

BAiP Elder Law Panel Discussion, May 20, 2010

(Community Room, Marseilles Residence, 230 W. 103rd St., New York, NY 10025)

Panelists:

- **Mariann Perseo**, Elder Law attorney
- **Martha Kunkis**, attorney, Bauman and Kunkis
- **Dino Peragallo**, attorney, Legal Services NYC

Topics:

- Advance Directives (Wills, Healthcare Proxies, Power of Attorney);
- Spending Down to Medicaid;
- Low Cost Legal Services and Housing Issues

Advance Directives:

Wills:

Panelist Martha Kunkis discussed the importance of making a will to ensure your wishes are followed in terms of the disposal of your property. Those without close relatives may wish to benefit certain organizations; unless you leave clear directions, the probate process can be long, difficult and costly.

Power of Attorney:

New York State has revised its requirements for establishing a power of attorney. This designates another person who has the authority to perform certain fiduciary tasks, such as paying bills or making decisions (other than healthcare related ones) on your behalf. The new process does not supersede existing powers of attorney. However it makes establishing a new power of attorney more complex. The state form is now 2 to 11 pages long; the panel advised it be done with the help of a lawyer.

Healthcare Proxy:

Appointing a health care proxy ensures that your wishes regarding your medical care will be followed in the event that you become incapacitated, i.e., unable to speak for yourself. In such a situation, the person who holds your proxy will be consulted when a decision must be made about a treatment, procedure, or life-sustaining care. Forms are available on a number of websites. You should discuss your wishes with the person whom you are appointing as your proxy prior to their nomination, and make sure that your primary care physician has a copy of the form.

The Family Health Care Decisions Act:

The FHCDA went into effect in New York State on June 1, 2010. Prior to its passage, state law set a high bar for family and friends who wished to make health care decisions for someone who became incapacitated and had not appointed a healthcare proxy. A family member, domestic partner, or close friend did not have a say in care unless they met a “clear and convincing” evidence standard for proving that their decisions reflected the patient’s prior wishes. In the

absence of a healthcare proxy, the FHCDA now establishes an order of priority for determining who has authority to make decisions on behalf of an incapacitated patient, beginning with spouses and domestic partners. In the event of a patient becoming incapacitated, the FHCDA allows hospitals and nursing homes to turn to this priority list and seek input from the person available with the highest priority. While FHCDA permits the patient's surrogate to make all health care decisions that the patient him or herself would make, including those regarding life-sustaining care, appointing a health care proxy in advance still gives a patient greater control in terms of having their wishes adhered to. The FHCDA is, in effect, a default system.

Spending Down to Medicaid:

A complex set of regulations govern Medicaid eligibility and it's recommended that someone seeking to become eligible consult with an Elder Law lawyer or experienced social worker to discuss the requirements. For example, should someone wish to have in-home care covered under Medicaid, they could transfer assets that might otherwise prevent their eligibility, and be approved within the month. But then if they later seek to enter a nursing home with Medicaid coverage, the person's financial status for the last five years is subject to examination to see if there has been an ineligible asset transfer. Similarly a person may own a home, either singly or jointly, and still be eligible for Medicaid. But if a spouse or partner living in the home dies, and the person is in a nursing home and does not express an intent to return home, the home may be viewed as an asset, subject to a Medicaid lien, unless it can be transferred to an eligible person.

Low-Cost Legal Aid:

Manhattan Legal Services, which has an office at 1 West 125th Street, offers free legal advice to Manhattan residents who have an income level below 200% of the federal poverty guidelines. Dino Peragallo described how the organization can assist with housing, domestic violence, and other issues. New York State law offers extensive protection to elderly residents in rent controlled, rent stabilized, and Section 8 apartments. Manhattan Legal Services offers expert assistance in such cases. The phone number is (646) 442-3100.

Other Sources of Legal Advice:

National Academy of Elder Law Attorneys

Website: naela.com

Locate an elder law attorney in your area by entering your zip code.

Elder Law Answers

Website: elderlawanswers.com

Find an elder law attorney with a zip code locator; frequently asked questions; estate planning advice

New York City Bar

Website: nycbar.org

Referrals for free or low-cost legal assistance and legal hotline.

Legal Hotline: The City Bar Justice Center Hotline is a free advice hotline for low-income callers. A phone call connects you with a staff of knowledgeable referral counselors, who are attorneys and paralegals. Counselors will give free legal advice on a wide range of subjects, such as family law, consumer debt, and landlord-tenant issues. Counselors are available to answer questions Monday through Friday from 9:00 A.M. to 1:00 P.M. and Tuesday and Thursday from 4:00 P.M. to 7:00 P.M. To speak with a counselor, call (212) 626-7383.