



## Weatherby & Associates, PC Counselors at Law

Helping Families Preserve and Protect Assets and Values

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# THOUGHT YOU'D LIKE TO SEE THIS:

Author and retired Law Professor Stephan R. Leimberg, one of the country's most well-respected authorities on estate and financial planning, has said that

**“The Only Difference Between An Old Woman and An Elderly Lady is  
... Adequate Income!”**

He is referring, of course, to the importance of knowing that your client and those they love will, in the event of death, disability, or at retirement, be assured of a steady, dependable, and adequate flow of cash for as long as it is needed.

But Leimberg also stresses that proper planning isn't only about having enough income and capital! Failure to properly plan for life contingencies such as disability and incompetency can result in disaster, no matter how successful your client has been in their investments.

Here's an example: Sam is a retired educator in Pennsylvania. He worked for 40 years for the school system. He did an excellent job, and the district rewarded him with a retirement income sufficient to enable him to maintain his lifestyle without having to cut corners or do without. Sam's wife died 10 years ago; they had no children. His closest relatives are his wife's two nephews, both of whom live 3,000 miles away on the west coast. Practically all of his close friends have moved away, and there is really no one nearby with whom Sam has a close personal relationship. Sam's estate planning consists of a will prepared by the law firm that represents the school district. Under the will, Sam leaves all of his assets to his nephews in California and Washington, and has named them co-executors.

In addition to Sam's pension, he has managed to accumulate a fairly sizable estate by investing shrewdly over the years. Sam has a savings and checking account at a local bank with which he has been doing business for the past 30 years.

Fortunately, when Sam retired, he still enjoyed good health, and planned to continue his practice of taking one big vacation annually. One year, while traveling in Hawaii, he was hiking along a trail to get a close-up look at a volcano, and he tripped, receiving a severe head injury and a fractured hip. The tour director made certain Sam was properly hospitalized, but was never told whom to call in case Sam was injured.

Sam was eligible for Medicare, and had his social security and Medicare cards in his pocket, but there was no information in any of his belongings about anyone to contact in the event of an accident or illness. Furthermore, Sam's memory was seriously impaired, and he could not communicate well with his doctors.

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The hospital knew of no one to contact about Sam's condition or how to get money over and above Medicare benefits to pay for his treatment.

Unfortunately, since Sam had failed to take advantage of the various options available to him to plan for or protect his future security, he had unknowingly turned over the management of his affairs to the court system. Sam is not alone in not having adequately planned for his incapacity. Unfortunately, it is the norm even among married couples. HIPAA, while good at protecting your health care records, without a thoughtful advance plan can make it impossible for the family to get the necessary medical information to make good decisions.

Sam's situation is an example of what can happen if your client fails to plan properly. Yes, Sam has a will which names his nephews as heirs and co-executors; but he did not anticipate the need to plan for contingencies such as an emergency and incapacity, or to safeguard his own future. As a result of his accident and diminished capacity, Sam could not manage his own affairs, and someone had to be formally appointed to handle them for his benefit. Under Sam's estate plan, guardianship was the "default" and unfortunately, only option.

The exact nature of guardianship proceedings varies from state to state and sometimes from county to county; and even the title of the person or institution chosen to manage someone's affairs, called a "guardian," or "conservator," or in some cases, "committee," will differ depending on the jurisdiction in which the legal proceeding is instituted.

Guardianship is almost universally a proceeding to be avoided if possible. The effect of the proceeding is to appoint a guardian to whom (or which, if an institution) all powers with respect to the incompetent person's life are transferred (at least temporarily). The court appointed guardian may not even know the incompetent person, much less his or her personal preferences or wishes. Likewise, the hearing judge may never have seen either the incompetent or the guardian before the proceeding. This is frequently the case in Connecticut, where the guardian is called the conservator. Connecticut law allows one to name in advance who they want to court to appoint should a conservator be needed.

There are several planning options that Sam could have used to protect himself and that your clients should be considering. The decision as to which option to choose (or more often which combination of options) depends on many factors, including your client's present financial situation, whether your client has one or more relatives or close friends available to lend support, whom they trust and who are willing and able to assist, their present physical and mental condition, and their personal feelings about managing their financial affairs.

**TO DISCUSS THESE OR OTHER MATTERS OF INTEREST, AS ALWAYS PLEASE FEEL FREE TO CALL! YOUR INTERESTS ARE OUR CONCERN!**

Sincerely,  
Weatherby & Associates, PC



Henry C Weatherby