




Elder Law Advisor


Summer 2019

I was involved in a car accident and will receive a modest settlement. However, I am currently on Medicaid and any settlement will cause me to lose my benefits. Is there anything I can do? The settlement is not large enough to use in place of Medicaid.

You may be able to stay on Medicaid and protect the proceeds by creating a special needs trust. The type of trust you can create will depend on your age. If you are under the age of 65, you can create a self-settled special needs trust (also known as a (d)(4)(A) trust). This type of trust allows you to maintain your Medicaid benefits and delay the use of the settlement proceeds until you are ready to do so. You will need to choose a trustee to administer your trust. Care should be taken to choose a trustee who is familiar with Medicaid rules to avoid distributions being made from your trust that will impact your Medicaid benefits.


Alternatively, you can utilize a pooled trust (also known as a (d)(4)(C) trust) no matter how old you are. A pooled trust is run by a non-profit organization that is well versed in administering trusts for people receiving Medicaid benefits. Consulting with a local attorney who specializes in settlement planning issues should be your next step. 

I have a 67 year-old daughter who is disabled. Upon my death, I would like to leave my estate to her to be used for her comfort and welfare. The problem is that I do not want her husband to have access to or inherit any of this money. Also, in case I need the money before my death, I want to be able to use it. Can I just do an amendment to my will?

A better solution than amending your will is to leave everything in trust for your daughter. A trust will allow you to protect your money from your daughter's husband and also not affect her eligibility for public benefits. A trust can be created now, but money will only be transferred to the trust after your death. Delaying the gift until after your death allows you continued access to the money in case you need it while you are living. After your death, the trust will only be for your daughter's benefit, assuring that her husband will not have access to the money. In addition, you can direct how the trust will distribute assets upon your daughter's death, allowing you to make sure her husband does not inherit any part of your estate. 

I understand that it is a good idea to execute a new financial power of attorney document if an individual moves to a new state. But what if the person who signed the original power of attorney document is mentally incapacitated when the move takes place? Then, what do you do?

Because of the incapacity, you will have to use the old power of attorney document. Under the full faith and credit clause of the U.S. Constitution, the out-of-state document should be valid in the new state. However, legality and reality sometimes come

into conflict. While the old power of attorney document should be honored in the new state, financial institutions may refuse to honor it. Sometimes the refusal is because the power of attorney document is old. Sometimes it is because the document is not recognized by the institution as valid because it's an out-of-state document. In such instances, it is worth talking directly with the financial institution's legal department if possible. Lawyers may be more persuadable than non-lawyers who simply react to the fact that the document is out-of-state. Unfortunately, sometimes you can't reach the legal department or even when you do you can't convince them. In cases where you are unable to convince an institution that the power of attorney document is valid, you may have to seek the court appointment of a guardian. 



Save the Date: 2019 Elder Law Seminars

October 1, 2019 @ Holiday Inn & Suites, Rothschild, WI

October 10, 2019 @ Holiday Inn 94 South,
Eau Claire, WI

October 29, 2019 @ Hotel Marshfield, Marshfield, WI

November 7, 2019 @ Green Bay Aging & Disability
Resource Center, Green Bay, WI

Visit www.ruderware.com/seminars for details.



Around the State and Nation

On February 7, **Jessica Merkel** attended the Webinar, “Drafting Tips and Do’s & Don’ts for Successful Promissory Notes.”

On March 19, **Aric Burch** and **Jessica Merkel** presented to the Aging & Disability Resource Center in Wausau, WI.

Jessica Merkel attended the NAELA Annual Conference in Fort Worth, TX from May 8 - 10.

Aric Burch and **Jessica Merkel** attended, “Successful Marketing Practices that Every Elder Law Attorney Needs” on May 30.

On May 31, **Aric Burch** and **Jessica Merkel** attended the “WisPACT Update 2019” Webinar.

Aric Burch and **Jessica Merkel** attended WINAELA’s “Unprogram” in Egg Harbor, WI on June 20 - 21.

Six out of 10 American adults do not have estate planning documents



Source: <https://www.aarp.org/money/investing/info-2017/half-of-adults-do-not-have-wills.html>

About the Authors

Attorney Aric Burch



Planning for how you or a loved one will pay for nursing home care can be a daunting task. As an elder law attorney, Aric works with seniors and their loved ones to prepare for possible long-term care needs. His goal is to alleviate stress by helping clients develop a plan to provide for their long-term care needs, while preserving their assets to supplement their quality of life and pass to future generations. His motivation is to find solutions for clients who are preparing for future life transition and care needs or are in need of immediate qualification for medical assistance benefits.

Attorney Jessica Merkel



At Ruder Ware, Jessica provides counsel on the use of irrevocable trusts for asset protection, medical assistance eligibility, and special needs trusts. Jessica engages families by listening, empathizing, and supporting their choices to achieve their goals. In addition, she counsels clients on estate and trust planning, taxation, powers of attorney, probate, and trust administration.

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Elder Law Services offered by Ruder Ware include:

- Nursing home and long-term care planning
- Asset protection
- Gifting and divestment planning
- Medicare and Medicaid benefits
- Insurance analysis (including long-term care insurance)
- Residential housing and other living options
- Planning for individuals with special needs
- Tax planning
- Durable powers of attorney for property and finances
- Health care powers of attorney
- Wills
- Trusts
- Marital property agreements
- Real estate
- Guardianship
- Conservatorship

Elder Law Team

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