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ELDER LAW NEWS UPDATE

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TO: Clients, Friends and Colleagues

**Check out www.eldercareatty.com.

SUBJECT: PROCRASTINATED FOR TOO LONG? THE ANSWER MAY BE GUARDIANSHIP!

GUARDIANSHIP ?

For those of my clients, 1) who need medicaid assistance, 2) who did not undertake advance medicaid and estate planning, and 3) who have now lost the ability to adequately understand and appreciate the import of their actions, the *cure may be GUARDIANSHIP*. A family member without the legal authority to act for her loved one's needs, may not only seek the authority to act as Guardian, but may request the Court to sanction a Medicaid Plan to ensure that individual so qualifies.

A Proceeding to Appoint a Guardian for the Personal and Property Management Needs of an incapacitated individual may be brought in the Supreme Court pursuant to the NYS Mental Hygiene Law Article 81. Enacted on April 1, 1993, its purpose is to meet the individual's personal and property management needs in the least restrictive manner possible so that the individual retains the "greatest amount of independence, self-determination and participation in all decisions affecting" her life. *MHL § 81.01*.

Guardianship is a compassionate but powerful tool utilized by counsel to effectively secure a Commission that permits the Guardian to access the individual's otherwise unavailable accounts and resources, undertake a medicaid plan, pay bills, apply for medicaid, make health care decisions, and even choose a place of abode. The list of authority is as comprehensive or limiting as the individual's needs.

Further, if immediate authority is tantamount to an effective plan, counsel may request that a *Temporary Guardian* be appointed so that an incapacitated individual's long term care needs in the community, or in a nursing home, may be promptly addressed. Timely preparation and submission of a Medicaid Application with packet are essential components of a successful long term care plan.

Although Guardianship may correct the lapses engendered by procrastination, it is not the best way to handle your estate affairs. Prepare your Powers of Attorney and Health Care Proxies in advance, and establish an estate and medicaid plan. You will not only be serving your own needs better but your support and legal representatives will be in an advantageous position to assess your needs and act accordingly with authority.

NOW MEETING CLIENTS AT HAUPPAUGE LOCATION

For your convenience, I am now meeting clients at my Hauppauge location (noted above), although my main office will continue to be based in Deer Park. It will represent a more convenient venue for many of my clients and their families who reside closer to the North Shore. I look forward to seeing you there.

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