

KAREN L. WEBBER

RADIO SHOW

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Legal Point
- Know Your Rights

WITH KERRI KASEM



KASEM CARES

“Supporting Visitation Rights of Adult Children With an Ailing Parent.”

T R A N S C R I P T

Legal Point Radio

Kerri Kasem
With Special Guest:
Attorney Karen Webber

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1. Intro & Background

Announcer:

Know your rights. It's time now for *Legal Point*. Now, your host, Kerri Kasem.

Kerri Kasem:

I'm Kerri Kasem. Like the man said, this is *Legal Point*. It's my legal show that I like to do.

I'm not a lawyer. I interview lawyers on this show and I interview elder law attorneys, lawyers, people who have really grown to have a huge place in my heart, lawyers who helped me see my dad for the last time again, and if it weren't for people in elder law, I probably would have never seen my father again.

I had to fight for the right to see him, and that's one of the reasons why I said, "I've got to do a show that really just focuses on senior issues, elder abuse, elder law."

I have a very special guest today, Karen Webber. She's an attorney in Vancouver, Washington. She's a partner in the firm Phelan Webber & Associates, and they focus their practice on estate planning, probate and trust administration, guardianship, and the special planning needs of seniors and persons with disabilities.

Karen received her law degree from Lewis & Clark Law School. She's a member of the Washington Bar, Oregon Bar, the National Academy of Elder Law Attorneys, and has earned the CELA. That's Certified Elder Law Attorney designation by the National Elder Law Foundation.

Karen's also ranked a 10 on the -- it's a big attorney site and it takes a lot to get a 10 -- it's [Avvo.com](https://www.avvo.com), and she regularly gives presentations on guardianship issues, special needs trusts and long-term care pre-planning.

Welcome, Karen Webber!

Karen Webber:

Thank you, Kerri, happy to be here!

Kerri:

I'm so glad you're here today. And you're coming from Washington, where I'm trying to get a bill -- it's called My Visitation Bill -
- passed.

Karen:

Yes, we're excited to have Washington be a part of that.

Kerri: Yay!

Karen: It's really important for all of us to have that opportunity to be with our families at the end of their lives.

Kerri:

Very true. I know you do that every day. You help people do that every day.

Karen:

Yeah.

Kerri:

Why, of all of the different... there are so many different laws, different, you know, types of law practices.....Why elder law?

Karen:

So there are a couple of reasons that it came about in my life, it probably started with the fact that I grew up in a family of lawyers.

Kerri:

Okay. [Laughter]

Karen:

My dad was an amazing man. He was kind and compassionate and gave us an amazing example of how to live your life, how to take care of your family, and how to take care of your clients all at the same time.

That said, I was adamant I was never going to follow in his footsteps as a lawyer. It was never, ever, ever going to happen. But when I was in my early 20s, my dad passed away from a car accident and there are lots of

things about that time in my life that I don't remember very well.

It was pretty up in the air a lot, but I do remember being at this table in a law office with my mother, and my sister, and my brother, and my grandmother, and trying to figure out what was supposed to happen next.

And we were there with, at one end of the table was one lawyer and at the other end of the table was another, and it happened to be my two uncles, and they're...

Kerri:

The whole family!

Karen:

The whole family.

Kerri:

The whole family was there! [Laughter]

Karen:

Yeah. [Laughter] The whole family.

Kerri:

Yeah.

Karen:

And trying to kind of figure out, “What’s going to happen next?” and I got that it wasn’t making sense to a lot of people, but it clicked for me, and so pretty early in the meeting I started interpreting what was going on.

And so I’d listen to my uncles, and then I’d turn to my mom, or my sister, or my grandma, and I’d start telling them what was supposed to happen, and through that meeting it just kind of, I started... it started making sense.

Life went on, I kind of forgot about it. A year later I happened to be here in LA, visiting family, and they happened to be attorneys, too.

Kerri:

Okay.

Karen:

And we're talking about life and what I should do, and that meeting came up and that, you know, being able to explain things and help people understand, and they said, "Well, you ought to go to law school." And so I did, and I didn't ever really look back.

Kerri:

And that was it for you.

Karen:

That was it.

Kerri:

And so you kind of innately just knew what the lawyers were talking about.

Karen:

Yeah. And...

Kerri:

You hadn't done any kind of law school or study or anything?

Karen:

No, growing up around it is not the best...

Kerri:

Yeah.

Karen:

You know, I worked in my dad's office, but I had a business degree. I worked with a trust company, but none of that was really focusing on what was going on with my family.

Kerri:

Sure.

Karen:

And so from the day I started law school it was always about coming out and being able to work with families that are going through hard times, or helping them make those times easier.

Kerri:

Sure.

Karen:

And so planning ahead and...

Kerri:

And that's so important, planning ahead.

Karen:

Yeah.

2. Planning Ahead

Kerri:

And that's one of the reasons I did this show, because people out there, you know, whether you're 18 or you're 65, it doesn't matter -- you need a will, you need estate plans. And people say, "Why? I don't have a house. I don't have any money."

Because if something happens to you, something tragic, you do not want your family left with the decision to say, "Oh, well, maybe he wanted to stay like this. Maybe he didn't, oh..." and then start having the family fighting like Terri Schiavo.

Karen:

Yeah.

Kerri:

Yeah. I bring that up a lot. It's like, "Wait, if she had that in writing, what she wanted, there would have been no fight at the end of that life."

Karen:

And not just in writing what she wanted to happen, but who was the decision maker?

Kerri:

Right.

Karen:

So not only a power of attorney helps you make sure that who you want in charge is actually in charge...

Kerri:

Yes.

Karen:

And then having in writing some kind of healthcare directive, advanced directive, something like that, so it's not a question. I mean, you can have... anybody can have an elder law attorney drafted document, and then it doesn't matter whether you're five or 85.

Kerri:

Yes.

Karen:

You can be 18, and so once you turn 18 legally, the law says you need to -- you know, you're an adult. You can make your own decisions, and so then you need to have those documents to back that up.

3. What Is A CELA Designation?

Kerri:

Very true. It's very important. You have something kind of special that goes with... you're not only an attorney, it's a CELA.

Karen:

Yeah.

Kerri:

Explain that.

Karen:

So the CELA designation is a national designation, and attorneys have to have practiced for a certain period of time before they are even eligible to apply to take the exam, and it's an exam sort of like another bar exam.

It's a day long -- an essay with multiple-choice kind of questions that's really focused on the main areas of elder law. So to even get to the point of sitting for the exam,

you also have to show that you've had a certain number of cases covering all of the areas that apply to elder law.

And so it's not easy for someone who, you know, thinks it might be kind of cool to do elder law. They can't really just go sit for the exam. They have to have had the experience and the time in the trenches doing the work to be able to get it.

Kerri:

So it's kind of like having a surgeon be board certified.

Karen:

Correct.

Kerri:

Okay, I get that now. I get that, because at first I'm like, "Well, that's a really cool thing to have."

Karen:

Yeah.

Kerri:

It means you're really versed in elder law.

Karen:

Yeah.

4. Choosing a Qualified Attorney

Kerri:

But I didn't realize you had to take certain cases and you had to have... so do you want to look for somebody that's a CELA attorney, or is it just somebody really who's had the years put in?

Karen:

Yeah, there are really amazing elder law attorneys who don't have their CELA designation, so I don't want to, you know, bash those guys...

Kerri:

And say they're not qualified.... no, no, I get it, yeah.

Karen:

But if there's someone in your area who does have the CELA designation, then that's a really great place to start in knowing that they've had the exposure to the areas that they need to.

The other way people sometimes can find out is, who they're looking at going to, is asking the questions of their office. You might not get to ask them, but maybe their staff, how many cases have they done? How long have they done elder law? Not just been an attorney...

Kerri:

Right, right.

Karen:

...but how long have they done elder law, and those are really critical.

Kerri:

I absolutely agree with you, because when I was looking for my attorneys, I literally found one that was ElderLawMom.com.
[Laughter]

Karen:

Yeah. [Laughter]

Kerri:

I'm like, "Okay!" No, she actually found me in a radio show just like this, so it was

amazing. But yeah, somebody who practiced elder law and was very versed in it, and it's very important.

Karen:

Yeah.

5. Do You Need A Trust?

Kerri:

Very important. Talk about the need for a trust and if you already have one, what do you do? Is there anything else that people need to do?

Karen:

So trusts are mainly a way to manage your finances and let people know what you want to be done with your money, how you want it to be used. Do you want it to be able to be gifted to your children? You can make all kinds of decisions, and there are all kinds of trusts out there.

There's revocable ones and irrevocable ones, and they all do different kinds of things. The most common one that I know happens in California, because probate in California is supposed to be pretty terrible, so people have a lot of revocable living trusts.

Kerri:

[Laughter] Oh, yeah.

Karen:

So in Washington, we do them as well to avoid probate, and so sometimes they're basic. They just say, "You know, use my money for me and when I'm gone, my kids get it," or "My best friend gets it," or whatever.

But in your trust, you can have language that makes it clear that if you're in some kind of long-term care situation, that the money can be used to make sure you're in a clean, safe place, that you can plan to protect some of it.

And somebody who you choose to put in charge can then make the decisions about how best to take care of you after giving them instructions. So a basic trust may not cover it all.

Kerri:

Yeah, and let me ask you this, too. I've always said I think it's best if there are two or three people kind of in charge, the checks and balances.

Because if one person decides to go rogue and is like, "Okay, you know this, I'm changing things up and I know they put me in charge, but that's not what I'm going to do," which we've seen.

Karen:

Yeah, yeah.

Kerri:

Unfortunately.

Karen:

Yeah.

6. Who Should Administer The Trust?

Kerri:

What do you suggest to your clients?

Karen:

Well, sometimes they can name, you know, two responsible kids who -- or maybe it's two siblings or somebody who you really trust, because that's the bottom line, is who do you trust and who's going to listen.

Kerri:

Right.

Karen:

And includes your family, even if they're not the ones in charge. So if it's one person, sometimes that's enough. Sometimes it's two. After you get past two, it sometimes gets hard because there are maybe too many cooks in the kitchen.

Kerri:

Yeah.

Karen:

But at least having those people that you trust, and sometimes the checks and balances come from having one person in charge of finances, and somebody else in charge of the healthcare, so they have to work together because one of them -- yeah. If they don't, there are ways to deal with it. [Laughter]

Kerri:

Yes.

Karen:

But it is a way to have a check and a balance to have split of authority and kind of sharing the responsibilities.

7. When Should I Start Planning?

Kerri:

Okay, so if I'm a healthy person, right?

Karen:

Yeah.

Kerri:

Where and when would I start my planning? Is it very early on, like 20s, 30s? When would you suggest it?

Karen:

The second somebody turns 18, they need to have a power of attorney.

Kerri:

Absolutely, I agree with that. I agree with that. Yeah.

Karen:

So yeah, so then beyond that...

Kerri:

Yes.

Karen:

Having a will doesn't mean that you have to have money. It says who's in charge, who's making decisions. You can include things like funeral, burial, cremation within your will. You can also name who should have custody of your minor children, at least in Washington, and so it doesn't matter what you own.

It's all about putting those people in charge, who you want and making sure what you want to happen actually does happen, and so you can do a will at 18 just like you do a power of attorney. Doing a trust doesn't always make sense unless there are assets, but it sort of depends on what do you own and what's going on.

Kerri:

Sure.

Karen:

A lot of the question is, "What do you have and who's going to fight about it?"

Kerri:

Yeah, that's true. No, it's true and for me, because things were changed, it was so different. I've always said, you know, really make sure you put somebody in there who you trust, really.

Karen:

Yeah.

8. When Should I Start Planning for Long Term Care?

Kerri:

But I... and too, also, I really want to know when do you think people should start planning for long-term care?

Karen:

For planning for long-term care...

Kerri:

Yeah.

Karen:

Probably 50s would be a reasonable time to start thinking about it, because you have to look at what do you do with your retirement funds as you're looking towards the end of your career, perhaps, and how to set up your retirement.

Kerri:

Sure.

Karen:

There are things that you can do with those

retirement funds that help deal with long-term care, and so there are a lot of things that if you wait, you can't do them. It doesn't mean there are no options, but you always have more options the sooner.

So 50s certainly for long-term care issues. And there are some people who, it makes sense when they're in their 40s, whether it's because they have a loved one who's gone through a particularly challenging situation, or they're just worried about it because they have some diagnosis that might change their future.

9. How Do I Make Sure I Have Enough Money?

Kerri: Yeah. And how, if people are listening right now, they're saying, "Well, I just don't have the money to pay for it." How much would somebody need to start putting away to make sure that they're taken care of, or if they want to stay in their home, they have enough money to be able to pay for that caretaker?

Karen:

There are a lot of numbers that float around out there.

Kerri:

Yeah.

Karen:

And a lot's going to vary by state, so I'm sure what it takes in LA is going to be very different than Clark County, Washington.

Kerri:

[Laughter]

Karen:

But kind of the number I've heard a lot is, if you have a million dollars, you're sort of set to retire to have whatever care you want, whether it's in your home, whether it's in a facility, whether, you know, wherever it is, kind of that million dollar mark.

And it's a million per person, so if you're a couple, having two million sometimes really gives you the most options.

Kerri:

And that's in insurance, like you'd take out a million in insurance.

Karen:

Well, no, it could be in savings.

Kerri:

Savings.

Karen:

It could be different kinds of annuities or it could be long-term care insurance. So there's all...

Kerri:

Yeah, could you plan for that?

Karen:

Yeah, you could.

10. Do I Need Long Term Care Insurance?

Kerri:

Instead of having... oh, because some people are saying, “Okay, a million? That’s never going to happen in my lifetime. I’m maybe, you know, 65 right now,” “I’m 70, I don’t even -- I have... I don’t even have \$100,000 in my bank account.”

What can people get now, either types of insurance that will help people when they do get older and there is no money coming in or very little?

Karen:

Yeah, so long-term care insurance is one way that people do it, but sometimes the premiums are expensive, so you have to kind of shop around and consider what’s your biggest fear. Is it a long illness or is it that crisis, short-term illness?

Kerri:

Sure.

Karen:

And that impacts the premiums, and so sometimes that makes it affordable.

If you're at that lower asset point and you just want to be prepared, then it's really having the documents that are powerful, that powerful power of attorney that lets your loved one step in and access different benefits that are out there.

The other thing that's out there is a little bit newer way of planning, is using different types of annuities and life insurance and other kinds of financial contracts that use your assets and leverage them to help pay for your care.

Again, like long-term care insurance, you've got to do it when you're healthy, and so the earlier you're planning with that, the better.

11. What You Need To Know About Medicaid

Kerri: Now, talking about Medicaid, just a little bit. Talk about, you know, if your state will take Medicaid, like if I wanted to stay in my house, is that going to be enough to pay for it?

It doesn't seem like it will. It seems like you're going to have to actually have that money in the bank, or you're going to have to get the insurance like you were talking about.

Karen:

So Medicaid -- and in California I know it's called Medi-Cal.

Kerri:

Yes.

Karen:

But in most states it's Medicaid.

Kerri:

But in your state it's Medicaid, yes.

Karen:

And it's a federal and state combined program that helps people pay for all kinds of health matters, but also long-term care health. So maybe it's nursing home, maybe it's assisted living, maybe it's adult foster homes, adult family homes.

And most of the states I know of, you would not be forced to give the state your house. That's a common comment, is you have to give the state your house. That's not what happens. "You have to move out of your house." That's not usually what happens.

In Washington, you can be in your home and the state will provide caregivers to come into your home, but a lien goes against the house so when you pass away, the state has the right to get paid back if there's value left in your house, if there's a mortgage or there's something else that's kind of got to be allocated among the right ways.

But it is a way that people can stay in their home, even if they don't have the resources.

Yes, it minimizes what the kids might get someday, but that's usually not what it's all about.

Kerri:

No.

Karen:

It's, you know, does a person get to be in their home, and then Medicaid might be the best way to allow them to accomplish what they want.

Kerri:

Yes, and like our... California's strange, because instead of -- all over the country it's guardianships, and out here we have conservatorships.

Karen:

Yeah. [Laughter]

Kerri:

Right? You know, Medi-Cal, Medicaid, and so we change things up here. [Laughter]

Karen:
Yeah.

12. What You Need To Know About Guardianships

Kerri: Guardianships. Let's talk a little bit about guardianships.

Karen:

Yeah.

Kerri:

Because there's been a lot of not-so-good things about guardianships lately.

Karen:

Yeah.

Kerri:

But it doesn't mean all guardians are bad, all conservators are bad.

Karen:

No.

Kerri:

I was a conservator to my father.

Karen:

Yeah.

Kerri:

And I was not a bad person. [Laughter]

Karen:

No. [Laughter]

Kerri:

So I hear that, and I know there's arguing on both sides of the coin, but let's talk a little bit about guardianships.

Karen:

So guardianship usually starts with somebody who hasn't taken the steps themselves. They don't have that power of attorney that allows them to designate someone to make decisions for themselves, so somebody can petition the court to take over and manage affairs for them.

So that's usually how it gets started. If there's not somebody who's a trusted person who's petitioning, in most states there are

professionals who will do that job, but it doesn't have to be.

Kerri:

We have to take a quick break.

Karen:

Okay.

Kerri:

My guest today is Karen Webber. We are talking about elder law and something near and dear to my heart, if you know my story. We'll be right back. This is *Legal Point*. I'm Kerri Kasem. [Music plays]

Announcer:

Know your rights. Now, back to *Legal Point* with Kerri Kasem!

Kerri:

We're back! My guest today, elder law attorney Karen Webber. She's an attorney from Vancouver, Washington. It's been wonderful having you on, so far.

Karen:

Thanks so much, Kerri! It's been fun.

Kerri:

Absolutely, yeah, and before the break we were talking a little bit about guardianships.

Karen:

Yeah.

Kerri:

Yeah.

Karen:

So guardianships can come up for lots of different reasons. It might be a young adult who has some kind of disability, and it might be an 85-year-old who never happened to do a power of attorney.

That also could come up when there's something not going the way it's supposed to, so I know that's kind of how things came about for you.

Kerri:

Yes.

Karen:

And one of the stories I'll never forget is somebody who had a power of attorney, but there was a sister who happened to have the same name as the mom, and so she kept going to the post office to change the mailing address to the daughter's address to take mom's social security check.

Kerri:

Oh, no.

Karen:

So the good daughter would go to the post office, change the address back, and then the bad daughter would show back up at the post office, change it again. So this continued back and forth, although the mom had a good power of attorney.

So we ended up having to file a guardianship so that we could get a court order to stop this, you know, post office changing the address a lot.

Kerri:

That's horrible!

Karen:

So sometimes even when you've planned ahead, something comes up that's not working the way it's supposed to, and then the guardianship process is there and maybe just for that one limited purpose, so you don't need to take over their whole lives.

Kerri:

Yeah.

Karen:

Maybe it's just that one aspect.

Kerri: Right, and what about the daughter who was using the social security check? I always have to finish the story.

Karen:

Yeah.

Kerri:

Please say, did she get prosecuted?

Karen:

She did not.

Kerri:

Ugh!

Karen:

Which is pretty common. She might now, you know, it was quite a number of years ago. Now it might be a little stronger, but sometimes families decide they don't want to. They're worried about just getting them to go away. [Laughter] If they back off...

Kerri:

And not sure, and you don't want to go through the whole thing.

Karen:

If they back off and they just let the mom or dad or whoever be okay, then they sort of decide not to pursue it.

13. Diminished Capacity

Kerri:

Have you ever said no to somebody who brought someone in and you felt that they just weren't at capacity? They just didn't have it?

Karen:

Absolutely, and there's a couple ways we'll handle it. One is we've got to talk to them by themselves. Sometimes another is, we'll make them go see their doctor and see what their doctor has to say about things.

Because, yeah, they might sign their name, but that doesn't really mean they understand the document that they're signing or what it's all about, and as an attorney I'm not comfortable doing that, but anybody shouldn't be because it's going to come out in some way.

Kerri:

Yeah.

Karen:

Whether it's before or after the person's gone, and no, it's not okay to help somebody take advantage of somebody, even if it's well meaning.

Kerri:

And I feel as though -- and I think there's a bigger push now -- but elder abuse, financial elder abuse is kind of pushed aside. It's not really looked at as a horrible crime.

Karen:

Yeah.

Kerri:

And we're changing things, especially with this radio show, creating awareness.

Karen:

Yeah.

Kerri:

You being, you know, an ethical elder law attorney who, when they see somebody who might not have that capacity that you're looking for, you say, "You know what? Let's get a mini mental exam."

Karen:

Yeah.

Kerri:

"Let's, let's do something. Let's do this right."

Karen:

Yeah.

Kerri:

And good for you for doing that.

Karen:

Thank you.

14. “I’m Never Going Into A Nursing Home!”

Kerri:

Yes. Okay, so here’s my fun... this is kind of a -- it’s not a funny question, I don’t want to say that. But there are some people who will be like, “I am never going into a nursing home, ever. No way, I’m never going to need long-term care,” people who really just can’t look at reality.

What do you do? You know, because there are a lot of people out there. [Laughter]

Karen:

Yeah, and so I kind of laugh and say, “Well, I said I was never, ever going to be a lawyer and here I am.”

Kerri:

[Laughter]

Karen:

And so, but usually there’s not harm in

planning for it. We all can't predict our lives. I wouldn't have said 15-20 years ago I'd be sitting where I am today with you on the radio.

Kerri:

Yeah. [Laughter]

Karen:

And so why not put the planning in place that lets it happen if it has to? We don't know if we're going to fall.

Kerri:

Right.

Karen:

We don't know if we're going to have dementia, and so it doesn't mean that your power of attorney or your trustee has to actually use the authority you give them, but if you give it to them, you have more options.

And so by doing the planning, you may never go there, and you may want to write that in that says, you know, "This is only a

last resort option.” But at least they’ve got authority to do it if they have to.

Kerri:

Yes, yes. Now, for me, I know that using a videotape and videotaping my father signing the document he did -- which was a power of attorney over health, not estate, not money -- that he signed with us when he first got his... it was a wrong diagnosis of Parkinson’s, which ended up being Lewy body.

But when his wife called us liars, frauds, he would never sign that, he was estranged from us, he didn’t love us, we pulled out that videotape, which said a lot.

Karen:

Yeah.

15. Documenting Your Wishes

Kerri:

Which said a lot. Do you suggest that to your clients ever? I know that you don't, I know it's kind of hard for attorneys to tape for this or that. There could be...

Karen:

Yeah.

Kerri:

It could go either way, but what about to your clients?

Karen: So I think... videotaping, I've heard, can go both ways, so people have used it to show they didn't have capacity or not. So generally, we haven't videotaped.

And so then it's, how many other ways can you set it up? How many independent people can you have? Do you do more witnesses than you normally would, do you document by affidavits, the signing process?

Do you, you know, kick everybody out of the building except for the person?

Kerri:

Yeah. [Laughter]

Karen:

So how can you document that it's really happening?

16. What Is The Most Important Aspect In Planning?

Kerri:

What's the most -- we've got to go in 30 seconds -- what is the most important thing to do while family planning?

Karen:

It's a powerful power of attorney. Absolutely.

Kerri:

Plain and simple.

Karen:

Yep.

Kerri:

Power of attorney. So if you could just do one document, if there is one document that you needed done, it's a power of attorney.

Karen:

Yep, and a powerful one, not just one downloaded from the Internet. [Laughter]

Kerri: [Laughter] One done by a real elder law attorney!

Karen:
Absolutely.

Kerri:
Karen Webber, thank you so much for being on the show today. I really... I loved spending time with you. Thank you for what you do.

Karen:
Thank you for having me. I really enjoyed it.

Kerri:
It's *Legal Point*, I'm Kerri Kasem. We'll be back.