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A LIMITED LIABILITY LAW PARTNERSHIP, LLP

EXCELLENCE IN FAMILY LAW

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If you have any questions or need more information regarding elder law issues, please call Scott Suzuki, Esq at 938-3850. If you are aware of any incidents of elder abuse, please call Hawaii Adult Protective Services at 832-5115.

Legal Insights

By Steven L. Hartley

I think many of us would agree that our “families” are the most important thing in our lives. In Hawai’i, we use the term “Ohana” to describe the close relationships that we share with our families, close friends and neighbors. Unfortunately, as with many personal relationships, it is not always easy to live together peacefully and harmoniously. Whatever the reasons, in the past year, we have seen a marked increase in the number of cases we handle involving elder financial abuse. These cases generally involve adult children or caregivers taking advantage of their elderly parents or patients.

When these types of difficult issues arise in families, the existing community resources are not always available to those in need. When the resources *are* available, they are not always successful in helping the family to resolve their issues. Although the family court system is designed to address these kinds of family issues and problems, court involvement can often further damage the family relationships between those involved.

This is why advance planning and preparation are so important as our “kupuna” move toward retirement. In fact, we should all plan and prepare for our financial affairs before we enter our “golden” years to ensure that our intentions and wishes are crystal clear. This alone could eliminate a large number of elder financial abuse cases and go a long way toward protecting our family relationships and our cherished kupuna. In these cases, an ounce of prevention can bring a lot of harmony and peace for our families.

If you have any questions regarding any family law matters, please call us at (808) 263-6900 or visit our website at www.HMFamilylaw.com

In A Nutshell: Legal Guardianships

Legal guardianships of incapacitated adults can be filed in the Family Court or the Probate Court. Generally speaking, legal guardianships are used when our elderly family members become either physically or mentally incapacitated and can no longer take care of themselves or their affairs. Although a Conservatorship, which can only be filed in Probate Court, is often used when the incapacitated person has assets to manage and protect, a legal Guardianship provides the appointed party with authority to take care of the incapacitated party and manage his/her daily caretaking and financial needs.

In order to determine whether or not the respondent is legally incapacitated, a geriatric assessment by a qualified doctor is often requested. Under the current law, an incapacitated person is defined as someone who “is unable to receive and evaluate information or make or communicate decisions to such an extent that the person lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.”

A guardianship petition must be served on all interested parties as well as the alleged incapacitated adult. If the guardianship is contested, the court will first determine whether or not the respondent is legally incapacitated. If so, the court will then determine whether or not the requested guardianship is in the respondent’s best interests and whether or not the petitioner is the best suited person to be appointed as the guardian. The guardianship can be temporary or permanent and limited or unlimited in scope depending on the party’s needs.

In the end, a legal guardianship creates a legal relationship between the petitioner and the respondent and establishes specific rights and obligations between the parties.