

Asset Protection Law Newsletter



BROWARD TELEPHONE (954) 963-8719 ♦ MIAMI- DADE TELEPHONE (305) 326-7400 ♦ WEBSITE: WWW.ROSEMAN-ELDER-LAW.COM

FROM MARK A. ROSEMAN, ESQ.
WELLS FARGO BANK BUILDING
3325 HOLLYWOOD BOULEVARD, SUITE 308
HOLLYWOOD, FLORIDA 33021-6926

A FREE LEGAL UPDATE FOR ELDERS AND OTHERS WHO SEEK ASSET PROTECTION ♦ JUNE 1, 2014 EDITION

MAY SOMEONE WITH DEMENTIA SIGN A WILL?

Millions of people are affected by dementia; unfortunately many of them do not have all their estate planning affairs in order before the symptoms start.

If you or a loved one has dementia, it may not be too late to sign a will or other documents, but certain criteria must be met to ensure that the signer is mentally competent.

In order for your will to be valid, you must have "testamentary capacity," which means he or she must understand the implications of what is being signed.

Simply because you have a form of mental illness or disease does not mean that you automatically lack the required mental capacity. As long as you have periods of lucidity, you may still be competent to sign a will.

Generally, you are considered mentally competent to sign a will if the following criteria are met:

1. You understand the nature and extent of your property, which means you know what you own and how much of it.
2. You remember and understand who your relatives and descendants are and are able to articulate who should inherit your property.
3. You understand what a will is and how it disposes of property.
4. You understand how all these things relate to each other and come together to form a plan.

Family members may contest your will if they are unhappy with the distributions and believe you lacked mental capacity to sign it. If a will is found to be invalid, a prior will may be reinstated or the estate may pass through the state's intestacy laws (as if no will existed).

To prevent a will contest, your attorney should help make it as clear as possible that the person signing the will is competent.

I may have a series of questions to ask you to assess your competency. In addition, I can have the will signing videotaped or arrange for witnesses to speak to your competency.

To discuss the prevention of a will contest or other elder law issues with an attorney, please call the Elder Law Office of Mark A. Roseman at (954) 963 – 8719 or, in Miami-Dade County, at (305) 326-7400.

PREVENT YOUR POWER OF ATTORNEY FROM BEING IGNORED !

A durable power of attorney is one of the most important estate planning documents there is. It allows someone you appoint -- your agent or "attorney-in-fact" -- to act in your place for financial purposes when and if you ever become incapacitated.

However, many people experience difficulty in getting banks or other financial institutions to recognize the authority of an agent under a power of attorney.

Banks are often reluctant to accept powers of attorney for fear of being sued if the power of attorney isn't valid. A certain amount of caution on the part of financial institutions is understandable. Still, some institutions go overboard, for example requiring that the attorney-in-fact indemnify them against any loss.

To prevent problems later, contact your bank when you execute your power of attorney to find out what information it needs to accept the document.

Many banks or other financial institutions have their own standard power of attorney forms. If this is the case, get the bank's form and sign it in addition to your own power of attorney form.

While it isn't legally necessary, signing the bank's form can save your agent a lot of trouble and time down the road. In addition, you can provide the bank with copies of your power of attorney.

It is also a good idea to update your power of attorney frequently so the bank knows it is current.

You can also have the lawyer who prepared the power of attorney call the bank. If that doesn't work, you may have to have a lawyer deal with the bank.

In addition, Florida has a law that allows for sanctions against institutions that unreasonably refuse to accept a power of attorney.

If a bank is giving you a hard time about accepting a power of attorney, you can try talking your way up the chain of command

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NEWS YOU CAN USE

2014 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,163.00
Personal Needs Allowance:	\$35.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Medicare Part B Premium:	\$104.90
Community Spouse Resource Allowance:	\$117,240.00
Minimum Monthly Maintenance Income Allowance:	\$1,938.75
Maximum Monthly Maintenance Needs Allowance:	\$2,931.00
Excess Shelter Standard:	\$567.38