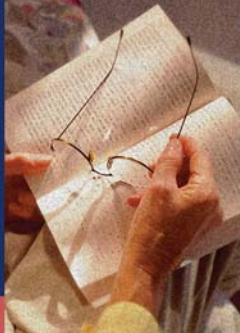


PLANNING for the FUTURE

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Important issues facing our elder population and families of adults and children with special needs, brought to you by the law firm of Littman Krooks LLP.

LITTMAN KROOKS
LLP

WINTER 2005

A MESSAGE FROM BERNARD A. KROOKS



Dear Friends:

AS we move into the holiday season, I would like to take this time to thank you all for allowing Littman Krooks LLP to serve you and your families. We are a firm dedicated to serving the elder population and those families of children and adults with special needs.

The holiday season is a time to reflect on the past year. It has been an exciting time for Littman Krooks. In addition to celebrating our 15th anniversary, we have added several new attorneys to the practice, who have tremendous experience in both the elder law and special needs planning practice areas. In August, Ellyn Kravitz joined us as a Partner in the Manhattan office. She is an advocate for our elder clients and focuses her practice on elder law, estate planning and estate administration. She has provided guidance regarding state and national programs addressing legal, financial and other related matters involving our elder population. In September, Adrienne Arkontaky joined us as an attorney in the White Plains office where she specializes in Special Needs Planning for families of children with special needs. She has extensive experience advocating for persons with disabilities. In October, Martha ("Marty") Brosius also joined us as an attorney. Her practice focuses on guardianships, will contests and other litigation.

On that note, so that you may get to know the members of the Littman Krooks team better, I have included a new section of the Newsletter entitled "Attorney Profile." Each edition will feature a different member of the Littman Krooks team. This month, Adrienne Arkontaky will share an inspiring story of her quest to become an attorney practicing in the area of special needs planning.

I have also included an article discussing how Medicaid planning can protect your savings. I hope you find it informative and interesting. I welcome your comments and suggestions. Please e-mail me at bkrooks@littmankrooks.com. In future issues, I will include a question and answer column to address your inquiries.

In closing, I would like to again thank you for the privilege of serving your legal needs. I know I speak for all the attorneys and staff of Littman Krooks when I say that we are all grateful to be able to practice in the areas of elder law, estate planning and special needs planning and are deeply committed to serving you in the best way possible.

I wish each of you a holiday season filled with hope, happiness and peace of mind.

Sincerely,

Bernard A. Krooks

Founding Partner and Certified ElderLaw Attorney

15 YEARS OF GREATNESS

Littman Krooks is celebrating its 15th Anniversary this year.

The firm was established in October 1990 and has grown from its initial two lawyers to a diversified practice with offices in New York City and Westchester.

ON AIR

TUNE IN!

Bernard A. Krooks is hosting a weekly radio show on AM 1230 WFAS, on Thursday evenings from 6:00-6:30 pm, addressing issues facing our elder population and those with special needs. Bernie strives to provide information on services available throughout the tri-state area to our senior population and those with special needs. You may download the shows via our website at www.littmankrooks.com or www.specialneedsnewyork.com.

SEEN & HEARD

Vincent Mancino recently spoke at Montefiore Hospital addressing Asset Protection for seniors.

Ellyn Kravitz and **Adrienne Arkontaky** recently spoke at a Parent Support Network meeting on the value of special needs planning.

Adrienne Arkontaky and her family were recently featured in *Westchester Parent Magazine*.

Ellyn Kravitz was recently quoted in the *Rockland Journal News*. She discussed the importance of special needs trusts.

Bernard A. Krooks and **Adrienne Arkontaky** served on a legal resource panel for Westchester ARC Resource Day.

Bernard A. Krooks recently spoke at a MassMutual Special Care Seminar on the mechanics of setting up Special Needs Trusts.

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Medicaid Planning Can Protect Your Savings/But Beware of Common Errors

BY: BERNARD A. KROOKS, CERTIFIED ELDER LAW ATTORNEY

Long-term care costs can devastate a family. In the New York metropolitan area, the average annual cost of nursing home care is more than \$140,000. The cost of home care and assisted living care is also very expensive.

Here is an all too familiar situation.

Richard and Nancy have been married for 50 years. They own a house and have savings of \$250,000. Richard collects monthly Social Security benefits of \$1,200 and he has a modest pension of \$700. Nancy receives \$600 in Social Security benefits. Richard has Alzheimer's disease and needs nursing home care. The nursing home bill is \$12,000 per month.

Richard and Nancy cannot afford nursing home care. At an annual cost of \$144,000 they would be broke in less than two years. Sooner or later, they will be forced to rely on Medicaid to help pay for Richard's nursing home care. Moreover, Nancy would be forced to apply for public assistance for herself after spending all their money on Richard's care. Nancy wonders if her husband can qualify for Medicaid without decimating the savings it took over 50 years to accumulate while keeping a sufficient income to maintain her independence.

Or consider the case of Samantha, a widow. Her daughter has given up work to live with her. Her son has a developmentally disabled child. Samantha now needs nursing home care. She wonders whether she can provide for her daughter and disabled grandchild and still qualify for Medicaid.

Medicaid eligibility is inevitable for Richard and Samantha. What the government fails to tell consumers is that it is possible for middle-income Americans to preserve their savings and also qualify for Medicaid.

Many confuse Medicare and Medicaid.

Medicare is the federal insurance program covering those 65 and older. Medicare pays for a very limited amount of nursing home care and does so only if the patient is receiving skilled nursing care. Medicare will pay for up to 100 days of skilled nursing care, provided that the patient was hospitalized for 3 days during the 30-day period preceding the nursing home admission. In addition, Medicare will pay only for the first 20 days in full; thereafter (days 21-100) a co-payment of \$114 per day (2005 rate) is required. For 2006, the rate will increase to \$119 per day. In any event, Medicare will not pay for custodial care. If you need help with activities of daily living, there is no Medicare coverage. Thus, Medicare is simply not a viable alternative for those in need of long-term care.

Long-term care insurance provides a valuable planning alternative and should be considered as part of an overall plan. However, many seniors cannot afford long-term care insurance or are not insurable due to various infirmities.

Seniors with acute care needs receive generous insurance benefits from Medicare. A senior who needs surgery can rely on Medicare. Conversely, a senior who has chronic care needs due to Alzheimer's disease will soon discover that Medicare benefits are very limited.

Medicaid is a jointly-funded federal and state program that pays for nursing home care for seniors. However, unlike Medicare, there are strict income and asset guidelines which must be met in order to become eligible for benefits.

Fortunately, Congress has enacted laws to protect against spousal impoverishment when one spouse enters a nursing home, to permit certain transfers of



assets and to preserve assets through legal means. Far too few middle-income Americans know about these rules.

Many Medicaid myths abound. Contrary to popular belief, Medicaid does not count your home as an asset and the nursing home does not take your home when you become a resident. In fact, there are significant limitations on what the state can recover from your estate on your death.

Medicaid planning is not illegal. Medicaid planning is ethical and is similar to tax planning. It is not illegal to reduce your tax liability by using the tax rules to your benefit. The same principle applies to Medicaid planning. You can preserve assets provided that you comply with the Medicaid rules. Learning about these rules can help families from losing virtually their entire savings to pay for nursing home care.

Over the years, we have seen individuals make many mistakes when it comes to their own planning. Listed below are some of the more common estate planning errors:

- **Lack of or inadequate disability planning** Many seniors fail to plan for the management of their financial and medical affairs if they become incapacitated. Others rely on inadequate or incomplete plans, such as joint bank accounts. A customized durable power of attorney and an advance medical directive should be parts of the estate plan of every senior.
- **Failure to plan for the cost of long-term care** As stated above, long-term care is extremely expensive. However, many seniors do not adequately plan in advance. Long-term care planning can be much more effective the earlier it is done.

- **Outdated wills and beneficiary designations** Many people fail to regularly review and revise their estate plans. They frequently have wills or beneficiary designations for life insurance policies or retirement plan accounts that are outdated. Seniors should review their wills and beneficiary designations whenever there has been a significant change in their circumstances and at least every three to five years.
- **Poor choice of agent, trustee or executor** The choice of an agent under a power of attorney and an advance medical directive, a trustee of a trust, or an executor of an estate is an important decision. Many people chose an agent, trustee or executor for the wrong reasons. For example, they chose their oldest child or the child who lives closest to them, however, they fail to consider whether this child has the ability, the time, or the respect of other family members, and the willingness to serve. In some cases, it is wise to appoint co-agents, co-trustees, or co-executors. In cases where members of the family are not getting along or there are other complex issues, it may be wise to appoint a professional to serve as agent, trustee or executor.
- **Lack of adequate records** Many seniors fail to keep organized records. This failure makes it difficult to assist them if they become disabled, or to settle their estates upon their deaths. They do not have or can not find the deeds to their real property, copies of their income tax returns, life insurance policies or bank statements. Seniors should maintain complete and organized records.
- **Overuse of revocable trusts, joint ownership or beneficiary designations** Many seniors fear probate. As a result, they seek to avoid probate by executing revocable trusts, creating payable on death accounts and retitling assets jointly with the right of survivorship. However, the consequences of setting up these types of accounts are often misunderstood. In many cases, an estate can be settled quickly and can provide for a convenient means to liquidate illiquid investments and provide for the payment of burial expenses, debts and taxes. For many seniors, a will is the better choice.

- **Failure to hold a family meeting** Many family disputes can be eliminated or the damage minimized if the senior would hold a family meeting to discuss his or her estate planning objectives and the terms of his or her estate planning documents.
- **Inadequate financial planning** Many seniors have accumulated diverse investments over their lifetimes. Frequently they hold these investments in accounts at several financial institutions without an overall investment plan and without adequate reporting of investment returns. It is generally a good idea for seniors to retain a financial planner to assist them in determining the appropriate level of investment risk to assume and to develop an asset allocation to maximize the investment return based on the assumed level of investment risk. The financial planner can also assist the senior in consolidating his or her investments and obtain improved reporting of investment returns.

Prior planning is important. There is no one right answer or form that is appropriate for everyone. An experienced elder law attorney can help seniors avoid these common estate planning errors.

Bernard A. Krooks, J.D., CPA, LL.M (in taxation), CELA, is the founding partner of the law firm Littman Krooks LLP with offices in New York City and White Plains. Mr. Krooks is certified as an Elder Law Attorney by the National Elder Law Foundation. He is past President of the National Academy of Elder Law Attorneys (NAELA), President-Elect of the NY NAELA Chapter, and is past chair of the Elder Law Section of the New York State Bar Association (NYSBA).

PROPOSED FEDERAL MEDICAID CHANGES HAVE DRASTIC IMPACT ON OUR SENIORS AND THOSE WITH DISABILITIES

Congress is currently considering major Medicaid reform. If these proposals are passed and signed into law by the President, they will have a significant impact on the ability of seniors and those with disabilities to access health care. The proposals include a requirement that seniors retain and submit detailed financial records for the five-year period prior to application for benefits. Seniors would not be able to access government-financed health care if they made any gifts to charity or helped pay for a grandchild's college education within the past five years. Also, seniors who purchased homes decades ago would be forced to sell the family home if they needed nursing home care. Bernard A. Krooks, Esq., founding partner of Littman Krooks LLP, has testified before Congress to try to educate members of the devastating effects these proposals would have on seniors and those with disabilities. Littman Krooks LLP will continue to fight against these changes and try to preserve access to health care for all Americans.

CONGRATULATIONS & BEST WISHES

Ely J. Rosenzweig, Esq. has been promoted to Partner. Ely's practice focuses on elder law, Medicaid issues, estate planning and asset protection.

Ellyn Kravitz, Adrienne Arkontaky and Martha "Marty" Brosius join the team. We are excited by the wealth of knowledge they bring to the table.

Howard S. Krooks has relocated to Florida. Howard has joined the firm of Elder Law Associates P.A. located in Boca Raton, Aventura, West Palm Beach and Weston. Howard will remain of Counsel to Littman Krooks here in New York. We look forward to utilizing Howie's expertise on trends in Florida elder law. His presence in the Westchester office is greatly missed.

A "Special Edition"

BY ADRIENNE ARKONTAKY, ESQ.

I asked my husband to go out to dinner on a January evening in 1999. My third (and last) daughter, Jenna had just celebrated her first birthday. I began the pre-dinner conversation with "I think I want to go back to school." Of course, a question followed: "What do you want to go back to school for?" I hesitantly replied, "I think I want to go to law school." At that point, I truly thought that my husband assumed it was the stress of having three children, all whom rarely slept through the night at the same time and the subsequent sleep deprivation, that was causing this temporary bout of insanity. Instead, he smiled and said "Well, go and be a lawyer."

Now, this may not seem the least bit special to most people, but the fact that my husband supported this decision and that I followed through and completed four years of law school at night is very special considering the circumstances.

Perhaps, I should start by telling you my family dynamics. I have three daughters: Justine is 16, Jordan is 13 and Jenna is now 7. Justine is an avid softball player (a very good pitcher, by the way) and a cheerleader. Most weekends and summers are spent shuttling her to tournaments and competitions. Jenna is a typical seven-year-old, with soccer and softball, Brownies and dance.

Jordan, however, is my "special edition." Jordan was born with severe disabilities, cerebral palsy, mental retardation and cortical blindness. Since she was born, she has had seven surgeries to correct orthopedic deformities and various other hospitalizations. She attends a program at Pinesbridge BOCES in Yorktown Heights where she receives numerous therapies to help her develop to her fullest potential. I am blessed to have wonderful nurses help care for her at home and she is on a Medicaid Waiver program which assists with the tremendous cost of her care.

Because of Jordan, my husband was not at all surprised when I told him I wanted to be lawyer. He has seen me fight for services and medical essentials for years. I have advocated for better insurance coverage for Jordan's many

pieces of equipment. I have worked through transportation issues and researched benefits that are available to her. So, in many ways, I have been "practicing" for this career since she was born.

During law school, I worked as an advocate for families of children with disabilities for a service coordination agency located in the Westchester Institute for Human Development in Valhalla. As a service coordinator, I assisted families in navigating the insurance and Medicaid systems and obtained various services for their children. Upon graduating law school, I worked for a major law firm as a pro bono coordinator where I fought for insurance coverage for cancer patients.

Realizing that I wanted to restructure my work schedule to fit the ever-growing demands of my family, I began to look for a position where I could use my unique ability as an advocate and stay in private practice. I attended a few Westchester County Bar events hosted by the Elder Law Section. In November, 2004 I responded to a job posting at Pace School of Law for a part-time associate position with a small law firm specializing in elder care issues, located in White Plains, New York. Once offered the position, I immediately accepted.

My daughter was having major hip surgery in December so we agreed to a start date of January, 2005. (I liked this position already). However, by mid-December, anxious to get to work, I worked on my first case at home, which truly helped keep my mind off Jordan's long recovery process.

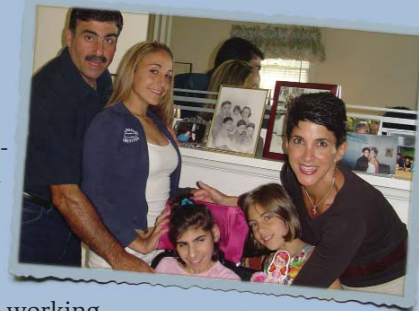
Once I started work, I realized that the next step would be to expand my practice into the area of Special Needs Planning. You can imagine how thrilled I was to be able to once again help families of children with disabilities. For anyone who has a child with special needs, the biggest fear is what will happen when the primary caregiver is gone. How does the family provide for the person with special needs financially without risking the loss of state benefits? These are daunting questions — professionally and personally.

I am extremely fortunate to be able to assist families working through

these issues. I am also fortunate to work for someone who appreciates the importance of this growing field and has encouraged me to look for opportunities to develop this practice area. It is rewarding in all aspects and I am extremely proud of the work we are doing.

So, in conclusion, I would not have pursued a career in the law if it were not for Jordan. She does not walk or talk but she has taught me so much. She has encouraged me to fight for what I believe in. Her struggles have been many, but as a family we never give up. I continue to advocate for better services and ways to give her the best quality of life possible. She has taught me to be optimistic, no matter what the circumstances. When I meet a family that needs our help, whether it be with elder law issues or special needs planning and they are feeling overwhelmed, sometimes I share my story of Jordan. I tell them that with all her problems, we always worked towards a solution and that she is "my special edition."

Adrienne Arkontaky is an attorney at Littman Krooks LLP.



Adrienne (right) with her family in June, 2005

COMMUNITY OUTREACH

In a continuing effort to assist the victims of Hurricane Katrina, **Littman Krooks** matched donations made by the attorneys and staff to a charity of their choice in furthering our relief efforts.

Several staff members walked at the annual Memory Walk hosted by the Alzheimer's Association held on October 23, 2005 at Riverside Park in Manhattan.

Littman Krooks recently participated in a food drive benefiting Yonkers-area families in need. The drive was organized by Nicole Garcia, Diana Steinberg and Marty Brosius of the White Plains office.