. Charles area when I started Strohschein Law Group.

In five years, we have grown to a team of twelve and we continue to add talented new people because the need keeps growing. I have two very active elementary school age kids that keep me busy and smiling, two cats and four fish.

To learn about the rest of our team, visit our web site: www.StrohscheinLawGroup.com

“Don't count the days, make the days count!”

Muhammad

Ali

Spring Cleaning for Safety's Sake

Living at home with a chronic illness may mean looking at spring cleaning from a different light. More than two-thirds of all older people who need help with everyday tasks live at home, including more than 70% of those with Alzheimer's disease! As changes occur in abilities to manage one's self-care and environment, consider the following tips:

- Build barrier-free entryways to your home.

- Clear pathways and avoid scatter rugs, or anything that can trip you up!
- Install grab bars, elevated toilet seats and easy access shower areas.
- Arrange often used items on easy access shelves and closets.
- Install rocker light switches for easy on-off lighting.
- Be sure often used kitchen

items are placed within reach and desks or work areas have knee clearance.

- Check lighting to be sure there is plenty!
- If you love to garden, raise flower beds and hire out the lawn maintenance jobs!

Rave Reviews

“I thank you for all you have done. I know I could not have done this alone. I could not imagine where my mother would be living today if not for your help this year. Thank you again. PS. A big thank you to your office staff, too!”

- K.B., Cary, Illinois

“Thank you for putting my mind at ease regarding my estate security.”

- R.P., Elgin, Illinois



Make a Wish!



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2010 Educational Series - Save the Date

VA Benefits and You

Did you know that veterans and their spouses may qualify for a pension benefit of \$1000-\$2000 per month of income tax free income? Come learn about these fabulous benefits that can help you pay for the care you need.

March 16, 2010 - 12-1 PM

March 18, 2010 - 7-8 PM

Guardianships and Special Needs

When a child turns 18, the parent no longer has decision making authority. But, what happens when the child is disabled and cannot make decisions for themselves?

Apr. 20, 2010 - 12-1 PM

Apr. 22, 2010 - 7-8 PM

Managing the Medicaid Maze

Long term care planning includes figuring out how you can pay for needed care. Learn ways to optimize assets, and access "public benefits", when the bills keep coming in!

May 18, 2010—12PM -1PM

May 20, 2010—7PM—8PM

RSVP 630-377-3241

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invite@StrohscheinLawGroup.com

***We invite you and
a friend to join us!***

All programs are held at
our office location:

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St. Charles, IL 60175

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