There's No Place Like Home: The Vera Institute of Justice Guardianship Project

By Laura Negron, Esq., and Julia Kaminsky

Like many elderly people without assets in New York, Mr. R might lose his home of forty years and wind up in a nursing home—where he does not want or medically need to be—without well-orchestrated intervention. Few might have predicted that Mr. R, a World War II veteran, who had a successful career as a musician and visual artist, would have ended up in such dire straits. As a teenager in the 1930s, he was selected as an apprentice illustrator for Disney. Legend has it that he helped illustrate Snow White when he was still in his teens. Years later, he composed symphonies performed at Carnegie Hall. Yet, at the age of 89, after the passing of his domestic partner and the subsequent loss of her income, Mr. R found himself out of money, with but a few cans of food in the pantry, and facing an eviction. Mr. R has severe dementia and has been living in his Murray Hill apartment with 24-hour Medicaid home care. With rent arrears rapidly accruing, utility shut-off notices in effect, and home care in jeopardy following a default on a fair hearing scheduled by family who didn’t show up, it seemed that he might have to live out his remaining days in a nursing home. Mr. R’s story and others like it have provided the impetus that inspired the Vera Institute of Justice to create the Guardianship Project.

Our population is rapidly aging. Between 2010 and 2025 the number of Americans over 65-years-old is expected to increase by 60 percent, reaching 64.3 million. In New York state alone, the elderly population is expected to grow by 43 percent between 2010 and 2030. As people age or suffer the debilitating effects of illness, injury, or a disabling condition, some become unable to manage their own affairs. By 2050, as many as 16 million Americans may be afflicted by Alzheimer’s disease if a cure is not found. This demographic reality will mean that our already under-resourced justice and social service systems will face a mounting strain as they seek to provide critically-needed services to increasing numbers of vulnerable people.

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What Are Your Plans For Elder Law Day?

May 1 is officially Law Day, recognizing the role of law in our lives and our fundamental rights under law. Since its proclamation by a joint resolution of Congress in 1961, it has been a day on which lawyers educate the public about legal rights.

The 2012 Law Day theme “No Courts, No Justice, No Freedom” highlights the serious underfunding of courts across America.

For some state and local elder bar sections and committees, this annual event is an opportunity to promote an Elder Law Day program to educate older people about their rights.

Let us know about your organization’s or bar group’s plan for an Elder Law Day program in your community (for May 1 or any other time in the month of May, which is also Older Americans Month) and we will include news of it in upcoming issues of Bifocal. E-mail Jamie Philpotts at Jamie.Philpotts@americanbar.org.
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To protect individuals who lack capacity, a court with jurisdiction can deem a person incapacitated and appoint a guardian to oversee his or her care. Because there is no national model for guardianship, state courts determine its form. In New York, where there is no public guardianship system, judges typically appoint private attorneys to serve as guardians for people having no family member or friend willing or able to provide care. The governing statute for adult guardianship in New York is Article 81 of the Mental Hygiene Law, which mandates that guardians maintain their clients in the least restrictive environment possible. Fulfilling this charge is often time-consuming and requires knowledge across a variety of disciplines: real estate, law, social work, and health care, to name a few. Many private guardians working alone may lack the resources and spectrum of expertise needed to provide intensive services to this population, particularly when it involves the labor-intensive job of moving clients back home from institutions. Thus, without a guardianship model that equips guardians to meet their obligations under Article 81, there is a systemic mismatch between a fundamental tenet of guardianship law and the actual legal practice of guardianship in New York. It is vulnerable people who pay the price. Many incapacitated elderly who are medically stable enough to live at home spend the last years of their lives languishing in institutions, isolated and removed from their homes and communities—the very things that give a life meaning, and the things they had worked so hard to build.

In response to the gap in services for this population, the Vera Institute of Justice founded the Guardianship Project in 2005 to test a new model of guardianship. Using a holistic, client-centered approach, the project’s multi-disciplinary team of lawyers, social workers, and property and financial case managers delivers intensive guardianship services to each client. Each of these respective disciplines is crucial for maintaining clients in the community: fiscal staff manages clients’ finances, paying bills and taxes and creating budgets to maximize limited resources. Legal staff litigates to defend clients in eviction and foreclosure proceedings, represents clients in fair hearings, negotiates and settles lawsuits, and advocates for clients’ interests in guardianship and collateral proceedings. For property-owning clients, the property manager coordinates home repairs, secures reverse mortgages, sells and auctions properties, and rents out property units to generate needed income. Case managers visit each client at least once a month; they coordinate and supervise clients’ medical and home care, apply for public benefits, and create individualized care plans that take into account each client’s wishes to the greatest extent possible. When a client wants to—and is medically able to—live at home, the team goes to exhaustive and complex lengths to make this a reality.

By the time the court became involved with Mr. R, his situation was urgent. Because guardianship hearings can take months, the judge appointed the Guardianship Project as “interim temporary guardian,” so that staff could immediately apply for benefits on Mr. R’s behalf while awaiting the full hearing. Without a combination of public and private resources to close his budget gap, he could not remain at home, and all signs pointed to a future life for Mr. R within the four walls of a nursing home. To further complicate matters, Medicaid—which has recently tightened its belt on community home care hours, ironically forcing many people into nursing homes where both the level of care and cost are higher—recently revoked Mr. R’s home care, recommending institutionalization. And while Mr. R is still physically robust enough to climb the four flights of stairs to his walkup apartment, due to his dementia, he cannot live at home without 24-hour care.

The Guardianship Project willingly tackled the seemingly insurmountable odds in this case. Once appointed, the project’s fiscal team immediately reworked his monthly budget to make the most of his $911 monthly Social Security—his only income. His case manager secured food stamps and a Home Energy Assistance Program grant to cover his energy costs. After extensive research on public and private grants for which Mr. R might qualify, staff located and applied for many other entitlements. Continued on page 38

Laura Negron is the director of the Guardianship Project of the Vera Institute of Justice.

Julia Kaminsky serves as the project analyst for the Vera Institute of Justice Guardianship Project.
programs and submitted applications to private foundations, most of which specifically support elderly artists and musicians. One grant application has resulted in a tentative commitment of private funds, and if approved, will provide ongoing monthly income to fill Mr. R’s budget gap. If monies come through to support his ongoing expenses in the community, the legal team will in turn apply for a Human Resources Administration grant that covers arrears for people who can demonstrate ability to pay future rent.

In the meantime, project attorneys have represented Mr. R in housing court and reached a settlement dismissing the warrant of eviction that had been issued and staying further actions until the guardianship hearing is concluded. The legal team has also scheduled a Medicaid fair hearing where they will advocate for his continued home care, which until then will be maintained at its present level. Although the various grant applications, eviction proceeding, and Medicaid home care status are still pending, it now looks very likely that Mr. R will be able to remain safely at home, surrounded by his paintings and the countless cassettes of his music—markers of his fascinating life.

As the story of Mr. R shows, complying with Article 81 and honoring a legally incapacitated person’s wish to remain at home, is often a complex and multi-disciplinary undertaking, best accomplished by a team of professionals with a diverse expertise. Maintaining clients at home often entails navigating not only protracted bureaucratic entanglements, but also complex interpersonal ones, in many cases involving family and others who may not have the client’s best interests at heart. Through its intensive client-centered team approach, the Guardianship Project meets this challenge every day, having consistently succeeded in maintaining one-third of its clients in deinstitutionalized settings, including private residences, adult homes, and assisted living facilities.

Living at home is not only more humane for clients, but it also generates substantial Medicaid cost-savings for the state. For example, Medicaid-funded nursing home care in New York City costs, on average, $112,000 per year; at approximately $81,500 per year, 24-hour Medicaid home care costs significantly less. By enabling clients to remain at home, or returning them to the community from institutions, the Guardianship Project saves the state approximately $2.5 million per year in Medicaid expense, serving 111 clients. If the project were scaled to serve 2,000 clients, the Medicaid cost-savings could reach as much as $43 million.

It is not, unfortunately, always possible to fulfill a client’s desire...
for full independence because of medical or financial limitations, the inherent risks when proper services are not in place, or when the client engages in self-destructive behaviors. But in many cases, the guardian’s spirit of determination, creativity, and skill in leveraging multiple resources is what is really needed to overcome obstacles jeopardizing a client’s ability to remain at home.

It is time to make institutional guardianship services that actually move people home more widely accessible to those who need guardians, in order to protect the dignity and autonomy of people who, like Mr. R, can no longer care for themselves. After all, there are still thousands of incapacitated elderly people needlessly trapped in nursing homes, simply because there is no one able to help them move or stay at home. If we do not make systemic changes to guardianship care, the nightmare they are living may one day be our own.

Notes
1. In 2009, the U.S. Census Bureau projected that the number of adults over age 65 will increase from 40.4 million in 2010 to 64.3 million in 2025.
2. Cornell University Program on Applied Demographics, New York State Data Project by County, http://pad.human.cornell.edu/counties/projections.cfm. According to the Cornell University Data, the number of adults over age 65 will increase from 2,617,953 in 2010 to 3,618,598 in 2030.
4. Guardianship in New York state can also be established pursuant to Article 17A of the Surrogate Court Procedure Act, and is used typically in cases involving persons having a developmental disability or afflicted with mental retardation, generally children under the age of 18.

Looking for the Latest Information on Guardianship Law?

Find it on the Guardianship Law and Practice Web page of the ABA Commission on Law and Aging, including:

- Current information on key developments in guardianship policy
- Valuable charts on state guardianship laws and annual updates
- Timely reports on pertinent issues in guardianship
- News from national and international consensus conferences
- Publications, handbooks, and video resources to help you in your work.

Go to: http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html
As is common, many elders wish to make gifts and transfers to various charities during their lifetime. These gifts may include stock, cash, life insurance, and more. While people often are not interested in making significant gifts during their lifetime, as they feel they “need” the funds, as they get older they may become more attached to a charity or they may have been solicited and realized that they now wish to make a larger gift. It may also be that they realize they do not need the funds that they have accumulated and they are willing to make either an outright gift or a planned gift, such as a gift annuity or a charitable trust.

Gifts and the Medicaid Look-Back

It is at these times, when a person makes a gift, that in most states that gift or transfer made without adequate consideration causes a look-back of up to five years in order to qualify for Medicaid. Therefore, a gift may carry with it the restriction that it will be looked at by a Medicaid office that will question whether the gift was made as part of a lifetime giving plan or program, or if it was a single gift in order to spend down assets in order to qualify for Medicaid sooner.

In many jurisdictions, the gifting of funds to charity may be considered disqualifying transfers. However, if there have been significant gifts given over years, the Medicaid authority should review the gift and determine that it was not made with the intent to spend down to qualify for Medicaid, but, rather, was given with the intention of the donor to continue to make gifts even during incapacity.

A similar situation occurs when a person is working or receiving other assets and determines that he or she wishes to give a weekly or monthly gift to a charity, such as tithing. Most Medicaid offices have agreed that gifting to charity in this situation is not construed to be a disqualifying transfer and, therefore, the person would continue to qualify for Medicaid and not be forced to ask the charity to return the gifted assets. The return of such a gift would be a significant hardship for the charity, since they may have spent the funds or allocated them for some purpose. Giving back five years’ worth of assets also may be a significant moral, though not legal, liability to the charity, since they have determined and believed that these assets were without restrictions and were completed gifts without any “strings.”

In many cases, so long as the person who is making the gift is not on his or her way to the long-term facility, they will probably be construed to have made a gift that should not be challenged. When in doubt, a request can be made to the attending physician to assess whether, at the time of the prior gifts, the donor was competent, of sound mind, and was not disabled to the extent that they required imminent institutionalized care.

Hyman G. Darling, CELA, of Springfield, Mass., is a board member of the National Academy of Elder Law Attorneys. His contact information is found on the Bacon Wilson law firm Web site: http://www.baconwilson.com.

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Gift Giving Under Power of Attorney

The agent serving under a power of attorney for a donor has the authority to maintain the gift-giving program to family, as well as to charities. Within the document itself, the agent has the authority to maintain the charitable gift-giving pattern while the principal was alive and competent to do so. If the principal’s intentions are sufficiently well thought out within the power of attorney to allow these gifts to be made, these gifts should be respected by all governmental agencies. Certainly, they are construed to be gifts for income tax purposes when taking the gift as an itemized deduction on the income tax return. However, the Internal Revenue Service could, in fact, challenge that gift if there was no authority within the power of attorney itself to allow transfers and gifts to be made.

Pledges versus Gifts

A questionable gift may arise in the situation where a person has pledged to make a gift, but has not yet complied with the fulfillment of the gift. In this case, the pledge may be construed to be a contract to make the gift and the power of attorney may be acting within the authority to complete the payment of the pledge, even if the power of attorney document itself does not allow for gifts to be made, as this gift may merely be a completion of the contractual terms in fulfilling the obligation of the donor to the charity.

A charity should review the status of the gift in any questionable situation, when a power of attorney or other fiduciary may be making a gift, and the charity is aware that the principal has become incapacitated to the extent that they are unable to make legal and financial decisions for themselves. The charity should verify that there is a situation where either the principal has sufficient funds to pay for care for five years, or that the life expectancy of the donor may be short enough that there will be sufficient funds to pay for the care of the donor for the balance of their lifetime. If not, the charity may be asked to return gifts, so they should not place them in an irrevocable endowment fund or expend those funds for permanent expenditures, such as renovations or additions to a building, or where the funds may not be able to be returned. In these cases, it may be that an applicant for medical assistance through Medicaid would ask for a hardship waiver, since the gift would be difficult to recover, if at all. In these situations where the donor may not be 100 percent competent, it may well be that the charity should check with the accountant and attorney for the donor before the gift has been allocated to a specific fund.

Get Connected, Stay Connected on Elderbar

Join Elderbar, the listserve that brings together public and private sector legal advocates and the aging network. Elderbar is for you if you are an:

- Elder law attorney
- Title IIIB legal services provider
- Legal services developer
- Senior hotline attorney or staff
- Long-term care ombudsman
- Senior Health Insurance Benefits Program staff
- Area agency on aging staff
- State unit on aging staff
- OAA-funded elder rights advocate
- LSC, IOLTA-funded, or other non-profit or public sector legal services organization
- Law school elder law or clinical staff
- State or local bar association elder law section or committee
- Service provider in the aging network
- National law and aging advocate

Elderbar gives you the opportunity to communicate across the boundaries of the law and aging networks and the public and private legal sectors. Share ideas and information about programs, bar section and committee activities, and learn how others are responding to the increasing demand and finite funding for legal services for seniors.

Elderbar is a project of the ABA Commission as part of its role in the National Legal Resource Center, funded by the Administration on Aging. It is a closed list; messages can only be posted and read by members.

To get connected to Elderbar send your name, e-mail address, and professional affiliation to David Godfrey at david.godfrey@americanbar.org.
Developments in Model Approaches To Statewide Legal Assistance Systems

David Godfrey, Senior Attorney
ABA Commission on Law and Aging

Model Approaches to Statewide Legal Assistance Systems is a discretionary grant program of the Administration on Aging that is designed to help states develop and implement cost-effective, replicable approaches for integrating senior legal helplines into the broader network of state legal service delivery systems. The focus of these programs are legal helplines, which assist seniors in accessing quality legal services to ensure their rights and financial security.

Since 2006, thirty-one states have been awarded funding from the Administration on Aging to participate in Model Approaches to Statewide Legal Assistance Systems.

The grants are currently split between two distinct funding cycles—eleven states are in the third year of a three-year funding cycle and seven states in the second year of a three-year funding cycle. In an effort to get all of the programs on the same three-year funding cycle, the eleven grantees in their third-year have recently been notified that they are eligible to apply for a fourth year of funding to “fine tune” and fully implement their work plans. This will result in all of the 18 currently-funded Model Approaches projects expiring at the same time in 2013.

This means that there will not be a call for new project proposals in 2012 and, assuming that the budget forecast remains unchanged, there will be a much larger call for proposals for funding in 2013 (about $1.8-million in projects will be expiring that year).

Under previous grant restrictions, states were eligible to apply for and receive Model Approaches funding only once. With 31 jurisdictions (30 states and the District of Columbia) having received funding, the pool of eligible applicants for Model Approaches projects is shrinking, but there are still states with significant interest in participating in Model Approaches.

At the same time, many of the 31 jurisdictions that have previously participated in Model Approaches are looking to move to the next level of high-impact legal services delivery. As a result, AoA is considering a two-level request for proposals in 2013. States who have not yet participated in Model Approaches will be eligible to apply for a Model Approaches Phase I project and will likely see grant expectations very similar to what was asked for in 2009 and 2010 (minor adjustments and fine tuning based on past experience likely.)

States that have completed Model Approaches Phase I will be eligible to apply for Model Approaches Phase II. It is anticipated that the Phase II Model Approaches projects will build on the experience and success of Phase I and will achieve more evolved legal service delivery systems capable of addressing increasing demand on priority legal issues impacting seniors most in need.

Details of the Phase II projects are undetermined at this time, but certainly it is important for past Model Approaches states interested in future funding opportunities to start thinking seriously about what they could do to implement existing service delivery standards, improve and expand legal service integration efforts, and intensify focus on priority legal issues that were central to Model Approaches Phase I. As always, only the strongest and most responsive applications will survive what is expected to be a very vigorous competition.

The National Legal Resource Center provides in-depth substantive legal information and expertise, case consultation, technical support on legal service development and legal hotlines, and training on issues in law and aging to attorneys, advocates, and professionals in the fields of law and aging.

Details on the programs and services of the NLRC are found at www.NLRC.AoA.gov
A key objective of the Massachusetts Senior Legal Assistance Project, funded through an Administration on Aging (AOA) Model Approaches grant, is to increase access to legal services throughout the state for low-income older adults by doing more with less. Sound familiar? Yet by leveraging expertise and tweaking processes through a collaborative approach, this initiative is succeeding.

The three-year legal services capacity building grant, awarded in 2010 to the Legal Advocacy and Resource Center (LARC) of Boston, in partnership with the Massachusetts Executive Office of Elder Affairs, was aimed at assisting those in greatest economic and social need. As a first step, an advisory committee was created, comprised of stakeholders from across the state. The committee’s initial task was to conduct a statewide needs assessment to gauge the highest legal priorities for adults aged 60 and older. Responses were collected from legal services providers and from consumer surveys of case managers, protective service workers, and healthcare providers and caregivers. Based on the assessment, project partners launched a dedicated statewide elder legal services helpline in July 2011 to more effectively and efficiently meet low-income older adults’ needs, especially in rural and other underserved populations.

Boston’s Legal Advocacy and Resource Center is a statewide legal aid assistance phone portal, which typically serves 13,000 people annually, of which 1,600 are seniors. Yet, many older adults would not or could not wait in a long call queue. With the launch of a dedicated helpline, now older adults are more able to reach a live legal advocate. And unlike with the general legal aid hotline, older adults can leave a message to have a call returned.

“The dedicated senior helpline is working. We served 1,364 seniors in just the first six months,” says Rosa Previdi, executive director of LARC and co-director of this project.

Project co-director Gordon Shaw, executive director of the Massachusetts Justice Project (LARC’s counterpart serving Central and Western Massachusetts) has logged an additional 404 cases from elders. Elders phone a toll-free number and are directed to select a number on their phone’s keypad based on the region of the state where they live to receive advice and assistance.

The centralized helpline also is revealing some subtle differences between the legal needs older adults and the general population. “Close to 60 percent of calls coming into the senior helpline are related either to housing stability, such as evictions and inability to pay rent or tax foreclosures, or consumer issues, such as debt collection or bankruptcy and debt relief,” says Shaw. “Whereas with the general population, 45 percent of cases are related to housing and 14 percent concern consumer issues.” In addition, notes Shaw, the poor economy is taking its toll in another way: unemployment issues, especially for seniors in their sixties, nearly doubled in 2011 from previous years.

The Boston area has seen a similar trend, with 340 cases related to housing problems and 240 related to consumer issues, including debt collection harassment and bankruptcy. “Many elders can’t pay their debt and are ashamed or afraid because they’re receiving calls telling them that they are going to jail and their Social Security money will be taken,” says Previdi. “They are so relieved to find out that their income is protected.”

Shaw notes that the Massachusetts Justice Project hopes to set up a debt collection clinic with volunteer attorneys in Worcester (the second largest city in Massachusetts) to represent clients in court. If the prototype is successful, he’d like to roll it out to other areas. The Volunteer Lawyers Project has been successful with this type of clinic in the Boston Municipal Court.

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Another trend uncovered through the senior helpline is increasing requests for wills and advance directives. To meet this increase, the Legal Advocacy and Resource Center partnered with the Women’s Bar Foundation to identify lawyers to provide this type of assistance to older low-income adults in the greater Boston area. “It’s challenging to get pro bono work on an extended case, but these type of smaller bites might help busy attorneys to work it into their schedules,” says Shaw.

Staff of the senior helpline receive initial in-house trainings on “nuts and bolts” issues, such as Medicare and Medicaid. Staff continue to develop their expertise on issues affecting seniors, such as through webinars from the National Legal Resource Center, National Consumer Law Center, the Center for Elder Rights Advocacy, and the National Senior Citizens Law Center.

Going forward, Previdi says that she’d like to send out surveys to evaluate the progress of the helpline and have law students do follow up calls with the elders to find out if the advice they received was helpful and had a good outcome after one month. “Having a centralized intake is a novelty in Massachusetts and is still a work in progress. We’ll keep tweaking the program for continual improvement,” she says. “It’s so exciting to have attorneys and representatives from the Office of Elder Affairs, students from different law schools, and representatives from various councils of aging and different medical partnerships at the same table discussing how to improve access to legal and other services for elders throughout the state.”

Shaw suggests that others considering setting up a centralized advice and delivery system bring in advocates within their legal services community who are the experts and figure out how to make it fit with systems that are currently in place. “One challenge is that advocates felt somewhat territorial over their clients and saw this collective approach as them losing connections they had made,” he says. “Instead, approach it as an enhancement to help elders, and set it up so everyone feels a sense of ownership in creating the program,” he advises.
Book Review


By Sally Balch Hurme
228 pp., January 31, 2011
Reg. Price: $119.95
Available from the ABA Web Store

Review by Erica Wood, Assistant Director, ABA Commission on Law and Aging

Fast forward and imagine you have died, and your heirs, weighed down by grief and fatigue, are sorting through your things. They want to write an obituary but “what was Mom’s title in that job she had?” and “Didn’t Dad get some kind of award?” They know there is a safe deposit box, but where is the key? They remember you had kept some important financial information on your computer, but what is the password? They need to contact the insurance agent, but can’t locate his name and number. Where is the deed to the condo and the title to the car? How can they find out about any survivor benefits? Just what kind of memorial service would Mom have wanted?

Help Is at Hand

The ABA Checklist for Family Heirs is a way to organize all of the information and documents that will be helpful to heirs or indeed anyone you care about. It is essentially a book of lists, conceived as a gift from you to your heirs. “One of the kindest things you can do for your family is to spare them needless frustration and stressful decisions at the time of your death. . . . You can make your own death easier on your family and significant others” by assembling and organizing key information, and recording your own preferences.

The book is divided into three sections. In the first section, you can record information about your personal history and your family history. This will be a legacy to pass on. It is also very practical, including places to list all key contact information from financial advisors to law service and pet care; a list of records and which ones are in the safe deposit box or in another location—and two whole pages devoted to organizational passwords!

The second section is a set of checklists on assets and liabilities. This includes detailed information on insurance, benefits for survivors, banking and savings, investments, real estate, and other assets and debts.

Finally, in the third section, you can describe the legal planning documents you have executed, where they are located, and what your final wishes are. Information about powers of attorney, trust agreements and health care advance directives will come into play if you become incapacitated. Information about your will or trust and your final wishes is needed upon death, and should be readily available.

Each chapter within these sections begins with a list to use in collecting the essential information. For each item on the list, the book gives a clear and concise explanation of why the item is important and how you could go about getting, keeping, or organizing it. The chapters conclude with additional lists your family can use in undertaking the tasks required. Each chapter is then followed by a detailed checklist form for your personal records.

In addition, the book comes with a CD-ROM including all of the checklist forms. The author suggests either filling in the checklist forms directly in the book with pencil, so you can make changes easily, or filling them in electronically with the CD. Either way, they can regularly be updated. (But be sure to note in the book the computer file name so your heirs can find it on your computer!)

The book, including appendices at the end with an ultimate “checklist of checklists,” a survivor’s checklist, heir’s checklist and resource list, is over 240 pages. It will take a while to complete! The author suggests taking it section by section, and discussing the project with your family so they will know what you are undertaking and how it will help them.

“Don’t look upon it as a task. If you approach it in manageable sections and view it as a fascinating family project, you will find it can give you great satisfaction to track down bits and pieces of your family history, locate the missing birth certificates, and gradually put your affairs in order.”

Published by the American Bar Association, the book will be of great benefit to trust and estate attorneys. Here is the ideal organizational tool to recommend to clients as you prepare their legal documents. Indeed, “putting affairs in order” means more than executing wills and powers of attorney. Ideally, the legal consultation could include a suggestion to organize and record wishes, instructions, and records more broadly. Here is a resource your clients will appreciate.
The ABA Commission on Law and Aging released a new free booklet offering a simple durable power of attorney for health care, designed to meet the legal requirements in nearly all states.

_Giving Someone a Power of Attorney for Your Health Care: A Guide with an Easy-to-Use Legal Form for All Adults_ can be described as “bare bones” because it doesn’t provide specific instructions about medical treatments, as most standardized health care advance directive forms do. Instead, it provides solely for the appointment of a health care agent with broad health-care decision-making authority.

A premise of the publication is that the guidance one gives an agent more effectively comes from having focused conversations with the agent and loved ones over time. There are a growing number of guides available on how to have those discussions and clarify one’s values and treatment goals, which, in fact, will change over time as one’s health and level of functioning change. Our Web page provides a resource list of many of those guides at: www.Ambar.org/AgingAdvancePlanning

The unique feature of the new form is that it complies with state legal requirements for a valid power of attorney for health care in almost every state. Only five states have laws so inflexible and cumbersome that the bare bones power will not work: Indiana, New Hampshire, Ohio, Texas, and Wisconsin. Accomplishing near universality required a major research effort and the assistance of legal counsel from several states. Users of the form will notice that the instructions for who can serve as one’s health care agent and who must witness the document are fairly detailed and extensive. That’s because state law requirements vary considerably, so combining all those requirements into one form results in a longer list of requirements than exist in any one state.

We don’t intend this new form to be perfect for everyone. In an ideal world, the public would have a multitude of permissible forms available nationally, because every adult approaches health care decision-making in uniquely different ways. Having multiple options promotes more individualized advance care planning. Lawyers have been and will continue to be an important resource for advance care planning, but the reality is that most people won’t use a lawyer, so we have always supported the use of self-help resources like this.

—Charlie Sabatino, Director
ABA Commission on Law and Aging

Access your free copy of the _Giving Someone a Power of Attorney for Your Health Care:_
www.americanbar.org/aging.
The American Bar Association
Commission on Law and Aging,
and the ABA Center for Continuing Legal Education

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Present a 90-Minute Live Webinar & Teleconference

Spousal and Domestic Partner Issues in Pensions and Retirement Income
Thursday, April 12, 2012
1:00 PM – 2:30 PM Eastern | 12:00 PM – 1:30 PM Central | 11:00 AM – 12:30 PM Mountain | 10:00 AM – 11:30 AM Pacific

PROGRAM DESCRIPTION
This session will cover the essential elements that elder law, estate planning, family law, and general practitioners need to know about spousal and domestic partner rights in traditional defined benefit pensions, IRAs, 401ks and other defined contribution plans, and Social Security retirement benefits. We will cover distribution elections, beneficiary designations, and special issues for same sex couples.

COURSE LEVEL: INTERMEDIATE

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LIVE WEBINAR/ TELECONFERENCE TUITION

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<th>Tuition</th>
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<td>$150</td>
<td>All others</td>
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All participants must be registered for the program.

Cancellation policy is available on the ABA website. Scholarship applications are also available upon request.

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