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Let's Help Prevent Seniors From Falling Victim to Fraud

We hear about new scams every day. Some are easy to recognize but others are quite clever. Unfortunately, seniors are prime targets. If they have diminished capacity, they are even more vulnerable. Here are some things that seniors can do to protect against the widespread damage caused by identity fraud:

Telephone Scams – *How it works:* Scammers call seniors pretending to be affiliated with various governmental agencies. They accuse the senior of some misconduct or violation such as failing to appear for jury duty. The scammer advises the senior of the dire consequences they face and offers to help. Out of fear, the senior gives the caller their address, date of birth, social security number and other vital information. *What to do:* Talk with seniors REGULARLY and explain how these scams work. This information should be repeated from time to time to reinforce the message.

Online Scams – *How it works:* As seniors get more internet savvy, scammers get more creative. We all receive emails, sometimes from people whose names we recognize, advising you that

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How Do I Know If My Loved One Has The Ability to Sign Estate Planning Documents

Not infrequently, we are contacted by a family member of someone who is or has been ill or who suffers with dementia. We are asked whether it is “too late” to do estate planning. It is important to note that, under our laws, the right to control how and to whom our estates will be distributed after death is sacredly guarded. In order to execute a will, someone need only be at least eighteen years of age and of “sound mind.” Being of sound mind does not require that a person be in perfect health. A diagnosis of mental illness, memory loss or dementia does not automatically deprive a person of this essential right. Lawyers talk about this ability as “capacity:” the



capacity to execute a will. Interestingly, one requires less capacity to execute a will than for any other legal document.

Although every case is different, the capacity to execute a will usually depends on three factors: (1) whether the

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New York Medicaid Planning and Applications

Many of us fear that we may one day lose the ability to live independently and care for ourselves. When this occurs, the choices for most of us are nursing home care, assisted living or home care. In the greater New York area, depending on the level of care, nursing homes cost between \$150,000.00 and \$250,000.00 a year. Assisted living facilities charge a monthly rate for room and board but add additional charges for services. These include all aspects of daily care such as assistance with bathing and dressing, calling for residents to attend meals and activities,

and medication management. In addition, many assisted living facilities make special provisions for those residents who have diminished capacity and require more careful monitoring. Naturally, this is costly and may even exceed the cost of ordinary care in a nursing home. Even home care can cost in ex-

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Guardianship Myths and Misconceptions

Part of our practice, at Berwitz & DiTata LLP, is to represent Guardians who have been appointed under Article 81 of the Mental Hygiene Law. It is surprising how many well-intentioned Guardians are ignorant of their responsibilities. This can be really problematic. Here are some misconceptions that Guardians frequently have:

It is OK to combine my ward's money with my own: Absolutely not. As the Guardian collects the assets of the ward, they must be deposited into a separate account. The Order and Judgment usually specifies the title of the account.

If my ward and I owned a joint bank account before the guardianship pro-

ceeding, I can keep that account: No, segregate the account. Determine what was contributed by each of you and divide it accordingly. Deposit the ward's money into the guardianship account.

If necessary, it is OK to borrow from the guardianship account provided that I return the money

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they are in a foreign countries and need your monetary help. They ask for critical information such as your account and social security number. *What to do:* Seniors need to be educated as to what to look for online and how to recognize a possible scam. They need to be taught how to opt for security. Simple instructions, maybe even in writing and kept by the computer, as to what to look for in a scam will minimize their exposure.

File a Tax Return Whether You Need To or Not - Our clients often report that they do not file tax returns because their income is below the level

that requires filing. Scammers use unlawfully obtained social security numbers and file tax returns. Their goal? To secure a refund. The individual whose identity is utilized may never know that the fraudulent return was filed. The IRS estimates that tax refund fraud will exceed \$20 billion this year! Refunds are often paid to prepaid debit cards that need not be registered, so the criminal is almost impossible to catch. Unwinding this is a time-consuming and difficult process.

Protect Confidential Information - Some seniors no longer appreciate the gravity of exposing personal and confidential information. Some seniors have hired help in their homes or, if they are in assisted living, cleaning and caregiving staff have access to their living space. Most of these people are honest and hardworking but some are not. Sensitive information must not be accessible.

Track Purchases and Payments - Diminished capacity can affect good decision making, even where no fraud is involved. Monitoring a loved one's purchases and payments help identify waste but also prevents new problems. Something as simple as discontinuing subscriptions for book clubs, magazines and newspapers or even memberships in organizations that are no longer enjoyed can be more important than just

for reducing the budget. It can help identify new predators.

Be Cautious When Hiring Caregivers - Unfortunately, while there are countless highly dedicated and sensitive care givers, there are also those few who take advantage of their patients. A care giver can become a trusted friend to those for whom they care. If the bond becomes too strong, however, a bad-intentioned care giver can have improper influence. Cases abound in which care givers "assisted" their clients in executing new estate planning documents or were named as joint account owners and then drained the clients' resources. It is important not to put the senior into jeopardy of possible undue influence. If the caregiver becomes too friendly or the senior too dependent, it may be time to rotate caregivers.

Technology advances at lightning speed. Each time you encounter new scam opportunities, remember that your senior loved ones are probably being confronted with them as well. Help them protect themselves and stay vigilant. Defending our elders from identity theft and fraud is just one of the many responsibilities we take on as we help care for them. Planning ahead, staying organized, and being aware is the best way to prevent financial abuse and fraud.

How Do I Know If My Loved One Has The Ability to Sign Estate Planning Documents

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individual understands the significance of the document; (2) whether he or she knows the nature and extent of their assets; and (3) whether they know the natural objects of their bounty. This means that, to sign a will, we must understand that we are signing a legal document which will dictate who will receive our assets after we die and we must know to whom we are leaving our assets. We must also have a general idea of what we own in order to understand the significance of the gifts we intend to make. It is not required that we know the balances in each of our accounts, but we should have an idea of the value of our assets. Inaccuracies in this regard do not mean that one lacks capacity, general knowledge is all that is required. Knowing, for instance, that my home is a house and that I own it is key. Knowing its market value is not. Our “natural objects” are usually considered next of

kin: a spouse, if married, children, if any, or whomever is the next closest relation. If I am not leaving assets to kin, why? Do I know who they are? Do I have reasons for omitting them and, if I have the intention of disinheriting one, can I describe my reasons for doing so?

The person making a will, called the “Testator,” is only required to be aware of these factors at the time of the execution of the document. As long as the Testator experiences a lucid moment, he or she can execute the will during such a moment. This is so even if the testator would be unable to recall the names of his or her children or the value of assets at a later time. Even a court’s determination that a person is incapacitated and needs a guardian does not automatically mean that such a person lacks the capacity to execute a will. At Berwitz & DiTata we are respectful of our clients’ limitations, if any, and also

of their autonomy. We try to work with them when they are most alert and capable of expressing their wishes.

When one is making gifts or executing other documents, such as a revocable or irrevocable trust or power of attorney, different levels of capacity are required. At a minimum, the signer must have an understanding of the significance and consequences of their actions. We can work with clients and their families to assess whether, in our professional judgment, an individual is capable of signing a particular document. We base this upon our experience, knowledge and understanding of the law. We also provide advice as to the options in the event that a loved one does not have the requisite capacity to complete the task at hand.

If you have questions regarding capacity to execute estate planning documents or concerns regarding a particular person’s capacity in this regard, call Berwitz & DiTata for an appointment. We would be pleased to discuss these matters further.

New York Medicaid Planning and Applications

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cess of \$10,000.00 a month if one requires care 24 hours a day. Many people believe that Medicare pays for long-term care but that is not the case.

However, for a qualified applicant, all of these options can be paid for through the Medicaid system. Medicaid eligibility is complex but careful planning, whether in response to a “crisis,” an accident, illness or other incapacitating event, or in advance of the need for long-term care, can help protect your estate. This is called **Medicaid Planning** - planning ahead to accelerate qualification for Medicaid benefits when the need arises.

Medicaid Planning must be tailored to meet the individual’s needs. Every case is different. Some people own homes or have significant savings, either in the bank or in an investment portfolio. Some have retirement accounts. Others have interests in businesses or real estate. Some have substantial income while others survive on Social Security. Some Medicaid applicants, or *prospective* applicants, are single and others are married. Some enjoy the support of family members and others do not.

Berwitz & DiTata LLP offers Medicaid Planning to help clients structure

their financial resources, create trusts, manage asset transfers, convert countable assets into exempt assets and protect the family home from potential Medicaid recovery. If there is a healthy spouse, we seek to ensure that he or she has adequate income and resources to continue living independently during and after the time their partner begins receiving care.

Our experienced attorneys stand ready to consult with you and your family to develop a plan that will meet your individual needs. Our proven strategies of asset protection will maximize Medicaid eligibility. We will prepare, submit and present the **Medicaid application** and can represent you in hearings before your local Medicaid agency.

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Guardianship Myths and Misconceptions

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within a reasonable time: The Guardian may NOT borrow from the guardianship account. Do not use the ward's funds for your own purposes.

I can hire and pay professionals to assist me as Guardian: Not without Court approval. You may certainly require the services of lawyers, accountants, financial advisers and others in fulfilling your duties to your ward but you must seek Court approval *before* you pay these professionals.

Once my ward has a Guardian it is too late to sign a Will or other estate planning documents: Surprisingly, this is also untrue. Even those who are incapacitated may have periods of lucidity. Please read the article about capacity in

this issue of *A Step Ahead*. What is very important is that you not destroy a Will, power of attorney, or other contract that was made by your ward before you were appointed.

One of my jobs is to sell my ward's house if they can no longer live in it: Do not transfer or sell real property owned by your ward without the permission of the Court.

I can pay for my ward's necessities from my money and reimburse myself later: No, as Guardian, you should marshal your ward's assets into the guardianship account and then use that account to pay for your ward's needs. If you are shopping for your ward at the same time that you shop for your-

self, do not put all the items on the same receipt. Segregate spending! You will be required to account for your expenditures on behalf of your ward, so it is important to keep accurate records — and keep receipts!

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