

JULIE OSTERHOUT

*Emeritus Specialist in Elder Law
Of Counsel*

LANCE MCKINNEY

Certified Elder Law Attorney

BETH PRATHER

*Certified Elder Law Attorney
Certified Circuit Civil Mediator*

BRITTON G. SWANK

Elder Law Attorney

If you have clients who need assistance with finding the right place for their ill family member to live and determining how to pay for it, **we can assist them with becoming eligible for Medicaid.**

If you have clients who are unable to care for themselves and make their own decisions, **we can assist their loved ones with becoming their guardian.**

Osterhout, McKinney
& Prather, P.A.
3783 Seago Lane
Fort Myers, FL 33901
Telephone: 239-939-4888
Fax: 239-277-0601
www.omplaw.com

E-Mail:
info@omplaw.com

WORDS TO THE WISE

November 2008

Keep Original Will Safe!

We have had several probate cases recently where the decedent's original Will could not be found. Given the complications that arise under these circumstances, we think it is important to remind our readers of how important it is to keep their **original** Will in a safe place. If a Will is last known to be in the possession of the Testator and it cannot be found after they die, Florida law presumes that the Testator destroyed the Will on purpose. Yes, this presumption can be rebutted, but many times the evidence is insufficient to overcome the presumption. For example, in a recent case before the Fourth District Court of Appeal, the proponents of the lost or destroyed Will argued that the decedent's Will was accidentally lost due to increased traffic and paperwork in the home during the decedent's illness. The trial court had admitted the copy of the Will to probate, but was reversed on appeal. The Court found that the proponents of the lost or destroyed Will failed to rebut the presumption and "presented no more than the fabled twins of speculation and conjecture to establish that [the decedent] might not have revoked his will."

Source: Balboni v. LaRocque, No. 4D07-3991, (Fla. 4th DCA October 1, 2008).

VA Aid and Attendance Benefit

Many veterans do not know that they can get additional income to pay for things like home health care, an assisted living facility, or a nursing home. Aid and Attendance Benefits are available to a veteran who served during war-time, if the claimant is blind, living in a nursing home, or has certain care-related needs that require assistance on a regular basis. These benefits are also available to the veteran's widow(er). There are asset and income limits for this benefit, but with respect to income, unreimbursed medical expenses paid may be used to offset the veteran's income. The cost of home health care, an assisted living facility, or a nursing home are included as an unreimbursed medical expense. The well-deserved benefit of Aid and Attendance can mean up to \$1,842.00 per month in tax-free income and can make a huge difference in the quality of life for a veteran and their family.

Once again this year, we are asking our friends and clients to join us in adopting a senior from our "Giving Tree." Area nursing homes have provided us with the needs of their most isolated seniors and we have placed these needs on cards on our "Giving Tree." Please call or stop by to pick a senior to adopt. Your wrapped gift must be returned to our office with the gift tag we provided by December 12th for distribution prior to the holidays. Your participation is greatly appreciated.

