

ALWAYS ON CALL



Even kind-hearted attorneys can't respond every time an older client—or a family member—phones for help. That's where geriatric care managers come in. [See page 2](#)



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A HELPING HAND FOR ELDER LAW ATTORNEYS

Geriatric care managers can put support systems in place

By **MARLENE DUBE**

Martin, an 82-year old veteran with advanced Alzheimer's disease, quite literally kept his attorney up at night. Phone calls from the police, who picked Martin up when he was found wandering on Hartford streets, and frantic calls from Martin's elderly spouse and daughter who lived in Iowa, were becoming more frequent. This elder law attorney, who had been appointed Martin's conservator of person and estate, wondered how long he could possibly manage this difficult, demanding case and still keep up with his regular workload. There was never enough time to address the family's continual crises.

The solution? Martin's elder law attorney decided to utilize the services of a professional geriatric care manager. The care manager, a social worker certified in care management and knowledgeable about community resources, first conducted a comprehensive assessment of Martin's

medical and social needs. She then developed a plan of care, and with the attorney's authorization, coordinated the services Martin required to live safely at home. Her recommendations included an adult day-



care program with a dementia specialty that would keep Martin engaged in activities, medication monitoring, a "safe return bracelet," and suggestions to make the home environment safer.

She arranged for transportation to the adult day program, respite for the relatives caring for Martin, and assisted the family with long-term planning in the event he could no longer remain at home. Much to

the attorney's relief, his client now had the support systems in place that he needed. The emergency phone calls were over.

Private geriatric care management is a valuable option for attorneys whose older

service delivery on the part of the attorney. Working with a geriatric care manager provides the following benefits for attorneys:

Enhanced client satisfaction, thus increasing referrals: Working closely with an attorney, the geriatric care manager can evaluate the elderly client's needs, screen for risk factors, and ensure that the most appropriate services are in place. This not only assists the client but can provide peace of mind and respite for the family. Meeting or exceeding clients' expectations is not only good customer service, it makes good business sense. Satisfied customers are more likely to make referrals, provide free advertising in the form of positive feedback to others about the attorney, and are potential sources of additional revenue.

Expert Testimony

Reduced liability and greater certainty regarding clients' plans of care: With the recent changes in conservatorship law, the expert testimony of a qualified, experienced geriatric care manager can be of great value in probate court. Difficult client situations may require the involvement of outside professionals, especially in cases of diminished capacity or when the potential for abuse exists. The attorney who is conservator of a client with complicated medical and psycho-social needs can call upon a geriatric care manager to review the plan of care and offer his/her professional opinion. In cases where families are in conflict, the attorney or probate judge can recommend an objective assessment by a seasoned geriatric care manager. Fees for geriatric care management services average \$125 to \$150 per hour.

Greater time efficiencies: Attorneys whose elderly clients are in crisis may find themselves and their staff spending a great deal of time and effort trying to locate resources and act as social workers. The geriatric care manager relieves that burden, particularly in cases when the attorney is appointed conservator. If the client has no family, the care manager can assist the client with medical appointments, social activities, appropriate living arrangements, and whatever else the client needs to live as independently as possible. In addition, the geriatric care manager can monitor the client's care over time and make adjustments to the care plan as needed. Close communication between the care manager and the attorney ensures that the attorney is kept well-informed of the client's status. Without the responsibility of case management, the attorney is free to focus on the client's legal affairs and his/her domains of expertise.

As the baby boomers grow older and an increasing number of people live to advanced ages in the United States, the field of geriatric care management will continue to grow and play an important role in the legal arena. Attorneys who specialize in elder law have more opportunities than ever to enhance their practices and best serve their clients. ■

Many geriatric care managers are licensed nurses, social workers, or other human services professionals

clients have complicated eldercare issues, or whose families disagree about their care. In addition, probate courts often request the objective assessment of a qualified geriatric care manager when a determination must be made about nursing home placement. Geriatric care managers can provide expert testimony in probate court hearings regarding their opinion of the client's status and recommendations for care. The attorney knows the law, but not necessarily how an elderly client's medical and social needs are most effectively addressed.

Eyes And Ears

Who provides geriatric care management? Many geriatric care managers are licensed nurses, social workers, or other human services professionals who are trained to conduct comprehensive psychosocial assessments.

National certification in care management demonstrates that the individual has had specific training and experience in eldercare. To be truly effective, the geriatric care manager must have a solid knowledge base regarding community-based service options, state and federal entitlements, and be able to navigate the maze of available health care services and programs. For long-distance caregivers, the geriatric care manager can be the "eyes and ears" for the family and assist clients to remain as independent as possible, for as long as possible. Even individuals in assisted living facilities or in other institutional settings can benefit from the services and advocacy of a geriatric care manager.

As a resource to attorneys, the geriatric care manager can recommend plans of care for clients with complex needs, coordinate in-home services and advise the attorney and family regarding the most appropriate, cost-effective living arrangements for the client. In addition, the geriatric care manager serves as a liaison with all involved professionals, and provides support and education on eldercare to the client and family. All of this translates to a higher quality of life for the client, and enhanced

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PRUDENT *Planning*

A WAY TO PAY FOR LONG-TERM CARE

Insurance policy can protect assets from nursing home costs

By ELIZABETH LOVEJOY

A comprehensive wealth management strategy needs to include a plan to pay for nursing home care. The costs of care are so high, and the likelihood of needing care so great, that a failure to plan could drastically deplete assets intended to support a

assets worth \$101,640, and income for the healthy spouse of \$2,541 per month.

Inflation Protection

The Connecticut Partnership for Long-Term Care is a state program that provides a way for people to plan for long-term care and protect assets while still qualifying for

Because their policy had an inflation rider, the lifetime benefit has increased to \$569,000. That amount is paid out in just over two years. However, because of the Medicaid Asset Protection feature of the policy, \$569,000 of their assets will be disregarded for Medicaid eligibility purposes, leaving only \$81,000 of countable assets.

The ill spouse will qualify for Medicaid, Medicaid will pay for his care for as long as he stays in the nursing home, and the state will not be able to recover from the protected assets any of the Medicaid benefits paid. The healthy spouse will be able to continue to live securely in the community, as she has not had to spend everything on the nursing home. If she eventually needs care, she also has a long-term care policy, so she will be able to receive the care she needs and still pass something on to their children.

Significant Advantages

The advantages of a Partnership long-term care policy in this scenario are significant. The couple spent a total of \$66,000 in premiums over 20 years for the policy. The policy then paid for \$569,000 in care, and allowed the ill spouse to qualify for Medicaid for unlimited care after the full benefit was spent. Without a Partnership policy, the couple would have spent nearly all of their assets on the ill spouse's care in less than two years. While the \$3,300 of premium dollars could have been invested each year for the same twenty-year period, even if the investment earned 10 percent annually the return would have been only \$212,423, or about nine months of care. (The gains earned would have been further reduced by tax. In contrast, long-term care insurance premiums are tax-deductible as a medical expense to the extent they exceed 7.5 percent of the policyholder's adjusted gross income, and the benefits received are not taxed as income). Even if this couple had been very wealthy and planned to pay the whole cost of care out of their existing income or assets, it would have been much cheaper to have paid the premiums and received the policy benefits.

Many clients will question whether to buy long-term care insurance at all, since the need for long-term care is likely, but not certain. Knowing how long-term care insurance can protect your clients' assets from the high cost of care can help you guide them toward an answer that fits within their overall wealth management plan. Long-term care insurance can be the best and most affordable way to ensure that a financial plan a couple has crafted over decades works just as they hoped. ■



The Connecticut Partnership for Long-Term Care is a state program that provides a way for people to plan for long-term care and protect assets.

couple throughout all of their retirement years, or intended as a legacy for future generations.

One of the best ways to protect assets from the costs of nursing home care is to buy a long-term care insurance policy that is approved by the Connecticut Partnership for Long-Term Care.

Nursing home costs in Connecticut average about \$114,000 per year, and the cost of care has been rising at about 5 percent per year. Skilled home care generally costs less, but it can come close to the cost of institutional care, depending on the type and frequency of the care needed. The chance that anyone will need chronic care is significant as well. Sixty-nine percent of people turning 65 years of age will need some long-term care before they die. About half will need care for at least a year, and about 20 percent will need care for more than five years. The average length of stay is two-and-a-half years. Furthermore, Medicare and other health insurance cover primarily acute medical needs and do not pay for long-term care in most cases. While Medicaid will pay for chronic care, only individuals who meet the very low asset and income requirements can qualify. Generally, a couple who wish to qualify for Medicaid can keep only their house, a car,

Medicaid. The state and private insurance companies have worked together to develop the long-term care policies approved by the Partnership. Every Partnership policy has a Medicaid Asset Protection feature. Under this feature, every dollar of insurance benefit spent on long-term care protects a dollar of assets from being counted in determining your Medicaid eligibility. Partnership policies are also required to increase benefits over time by providing automatic compounded inflation protection. Since every dollar of benefit paid protects a dollar of your assets, the amount of assets you can protect increases at the same compounded inflation rate. Although benefits increase, Partnership policy premiums must remain level for the duration of the policy unless the Connecticut Insurance Department approves an increase. Partnership policyholders are also guaranteed a 5 percent discount on private pay nursing home rates.

Let's look at a couple in their 50s who are planning for possible nursing home expenses. They each buy a Partnership long-term care policy that will pay \$300 per day for three years for a lifetime benefit of \$328,500, with a 5 percent inflation rider. The premiums for this policy cost them \$3,300 per year. They pay for 20 years, and then one of them enters a nursing home. In addition to their home, they have \$650,000 in assets. In the intervening 20 years, the cost of care has risen from \$300 per day to \$840 per day. As owners of a Partnership policy, our couple receives a 5 percent discount, reducing their rate to \$800 per day, or \$292,000 per year.

Elizabeth Lovejoy is a member of the Trusts and Estates Practice Group at Halloran & Sage. In addition to traditional estate planning, her practice includes planning for long-term care. She has an LL.M. in Estate Planning and Elder Law.

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LIVING Arrangements

HOUSING CHOICES FOR SENIORS WHO NEED CARE

Nursing homes no longer the only option

By **ROSEMARY B. JONES**
and **BARBARA W. REYNOLDS**

Seniors face an ever-increasing myriad of places to live and ways to receive care. When looking at options, there are five factors to consider: 1) Where do you want to live? Do you like your home? 2) Do you wish you had more contact with people? 3) What type of care do you need now and what will you likely need in the future? 4) Are you willing to follow doctor's orders? 5) Do you have money to pay for your care?

Home. This is the place most seniors hope to stay. It's familiar and comfortable. Home is a good choice for you if you have a one-level home or one where you can remain on the first level or navigate the stairs. If you need assistance from a personal care-giver, there are home health aides who can help anywhere from a couple of hours a day to a full 24/7 live-in caregiver if that's what is needed.

There are times, however, when home is not the best choice. Sometimes home is not a safe place because of stairs or because of

extensive medical needs or because the senior is not willing to accept help or will not eat or take medication regularly.

Independent Living or Congregate Living. Both of these generally offer an apartment within a complex where other seniors live. Many of these places offer one

ication, etc. If someone begins to need additional assistance after being at the complex, then he or she may be allowed to "age in place" by having a home health aide come to the facility for the additional help. The cost of such a place may range from \$2,000 to \$3,000 per month.

Many ALFs cost from \$3,500 or more per month with no services and up to \$6,000 or \$7,000 with the highest level of services. Sometimes an ALF may require a resident to have a 24/7 live-in aide due to the excessive care needs of the resident.

Connecticut has an assisted living pilot



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congregate meal per day, transportation to doctor's appointments and a variety of social activities.

To qualify for an independent or congregate living complex, a senior generally must be able to manage his/her own life, including meal preparation, taking med-

Retirement Care Home ("RCH"). These facilities, often called "rest homes" or "boarding homes," generally offer a home-like environment for seniors. Seniors may have their own room or a shared room with bathrooms that may or may not be shared. There are generally 25 or fewer residents in a single RCH. The RCH offers three meals a day, transportation to doctors' appointments and may have social activities. The state supplement program may pay for a resident's room and board if his or her income and assets meet certain state qualifications. An RCH generally costs about \$3,000 or less a month.

Assisted Living Facilities ("ALF"). These facilities are generally newer developments and are frequently reminiscent of a large resort hotel. They are very attractive facilities that offer three meals a day in a restaurant-like setting, transportation to doctor's appointments, social activities and assistance with activities of daily living (bathing, dressing, feeding, reminders to take medications).

Dementia Units

Many ALFs offer specialized care for seniors with dementia. These units can provide greater oversight and activities to stimulate brain activity and keep the senior more alert and involved. These units are especially designed to assist those who may wander, who may not know where they are and who loved ones are, and those who would not remember to eat or take medication if living at home alone.

ALFs often provide additional care services *a la carte*, so if someone needs to be dressed and helped with showering in the morning and help getting ready for bed at night, those services may be available for an additional charge. Other facilities have "levels" of care with each level including a certain number of hours of "hands on" care each day.

Many assisted living facilities offer specialized care for seniors with dementia. These units can provide greater oversight and activities to stimulate brain activity.

program that provides financial assistance for the cost of care for ALF residents who deplete their assets to pay for their care, but the program has a limited number of slots and a rather large waiting list. Even with governmental assistance, the senior and his or her family will still need to pay for room and board, although we have been told that the Medicaid program will be changing and more assistance will be provided to seniors in assisted living when that does happen.

Skilled Nursing Facilities ("SNF"). Skilled nursing facilities provide care to those who need higher levels of skilled and/or custodial care, often patients who are bedridden or virtually immobile. These facilities generally have shared rooms, on-staff nurses and a hospital-like setting. Medicaid will cover these facilities fully after the resident has spent his or her funds and pays his or her income to the facility each month. Sometimes a resident who runs out of money at an assisted living facility is forced to move to an SNF in order to obtain Medicaid assistance.

SNFs range in cost from \$8,500 to close to \$11,500 per month. With costs approaching \$120,000 per year, it's easy to see why people panic when they imagine paying that bill for two or more years. Once someone runs out of assets, Medicaid will cover the cost of care for someone who is otherwise eligible. There are also provisions made for the "well" spouse to be able to keep a certain level of assets if his or her ill spouse needs to go into a nursing home.

Things have greatly improved from the days when the only option for someone who needed care was a SNF. In the next few years, we hope that even more options will appear which minimize the cost of care while providing a safe and comfortable environment for seniors who need care. ■



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HOUSING Trends

TAPPING THE EQUITY IN SENIORS' HOMES

Reverse mortgages are specialized loans with no monthly payments

By **CHRISTOPHER J. ALBANESE**

“You were the answers to my prayers!”
In the six years that I have had my own practice and after 1500-plus closings, this was the highest compliment I have ever received as an attorney. In June 2004, I was contacted by two seniors in Preston, Conn., who had been prompted by two of our reverse mortgage clients to contact us. Fortunately, they did.



leaves the home, at which time the loan is paid off.

The loan does not have to be paid off during the homeowner's lifetime and the money received, in general, does not affect Social Security or Medicare benefits. The money can be accessed through a lump sum, line of credit, monthly payments, or a combination of the three. The biggest benefit is the ease in which these loans allow seniors to free up the blood, sweat and tears they have poured into

higher than those for conventional loans. In addition to appraisal, title search, title insurance, attorney fees, etc., there are two other fees. First, there is a 2 percent mortgage insurance premium (MIP). While MIPs are common in purchases, they are not common in refinances or HELOCs. The reverse mortgage MIP, however, is not entirely bad. It does permit higher loan-to-value ratios and, therefore, allows more equity to be tapped out of seniors' homes.

Second, there is a 2 percent loan origination fee, compared to 0 percent for a forward mortgage for borrowers with good credit. To understand the reasoning, think in terms of profit. During the first seven years of a 30-year forward mortgage, most of the payment goes towards interest. It is almost pure profit. Because that profit is coming in contemporaneously (more or less), with the origination of the loan, the lender can use it to pay its loan originators. Conversely, for a reverse mortgage, the lender has to wait until the last borrower permanently leaves the home to get paid (i.e., make a profit). That can be a long time, especially if the homeowners are in their early 60s and their departure date from their home occurs 30-plus years down the road.

That's not the entire story. The two fees are not based on the amount of the loan, but rather on the "maximum claim amount," which is the lesser of the FHA lending limit or the appraised value. For example, a borrower in a New London County home which appraised for \$200,000 would receive about \$123,600 after closing costs. The combined MIP and loan origination fees would be \$8,000. Effectively, these fees are not really 4 percent, but closer to 6 percent. The truth is that the up-front costs for a reverse mortgage are greater than those of a HELOC.

That, however, is like comparing apples and oranges. Consider the fact that without tapping their homes' equity, many seniors are faced with living somewhere around the poverty line, losing their homes, or selling their homes and losing independence. The simple truth is that seniors who have equity in their homes must face the fact that some-

■ See **REVERSE** on **PAGE 8**

While reverse mortgages are lifesavers for many seniors, they have a downside. Closing costs are typically higher than those for conventional loans.

However, it was only seven business days before their home was to be sold in a foreclosure sale. With the help of Bradford Financial Inc., (a Waterford reverse mortgage brokerage), Financial Freedom Senior Funding Corp, and Hunt Liebert, we were able to pull off this miracle in only three business days.

The closing was in my office three days before the couple's home was to be auctioned off on their front lawn. Our clients were surrounded by my six staff members and the brokers as we signed everything. There was not a dry eye in the conference room. Welcome to the world of reverse mortgages.

Specialized Loan

A reverse mortgage is a specialized loan which enables seniors, age 62 and over, to access the equity in their homes without making monthly payments. The mortgage accrues interest until the homeowner permanently

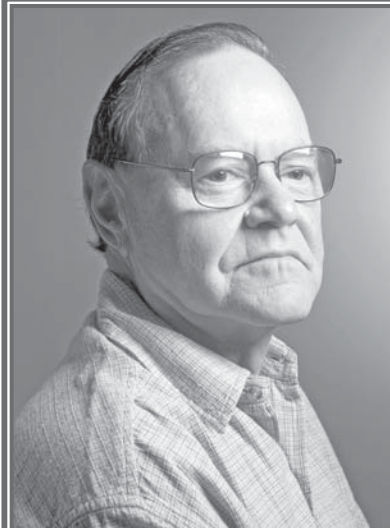
leaves their homes.

When seniors need to access the equity in their home, they can typically choose either to obtain a conventional or reverse mortgage. The most common forward mortgage a senior would use is a home equity line of credit. A HELOC is different from a reverse mortgage in significant ways. First, monthly payments must be made, while there are none for a reverse mortgage. Second, a HELOC does not earn interest, while a reverse mortgage line of credit does (3.76 percent as of the day of this writing). Simply put, the plus about reverse mortgages is that they allow seniors to get cash from their homes without having to make payments.

The Downside

My grandmother always told me if something sounded like it was too good to be true, then it was too good to be true. While reverse mortgages are lifesavers for many seniors, they have a downside. Closing costs are typically

Chris Albanese is a retired Navy chief who is now an attorney in Gales Ferry, where he does real estate law. He has facilitated numerous seminars on reverse mortgages and real estate law.



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THREE PEOPLE WERE TOO MANY

Laws clarify who makes health care decisions for incapacitated people

By **BENJAMIN JOHN KINIRY**

We all have to make health care decisions. We are examined by our physicians and the physicians educate us about available options to treat

Probate Court could have appointed a conservator of the person.

A health care agent and an attorney-in-fact for health care decisions would have been able to convey, to a treating physician, the patients' wishes concern-

evidence, that a person is incapable of caring for himself. (See C.G.S. § 45a-656 (2007)).

Case Study

Mr. Johnson arrived at Hartford Hospital after suffering a stroke. Three individuals arrived at Mr. Johnson's bedside declaring they each had the authority to make health care decisions on Mr. Johnson's behalf. After reviewing the documents the three parties presented, the treating physician was confused as to who had the legal authority to make health care decisions.

Because of the serious nature of health care decisions and the potential confusion over the question of who has priority and the specific authority to make them, the

legislature in 2006 and 2007 acted to make sure the intent of any person appointing a Health Care Representative is followed.

First, on Oct. 1, 2006, the legislature modified the health care agent and the appointment of an attorney-in-fact for health care decisions by combining these authorities into a new singular authority called a "health care representative." (See C.G.S. § 19a-577 (2006)).

A health care representative acts if you become incapacitated and is authorized to convey your wishes to your physician to ensure that your wishes are carried out. Your representative may accept or refuse any treatment, service or procedure; arrange to maintain your physical comfort and to provide, withhold or withdraw life support systems in accordance with your wishes. In contrast with the power of attorney, this authority is very narrow and pertains only to health care decisions.

Second, on Oct. 1, 2007, the legislature removed the health care decision making authority from the short form

power of attorney. (See Public Act No. 07-252 (2007)) Under current law, rather than having a hidden health care decision making authority within a power of attorney, Mr. Johnson would be appointing only a health care representative to make health care decisions. This assures that his nomination regarding who should make health care decisions is followed and leaves no room for error in creating a conflict between the health care representative and the power of attorney.

Third, on Oct. 1, 2007, a message was sent to the Probate Courts that the "least restrictive means of intervention" must be utilized to aid a person involved in a conservatorship process. "Least restrictive means of intervention" is defined as "sufficient to provide, within resources available, for person's needs, while affording the person the greatest amount of independence and self-determination." The legislature's likely intention, as it pertains to this writing, is that if a health care representative has already been appointed, then the Probate Court should not assign this authority to a conservator of the person.

A Good Result

Prior to Oct. 1, 2006, it was possible for Mr. Johnson, and the Probate Court, to unknowingly assign health care decision authority to multiple agents, likely resulting in conflict.

As of Oct. 1, 2007, if Mr. Johnson were to appoint a health care representative and a power of attorney, the law is clear that the Health Care Representative has the sole authority to make the necessary health care decisions. The power of attorney has been rendered a non-issue, as there is no longer authority given for health care decisions. The Probate Court, if made aware of the existence of the health care representative, will follow the rule of least restrictive means and therefore not assign health care decision making authority to a conservator of the person. ■



Three individuals arrived at Mr. Johnson's bedside declaring they each had the authority to make health care decisions on his behalf.

our medical conditions. Based upon the physician's input we make a health care decision.

What if you suffered a stroke or suffer from dementia and you are no longer able to communicate with your medical provider? Who will make health care decisions for you during your incapacity? Do the nominated parties have the specific legal authority? These are some of the most important questions about your health care.

In 2005, there were numerous ways in which health care decision making authority could have been assigned. A health care agent and an attorney-in-fact for health care decisions could have been nominated. Another possibility was to assign health care decision making authority to an agent under a power of attorney. In addition, the

ing the withholding or removal of life support systems and refuse or withdraw consent to any medical treatment consistent with the patient's wishes. (See C.G.S. § 19a-577 (2005)).

An agent under a power of attorney could also have been given health care decision-making authority. The power of attorney is commonly believed to allow only for the management of finances if a person becomes disabled. The reality, however, is that the typical power of attorney is much broader in scope and may provide for numerous other powers, such as: real estate transactions, insurance transactions, claims and litigation, personal relationships and affairs, benefits from military service, health care decisions — and the catch-all, all other matters. (See C.G.S. § 1-42 to 1-56 (2006)).

The Probate Court may have also appointed a conservator of the person and given the conservator health care decision making authority. A conservator of the person is appointed if the court finds, by clear and convincing

Benjamin John Kiniry is a graduate of the University of Connecticut School of Law and has been with Kearns & Kearns in West Hartford since 2005. He handles estate planning and probate law.



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MODEL Standards

A 'PERSON-CENTERED' APPROACH

Legislative amendments make sweeping changes in conservatorship law

By **KATE McEVOY**

Enactment of Public Act 07-116, which became effective on Oct. 1, 2007, reflects sweeping changes in Connecticut's conservatorship law that update and modernize the state's law consistent with model standards.

These amendments reflect a "person-centered" approach that requires courts to evaluate each instant situation on an individually-tailored basis. The most fundamental aspect of the amendments is that they build on prior Connecticut law to require a presumption of limited, rather than plenary, conservatorship.

Conservatorship law in Connecticut has been slow to evolve. Before 1998, in all cases in which a court found that a respondent was incapable, it was obligatory that the court appoint a plenary conservator. While

refers to an individual's ability to make and communicate informed decisions, has been added;

- the "essential needs" clause, which describes the individual's inability to care for him or herself or to manage his or her affairs, now includes reference to "appropriate assistance" that might help an individual to do so.

Procedural Protections

The amended law includes enhanced procedural protections that:

- require that courts establish jurisdiction; confirm that the person who is the subject of the application has been given the required notice and has been advised of the right to an attorney; and confirm that the person is either represented or has knowingly waived the right to an attorney;

- that his/her financial affairs are not being adequately managed or that he/she is not being adequately cared for; and

- that conservatorship is the least restrictive available option.

Courts are now prohibited from appointing a conservator of the estate if the respondent's affairs are being adequately managed by other means including, but not limited to, a power of attorney or advance health care directive.

Even where a court concludes, based on clear and convincing evidence of needs, that appointment of a conservator is necessary, it is required to make a limited appointment and to review the conservatorship ongoing with an emphasis on authorizing only those duties that clear and convincing evidence has shown to be necessary.

The basis for such assignment must be that each such duty and authority restricts the decision-making authority of the ward only to the extent necessary to provide for his or her personal or property management needs. Important examples of this include provisions that state that conservators of the person may not, without court authorization:

- revoke the conserved person's advance health care directives unless authorized to do so by a court of competent jurisdiction;

- terminate a tenancy or lease, sell or dispose of real property or furnishings or change the conserved person's residency; or

- place the conserved person in an institution, which is defined as a skilled nursing facility, an intermediate care facility, a residential care home, an extended care facility, a rest home or a rehabilitation hospital.

The amended law also provides that a conserved person retains all rights that are not expressly assigned to the conservator. Throughout, the amended law emphasizes use of the "least restrictive means of invention" and the obligation of the conservator of the person to take into consideration the wishes and preferences of the conserved person.

Finally, the amendments contain major changes concerning appeals. In contrast to historical *de novo* review, state Superior Courts must now limit their review to the record created at the probate court level, and must affirm the decision of that court unless it finds specific circumstances, such as legal error, to have occurred, or that the decision is contrary to the evidence presented.

The amended law also provides that an individual may apply for and is entitled to the benefit of a writ of habeas corpus even if s/he has not exhausted other remedies. ■

At every stage of a proceeding, courts are required to evaluate whether a respondent's needs are currently being or could be met by a means that is less restrictive than appointment of a conservator.

amendments in Connecticut law first provided that appointment of a conservator was no longer mandatory where there were alternate existing supports, and later permitted appointment of a conservator on a limited basis, plenary appointments continued to be the norm.

This has changed due to the comprehensive amendments enacted in the 2007 legislative session. Initially inspired by the Wingspan recommendations and drafted by advocates from Greater Hartford Legal Assistance and the Connecticut Legal Rights Project, with comment from diverse partners, the amendments were finalized and ultimately championed by a work group led by Hartford Probate Court Judge Robert Killian Jr.

The amendments provide enhanced guidance on every aspect of the process, from inception through periodic review.

A key premise of the amendments is that Connecticut's definitions of incapacity have been revised as follows:

- the "disabling condition" clause, which describes the individual's mental, emotional or physical condition, has been revised to remove references to such terms as "mental deficiency", "chronic use of drugs and alcohol" and "confinement";

- a "cognitive functioning" clause, which

- emphasize the right of a respondent to be notified of, to attend and to participate in hearings, and to be represented by an attorney of his or her choosing;

- outline courts' responsibility to schedule hearings at a place that will facilitate participation by the respondent;

- require that all hearings be conducted using the rules of evidence established by the Superior Court, and that all testimony that is offered be given under oath or affirmation;

- require that courts record hearings and retain the recordings for use in the event of an appeal;

- provide standards for review and termination of conservatorships.

Meeting Needs

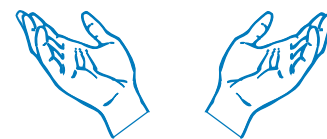
At every stage of a proceeding, courts are required to evaluate whether a respondent's needs are currently being or could be met by a means that is less restrictive than appointment of a conservator. The amended law requires courts to consider numerous factors in determining whether a conservator should be appointed, including the abilities and preferences of the respondent, evidence of his/her lifestyle and cultural background, and whether there exist alternate legal tools or supports that obviate the need for a conservator.

The new standard for appointment requires that the court find:

- that the respondent is incapable;

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REVERSE MORTGAGES GAIN POPULARITY

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one is going to spend it. It can be them through a reverse mortgage or HELOC, their kids through inheritance, or the government through Title XIX.

HECM Loans

Today, there are more than 22 percent of reverse mortgage products; the Home Equity Conversion Mortgage accounts for around 90 percent of the market.

The first HECM loan was developed by the federal government in 1989. In 2000, 6,640 loans closed. Popularity soared, and more than 110,000 loans closed in 2007.

The HECM can be based on the U.S.

Treasury's one-year constant maturity rate plus 1.00 percent, 1.25 percent or 1.50 percent, or upon the London inter-bank offering rate (LIBOR). The CMT is a less

volatile index than the LIBOR, which is much more reflective of market forces.

Any discussion about reverse mortgages

would be incomplete without touching on taxes and public benefits. Reverse mortgages are considered loan advances by the IRS, which makes them non-taxable. However,

interest on reverse mortgages is not deductible until the loan is paid off entirely.

It's also important to look at other gov-

ernment programs. While reverse mortgages should not affect Social Security or Medicare benefits, they may have an adverse impact on SSI, Medicaid or other public assistance. Reverse mortgage loan advances are counted as "liquid assets" if they are kept in an account past the end of the calendar month in which they were received. Care must be taken not to allow total liquid assets to become greater than these programs allow.

As a trusted advisor to seniors, elder attorneys should have a strong understanding of reverse mortgages. While it is not for everyone, this simple-to-understand program is an arrow every to keep in your quivers. ■

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Scheduled Dates

Article Deadlines Advertising Deadlines

February

4	Federal Litigation & Electronic Discovery	1/24	1/28
		1/31	2/4
11	Insurance Litigation		
18	Personal Injury Yearbook 2007	2/7	2/11
25	New Partner's Yearbook 2008	2/14	2/18

March

10	Construction Law	2/28	3/3
24	Personal Wealth Management	3/13	3/17
31	Business Litigation	3/13	3/24

April

14	Land Use & Environmental Law	4/3	4/7
21	Intellectual Property	4/10	4/14
28	Employment & Immigration	4/17	4/21

May

5	Luxury Auto Guide	4/24	4/7
5	Trib 25	4/24	4/7
12	Health Law	5/15	5/19
19	Insurance Litigation	5/8	5/12
26	Women & the Law: Leadership & Innovation	5/1	5/5

June

2	Summer Associates Guide	5/22	5/26
16	Law Office Technology & Electronic Discovery	6/5	6/9
23	Alternative Dispute Resolution	6/12	6/16

July

14	Construction Law	7/3	7/7
28	Employment & Immigration Law	7/17	7/21

Scheduled Dates

Article Deadlines Advertising Deadlines

August

18	Family Law	8/7	8/11
25	Complex Litigation & Electronic Discovery	8/14	8/18

September

1	Municipal & Education Law	8/21	8/25
8	CT Supreme Court Year In Review	8/28	9/1
15	Personal Injury Litigation	9/4	9/8
29	Business Litigation & Bankruptcy Law	9/18	9/22

October

6	Land Use & Environmental Law	9/25	9/29
13	Intellectual Property	10/2	10/6
20	The Best Survey 2008	10/9	10/13
27	Successful Bar Candidates	10/16	10/20
27	Employment & Immigration Law	10/16	10/20

November

3	Luxury Auto Guide	10/23	10/6
3	Construction Law	10/23	10/27
10	Medical Malpractice	10/30	11/3
17	Corporate Law	11/6	11/10
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December

1	Product Liability & Toxic Tort	11/20	11/24
15	Year in Review	12/4	12/8