



THE COULSON  
LAW GROUP

# MEDICAID PLANNING TODAY

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National Academy of  
Elder Law Attorneys, Inc.

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## Safeguarding Your Estate Plan

The death or incapacity of a family member is often a stressful and emotional occasion for other family members. When emotions run high in times of stress, people can and do react in angry, defensive or unpredictable ways.

A family member who is disappointed not to have been put in charge of things, or who will receive less of an inheritance than he or she feels is "fair" or "right," may get mad and try to cause a power struggle. Or that family member may try to cause estate planning documents to be thrown out, alleging either that the family member who signed them was not mentally competent, or that another family member exercised undue influence which caused the person to sign documents that did not reflect his or her real intentions.

More generally, a person who feels scorned – particularly in a stressful family situation – is often prepared to do "whatever it takes" to right what he or she perceives as serious wrongs.

Will contests, and contested guardianship and conservatorship proceedings, are very expensive and time-consuming. The underlying divisiveness can break up a family to an extent it may never recover from. Here are some steps you can take to best minimize the risk your estate plan will be contested.

**Do it right, with a lawyer's help.** Last month's newsletter discussed the risks of "do it yourself" estate planning. There are a number of potential grounds for causing estate planning docu-

ments – and that includes not just wills and trusts, but also powers of attorney and other "life planning" documents – to be thrown out in court. That can be the fate of documents – even ones signed by a competent person acting of his or her own free will – if they are not properly executed or witnessed, or include language that is incorrect, incomplete, ambiguous or

imprecise. That risk is just not worth taking for what you will "save" by doing it yourself. See a competent estate planning or elder law attorney, whose malpractice insurance is on the hook if things get messed up, and get it done right.

**Prove your competency.** If you have any reason to expect a potential challenge to your competency, take steps to safeguard against that risk. Ask your lawyer to question you at some length about your planning decisions, and to either record or take careful notes of the discussion. Ask your doctor, or a social worker or mental health professional, to test you for competency.

**Remove the appearance of undue influence.** It may make perfect sense to you to leave a disproportionate share of your estate to the daughter who has been taking care of you for the past few years, and to

put her in charge of everything. But your other children may think she is overreaching, and that she badgered you into thinking you "owed her." Avoid the appearance of any impropriety by coming alone to appointments with your lawyer (if you need a ride, someone can drop you off and pick you up), and make sure that no other family members are present when you sign documents. Also, discuss your concerns with your lawyer and have him or her take safeguards as with competency.

### Join us for our January teleseminar:

#### **MEDICAID PLANNING BASICS**

The first Medicaid teleseminar will focus on the basics of Medicaid planning and answer such questions as:

Who are candidates for Medicaid Eligibility Planning?  
Is it ever too early or too late to plan?  
How does thorough planning affect outcomes?

This teleseminar is a great way to learn more about Medicaid Eligibility Planning; the process, rules, procedures, and importance of getting it right the first time.

*This is a FREE seminar, and better yet, you don't even need to leave your desk to attend!*

**Date: Thursday, January 24th**  
**Time: 12:00 Noon to 1:00 p.m.**

**To register, call us at 314-567-9292 in Missouri  
or 618-659-9292 in Illinois,  
or e-mail [steve@coulsonlawgroup.com](mailto:steve@coulsonlawgroup.com).**

**Call now and mark your calendar!**

**Have your document signing videotaped.** Your lawyer can easily arrange this through a court reporter. Videotaping allows family members, and if necessary a judge, to see that you are signing freely and that you know and understand what you are signing. You can be asked questions as part of the signing process that are directed toward showing your competency and the lack of any undue influence.

**Explain your decisions to your family.** If family members understand the reasoning behind your decisions, they are less likely to contest your will, trust, or powers of attorney. Talk to them about it, if you reasonably can. If you're afraid that might cause more harm than good, state the reasons in the documents or in an accompanying letter.

**Include a "no contest" clause and other protective language.** "No contest" clauses generally provide that if someone contests your will or trust, that person does not receive any inheritance at all. They can also be used to disqualify someone from serving in a fiduciary capacity, for example as executor or trustee. However, know that these clauses are often challenged in court and don't always hold up. To maximize the chance of yours having the intended effect, leave something of value to the potentially disgruntled family member, so that a challenge is seen as not being worth the risk of losing the inheritance you left him or her.

**Use a living trust.** Whenever a will is admitted to probate, the executor must send out a notice to all heirs informing them of their right to contest the will, and that they have six months in which to decide whether they want to contest. If a will contest is filed, the estate can't be closed and distributed until it has been resolved. Those circumstances give someone interested in contesting a will quite a bit of bargaining leverage to get what they want. While a living trust is not impossible to successfully contest, it's a lot more difficult than a will. People who don't think they have a very good chance of winning, or of setting up roadblocks until they get their way, are less likely to start the fight in the first place.

## Want to Switch to E-mail?

Would you like to receive this newsletter by e-mail instead of hard copy? If you are still receiving this on paper and you have an e-mail address, you would be doing yourself (and us) a favor if you would furnish us with your e-mail address so we can send it that way.

The e-mail newsletter will give you immediate access to our websites ([www.CoulsonLawGroup.com](http://www.CoulsonLawGroup.com), [www.QualifyForMedicaid.com](http://www.QualifyForMedicaid.com), and [www.BetterEstatePlanning.com](http://www.BetterEstatePlanning.com)), where you will be able to access the archives of previous newsletters and find a lot of additional information on subjects of interest.

We also invite you to sign up for our Special Needs newsletter that is distributed *only* through e-mail.

To sign up for any newsletter, just send an e-mail to [steve@coulsonlawgroup.com](mailto:steve@coulsonlawgroup.com).

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## "YOUR LIFE, YOUR LEGACY" NEWSLETTER TO LAUNCH NEXT MONTH

We will be consolidating the Medicaid Planning and Hospice newsletters into a single newsletter, "Your Life, Your Legacy," to reflect that, as elder law attorneys in the 21st Century, our practice increasingly involves helping people at a much earlier stage of life than when they are facing the immediate prospect of nursing home placement or dealing with end-of-life issues.

More and more people are turning to us for planning assistance at the first onset of a disease that might eventually result in nursing home placement or death. Moreover, more and more people are coming to the wise realization that the best approach of all is to deal with these potential issues as an important element of their overall estate plan, so that they will be prepared for whatever life may bring their way.

We don't just help people deal with situations when they reach the point that "something needs to be done" although we still help many people in those situations. We also help them to prepare for, and help guide them through, the legal/social/medical processes associated with aging that can, for many people, be a source of great uncertainty and worry.

We want our newsletter to open people's eyes to all of the ways in which we can help them, and to realize that planning isn't just a one-time event, but rather a continuing process that can evolve to best meet our needs

### *A Few Changes @ The Coulson Law Group*

The Coulson Law Group welcomed two new staff members at the conclusion of 2007.

Steve Held has assumed the position of Education and Outreach Manager. Steve comes to us from the SIUE School of Nursing where he served as the Director of Enrollment Management. His 17 years of higher education experience included time at Saint Louis University where he worked with the Nursing school and the School of Medicine. Steve is an SIUE alumnus and lives in Edwardsville with his wife, who is a Developmental Therapist, and two school-aged children. Steve will visit facilities, make contact with key individuals, and plan and execute educational programming. If you would like to arrange a presentation, workshop, or seminar you can reach Steve via email at [steve@coulsonlawgroup.com](mailto:steve@coulsonlawgroup.com) or by calling either of our offices.

The second addition is Cindy Ruecker, our new Legal Secretary. Cindy and her husband are recent transplants from San Diego, California. Cindy worked for law firms in San Diego in addition to raising a family, which include two current college students and a would-be graduate student. We're happy that Cindy has joined us—though it might take her a little while to get used to the Midwestern climate.

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