

Overview of Elder Law

Capacity to Care: Building Competency in Geriatric Mental Health Care

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Presented by: Dianne M. O'Donnell, J.D., M.A.

Of Counsel, Law Office of Ruthann P. Lacey, P.C.

Consultant, Senior Citizens Advocacy Project

Learning Objectives

- Elder Law Overview for Individuals and Families
 - Important legal documents
 - Guardianship
 - Public Benefits
- Policy Considerations in the 2011 Georgia Legislature

What is Elder Law?

- “Under this holistic approach, the elder law practitioner handles general estate planning issues and counsels clients about planning for incapacity with alternative decision making documents.
- The attorney would also assist the client in planning for possible long-term care needs, including nursing home care. Locating the appropriate type of care, coordinating private and public resources to finance the cost of care, and working to ensure the client's right to quality care are all part of the elder law practice.”

SOURCE: National Academy of Elder Law Attorneys (NAELA)

Life and Estate Planning Goals

- “I want to control my property while I am alive and well.”
- “I want to provide for my loved ones and for myself if I become disabled.”
- “When I die, I want to give what I have...
 - To whom I want
 - When I want
 - The way that I want.”

Wills

- Last Will and Testament or just “Will”
- Definitions:
 - A document that designates how a deceased person’s estate will be divided
 - Estate = all property: real property + personal property
- Only effective at death
- Most common “estate planning” device

Features of a Will

- Name a personal representative (executor) to act for your Estate
- Name beneficiaries to receive your Estate property
- Distribute ALL of your property to named beneficiaries
- Designate a guardian for minor children

Dying without a Will

- Confusion for loved ones during crisis
- State Law dictates who gets your property
- Intestate rules for heirs:
 - Spouse, no kids – spouse 100%
 - Spouse + 2 children – each 1/3
 - Children only – share equally
 - No spouse or kids – parents 100%
 - No spouse, kids or parents – siblings share equally

Today's Reality: Shift the Approach

- From planning for death...
 - Joint tenancy, POD designations
 - Wills
- To planning for incapacity...life and longevity...
 - Trusts
 - Powers of attorney

Trusts

- Definition
 - A legal arrangement where one party holds legal title to property for the benefit of another party
- Unlike a Will, a trust can be effective *immediately* and last beyond death

Trusts

- Regulated by state law
- Separate legal entity
- Living or testamentary (in a Will)
- Revocable or irrevocable
- Trust Myths
 - Managed by a bank
 - All control over assets lost
 - Only for very wealthy people

Common Trust Uses

- Manage financial affairs during a disability
- Protect assets until minors are old enough to use them wisely
- Shield assets from creditors
- Supplement needs of disabled family member without disrupting public benefits
- Limit or control how assets are used after death

Common Trusts in Planning

- Revocable Living Trust
- Irrevocable Living Trust
- “Love and Protection” Trust
- Special Needs Trust
 - Self-settled – under age 65
 - Third party SNT

Georgia Trust Act (2010)

- Pet Trusts officially permitted



Powers of Attorney

- Definition:
 - A legal document that authorizes another person to act on your behalf as your “agent” or “attorney-in-fact”
- Financial affairs or health care matters
- Broad or limited in purpose and scope
- Why? Disability or incapacity
- Agent’s powers end at death

Financial Power of Attorney

- Importance of “durable”
- Financial and property matters
- Typical powers for a broad, general POA
 - Business transactions
 - Financial accounts
 - Buy/sell property
 - Gifts by tax year
 - Revocable trusts

Financial Power of Attorney

- Recommended powers
 - Create trusts of any kind
 - No limit on gifts
 - Apply for public benefits (e.g., Medicaid)
- Agent's duty of loyalty
- Co-agents
- Successor agents
- Triggering event such as a determination of incapacity

Health Care Power of Attorney

- Agent appointed to make decisions when you are unable or choose not to
 - Consent, refusal or withdrawal of treatment
 - Autopsy, organ donation, burial
- Importance of choice of health care advocate

Georgia

- Pre July 1, 2007: Living Will and HCPOA
- Now: Georgia Advance Directive for Health Care
- www.gabar.org
- Why change the law?
- Old living wills and documents outside GA

GA Advance Directives

- Advance Directive for Health Care allows:
 - Appoint someone for health care decisions
 - State wishes for medical treatments at end-of-life
 - Nominate a guardian
- Goes into effect:
 - Unable or unwilling to make decisions or communicate
 - End-of-life

GA Advance Directives

- End-of-life Conditions:
 - “Incurable or irreversible condition will result in death in a relatively short period of time”
 - “State of permanent unconsciousness”
- Additional consideration: progressive brain disorders

Guardianship

- Public policy: to protect the persons and property of individuals who are unable to care for themselves
- Welfare vs. autonomy
- Probate court has jurisdiction in GA
- Guardianship over property (\$) = conservator

Guardianship

- Reasons a guardian may be needed:
 - Lifelong disabilities
 - Victim of calamity
 - Coma, vegetative state
 - Advanced dementia
- Old GA law: Lists of diagnoses
- 2005 Code: Decision-making ability

Guardianship Standards

Regular Guardianship

- Adult lacks sufficient capacity to...
- Make or communicate significant responsible decisions about...
- His/her health or safety

Emergency Guardianship

- Same factors for g-ship
AND
- Immediate and substantial risk of:
 - Death or
 - Serious injury, illness or disease

Guardianship Process

- First petitioner
- Second petitioner – interested party or physician, psychiatrist or social worker
- Nominate guardian and/or conservator
- Burden on petitioner to provide enough facts to warrant probable cause to set hearing
- Court will order an evaluation

Probate Court Hearing

- Burden on petitioner to show clear and convincing evidence
- Rules of evidence and civil procedure apply
- Some judges want the proposed Ward to testify
- If contested, more evidence and discovery

Loss of Rights

- To marry
- To make, change or terminate contracts
- To consent to medical treatment
- To decide where to live
- To defend any action at law (except the guardianship)

Conservatorship

- “Guardianship” over property and financial matters
- Court permission required after sufficient facts proving best interests of Ward for
 - Selling property
 - Estate planning or Medicaid planning

Scope of Powers

Guardianship

- Basic rights as a person
- Marry, make contracts
- Where to live
- Medical procedures

- NOT for enforcement of Rx

Advance Directives for HC

- Health care proxy
- Consent, decline medical procedures
- End-of-life wishes

Scope of Powers

Conservatorship

- Sell property
- Disposition of property for public benefits planning
- Set up trusts
- **Review and oversight by the Court**
- Bond required

Financial POA

- Depends on scope of powers
- POA might be revoked
- No oversight by Court, no bond/insurance required

What is Elder Law?

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- The attorney would also assist the client in planning for possible **long-term care** needs, including nursing home care. Locating the **appropriate type of care**, coordinating **private and public resources** to finance the **cost of care**, and working to ensure the client's **right to quality care** are all part of the elder law practice.”

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VA Aid & Attendance

- War-time veterans, 90 days service, other than dishonorably discharged
- Permanently and totally disabled veteran + dependents
- Max benefits:
 - Veteran: \$1,644/month
 - Veteran and spouse: \$1,949/month
 - Widow/widower: \$1,056/month

VA Aid & Attendance

- Asset (resource) test:
 - \$50,000~ for single veteran or widow/widower
 - \$80,000~ for married couples
 - Certain assets are exempt
 - Currently NO penalty for transferring assets
- Income test:
 - Income minus expenses = < \$0 (IVAP)
 - Expenses include home care, assisted living, etc.

ABD Medicaid Basics

- Asset (resource) test:
 - \$2,000 for single person
 - \$4,000 for married couples both institutionalized
 - Community spouse resource limit : \$109,560
 - Certain assets are exempt
- Income test:
 - \$2,022 maximum income in 2010 for Medicaid applicant... but...
 - Income diversion to community spouse: \$2,739

Quality of Care

- Many people who move into long-term care communities actually feel homeless...
- Dependency, loss of control, loss of dignity, powerless, no privacy, you lose yourself, no choices, uncertainty, insecurity, loss of hope

“I long, as does every human being, to be at home wherever I find myself...” Maya Angelou

Recommendations

- Make best possible decisions
 - As to protecting family
 - Planning for long term care needs
 - Choosing fiduciaries
- Consider shifting the planning approach
 - From planning for death
 - To planning for longevity

Public Policy

- Senior Citizens Advocacy Project: serves The Georgia Council on Aging, the Area Agencies on Aging in GA, and the Georgia Gerontology Society
- Georgia General Assembly meets for 40 days beginning each January



Georgia Council on Aging



Call for Volunteers!

The Georgia Council on Aging is seeking volunteers!

We need volunteers in the following skill areas:

- Clerical staff, especially with computer skills
- Advertising and publicity
- Website
- Event set-up and clean-up
- Senior Week at the Capitol
- Event preparations, phone calls to participants
- Research

Most clerical staff volunteers will work in the Georgia Council on Aging office during normal business hours. However, if you would like to contribute your talents remotely please let us know!

Which weekdays & hours work best for you:

- Mon Tues Wed Thurs Friday
 Mornings Afternoons

Comments: _____

How many hours per day would you like to volunteer?

- 1-2 hours 3-4 hours 5-6 hours

Please check the committees you are interested in:

- Clerical Staff (typists, other office computer skills, copies, stuffing mail-out packets)
- Advertising & Publicity (graphic artists, page layout, marketing experience, writers)
- Website (writers to create and update content for the site, maintaining the links page)
- Event Staff (setup and cleanup, etc)
- Senior Week at the Capitol
- Event Preparations (phone calls to participants, etc)
- Research

Please list any special experience, skills or equipment you have: _____

Annual CO-AGE Participation

I understand and agree to the terms of participation in the Coalition of Advocates for Georgia's Elderly (CO-AGE) as outlined in the CO-AGE participation handout. I accept these responsibilities.

Please enroll me as:

- An individual participant
 An organizational participant
 (enclose any additional addresses)

My voluntary contribution is:

- \$15 Student/Senior
 \$25 Individual Participant
 \$100 Organizational Participant
 Other

Senior Issues Newsletter Subscription Form

Please enter my subscription to the Senior Citizen's Advocacy Project's Senior Issues Newsletter at the following rate:

- \$10 Student
 \$10 Retiree
 \$15 Individual
 \$25 Group (up to 5)

Please check here if you prefer to receive your newsletter by Email

Subscription Form

Name: _____

Organization: _____

Address: (Street) _____

(City, State, Zip) _____

Business Home

Phone #s: (Home) _____

(Work) _____

(Cell) _____

Fax: _____

Email: _____

Contact Preference: home work cell email

Payment

Please make check payable to Georgia Council on Aging:

Total Amount Enclosed \$ _____

Return this Form

Return this form and/or make your check payable to:

The Georgia Council on Aging (GCoA)
2 Peachtree Street, NW, Suite 32-263
Atlanta, GA 30303-3142

Fax: (404) 657 - 1722

If you have any questions, please contact the council office at (404) 657 - 5343

Questions?



Thank you!

Dianne M. O'Donnell

Elder Law Attorney & Gerontologist

Of Counsel, Law Office of Ruthann P. Lacey, P.C.

Consultant, Senior Citizens Advocacy Project

dodonnell@elderlaw-lacey.com

dianne@elderadvocate-georgia.com

770-939-4616 (office)

678-429-6954 (mobile)