



# The Lyles Law Firm, LLC

## Newsletter

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The Lyles Law Firm, LLC  
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### Too Close for Comfort

By: Joseph Lyles

As our population ages the absolute numbers and percentage of citizens who need help with their financial, legal, and medical affairs increases. The traditional legal response to this need has been to encourage people to appoint someone to act as their power of attorney. In other words, someone is legally empowered to transact business on behalf of another by a legal document.

In my practice I have observed a growing number of cases involving allegations that someone is either abusing a power of attorney or a confidential or fiduciary relationship with the result that an aged and/or infirm person loses money or other assets.

Or to put it simply, I am seeing more examples of one person taking advantage of another person in order to

obtain money, property or both that they don't deserve.

A power of attorney document is a very important tool that is used to help with the care of old or sick folks. But it is based on a relationship of trust. If that trust is abused then a power of attorney helps the abuser carry out his or her dishonest designs.

Often when a family member or close friend helps an elderly person with their affairs, the elder wants to reward or thank the caretaker with gifts.

Family members who live some distance away often construe such gifts with suspicion. Lawsuits are sometimes brought by the distant family members seeking to reverse the gifts, sometimes after the elder has passed.

I've been involved in cases where elders are tricked into parting with their money by false promises of everything

from love to lottery winnings. Many times the elderly are convinced to make gifts or loans to caretakers or religious leaders in spite of the elder have very limited financial resources.

This crooked manipulation even takes place beneath the noses of nursing home staff who just don't pay attention.

Anyone who has a elderly or ill family member or friend should make that extra effort to watch for signs of elder abuse. If you are the recipient of a gift from an elder make sure to document that it was freely and voluntarily given and that it was reasonable in size or amount.

If you have a special relationship of trust with an elderly person, such as a financial advisor, pastor, medical care giver or attorney does, then I recommend you refuse valuable gifts from any elders, except possibly close relatives or long-term, close friends.

### Proving Your Case

By: Joseph Lyles

If you file a lawsuit, then you have the burden of proof. That means you must present enough evidence to convince the jury or judge that you should win. In a negligence case, for example, you must prove that there was an injury, that it was caused by the other side's conduct, and that the conduct causing the injury was negligent or careless.

In a civil lawsuit, the definition of wrongful conduct is different from that in a criminal case. Conduct is wrongful in a civil case if it constitutes a

breach of duty owed to someone else. In other words, conduct is wrongful if it invades another's rights.

One type of wrongful conduct is what is known as negligence. Negligence is often called carelessness. For example, a careless automobile driver who runs through a stop sign or red light is guilty of negligence because he breached the duty to stop.

Regardless of the burden of proof, you must persuade the jury to believe that you should win. If the jury doesn't like you or your claim for some reason, you will lose. Jurors tend to dislike people

who seem to be trying to 'get something for nothing' or who seem to be 'making a mountain out of a mole hill'.

To win your case in court, you must have incurred significant damages. You are not going to win if you do not seem to be damaged or injured in any way and if you are unable to prove that the other side is responsible for your losses.

No one can predict what a jury is going to do on any particular case. A jury trial is hard work and shouldn't be pursued unless you are willing to pay both the financial and emotional costs that will be incurred to prove your case.

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## Wills Versus Living Trusts



By: Joseph Lyles

*"The laws of a state change with the changing times."*

~Aeschylus

Many people contact me about setting-up a Living Trust, instead of a "Last Will and Testament". I generally recommend the use of a Will, not a Living Trust, but there are exceptions to every rule.

One of the big differences between a Trust and a Will is that before a trust is effective the title to the property has to be actually transferred to it. If you died before you actually signed a deed transferring your home to the trust, then the property would go into your estate.

However, there may be restrictions on such transfers in your

mortgage on the house. Also, the transfer of the property to the trust would in some circumstances constitute a taxable event, or as a gift that invokes the requirement to file a gift tax return with the IRS and/or your state taxing authority.

If you use a Will, no deed is required to make the Will effective in controlling the disposition of your property after your death. You can change your Will as often as you please and however you like, prior to your death.

On the other hand, the amendment of your Living Trust could require that you deed real estate out of the trust or to the "Amended Trust."

Many people simply want to insure that certain assets transfer to their spouse upon their death in the least expensive and simplest manner possible. In many such cases the solution is to title the property or account "jointly, with right of survivorship," not create a Living Trust.

Nonetheless, there are some cases that are appropriate for Living Trusts. It is best, therefore, to consult your tax adviser and your legal adviser before you make a decision on how best to proceed with your plans for how you want your property to be distributed upon your death.



Get your free copy today, by simply coming in!

## How You Can Avoid Legal Land Mines Legal Lessons for the Practical World

From the Book by Mr. Lyles

Lesson 25 is about telling your doctor all of your complaints.

People who have been injured in an accident sometimes fail to mention all their problems to their doctor.

For example, it is common for someone whose neck or back was injured in a collision also to have headaches and insomnia.

If the injured person mentions neck or back problems, but fails to mention the other problems, then the doctor surely won't document those other complaints in his or her records.

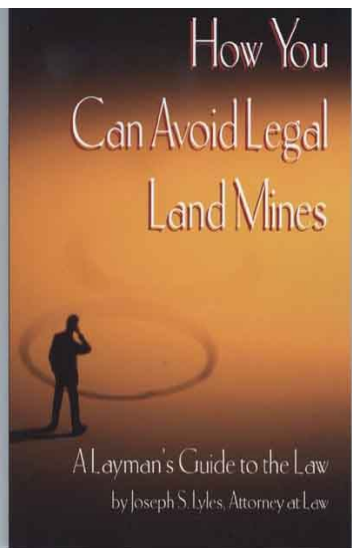
Later when the insurance company adjuster is reviewing the claim, he will not consider the headaches or insomnia because there is no reference to them in the medical records.

As far as insurance adjusters are concerned, 'if it is not written in the medical re-

ords, it didn't happen'.

And if it didn't happen, you will not be compensated for it by the insurance company.

**The Lesson:** *Your failure to mention all of your injuries to your doctor will prevent you from being adequately compensated for those injuries.*





## Legal Jargon

There are some words that are used in day to day conversations that people generally understand to have a certain meaning. However, there are some words that you should be careful how you use, when dealing with legal issues.

### For Example:

#### Estate:

**Normal Definition:** Just a piece of land or property, usually indicating land with a large house on it.

**Legal Definition:** all property or possessions owned by someone.

#### Affirm:

**Normal Definition:** to state or assert positively, or to maintain as true.

**Legal Definition:** to say that the lower court's decision was right (in an appellate court's ruling).

#### Bench:

**Normal Definition:** a long seat for several persons.

**Legal Definition:** the position of judge or magistrate, as well as the place that that they sit in a court of law.

#### Act:

**Normal Definition:** anything done, being done, or to be done, or the process of doing.

**Legal Definition:** a law dealing with a particular subject, like the Clean Air Act, as well as to describe proposed legislation or bills.

#### Right:

**Normal Definition:** in accordance with what is considered good, proper, and just.

**Legal Definition:** a legal entitlement to something.

#### Remedy:

**Normal Definition:** something that cures or relieves a disease or bodily disorder.

**Legal Definition:** the legal means of enforcing a right or redressing a wrong.

#### Action:

**Normal Definition:** the process or state of being active, something done or performed.

**Legal Definition:** when one person sues someone else to defend or enforce a right, to stop something bad from happening, or to punish them for a crime.



Definitions provided by Dictionary. Com, and the Legal Jargon Dictionary.

## Mr. Lyles in the Community



### Children Incorporated

Children, Incorporated is an international, nonprofit child aid organization. They are dedicated to helping impoverished children around the world, including in the U.S., by ministering to the children's physical, emotional and educational needs. The Lyles family has supported it for many years.

The organization was founded by Jeanne Clarke Wood after a trip to Guatemala where she personally witnessed the poverty and deprivation children were suffering there.

When she founded this organization, Mrs. Wood was sending letters to people from her house and using magazine advertisements to try and get help for ninety-five Guatemalan children.

Today, forty-four years later, Children, Inc. helps over seventeen thousand children around the world.

The headquarters for Children, Inc. is located in Richmond, Virginia, but the organization helps children in twenty four different countries, including the United States. It's staff members work with the schools, community centers, and orphanages that are already in these countries, by helping the schools and orphanages provide food, clothing, education, and shelter to these children.

There are two ways to support this organization. Mr. Lyles participates in the sponsorship program, where the sponsor gives at least twenty-eight dollars a month to provide

basic assistance to a child in one of these countries.

There are also opportunities to become contributors and give to various needs that can be found online at

[www.childrenincorporated.org](http://www.childrenincorporated.org).

The vision of Children, Incorporated is to keep assisting and cooperating with other organizations and institutions throughout the world who are also dedicated to the maintenance, support, education, and welfare of needy children. The vision also includes helping children and young adults to further their education, if they wish.





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Directions:  
Across Grove Road from the  
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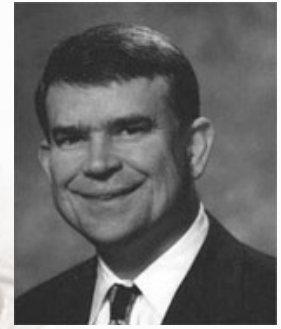


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## A Little More About Me

I grew up in Winnsboro, South Carolina. I received a BS from Western Washington University in Environmental Studies and a Juris Doctorate from the University of South Carolina School of Law. After spending three years as a Navy JAG, for one year I was a law clerk to the honorable C. Victor Pyle, Jr, Judge of the Thirteenth Judicial Circuit, Greenville, SC. Since then, I have worked as a member of a firm and as a sole practitioner.



I have practiced law since 1984 in a wide variety of areas including accidents, divorces, custody disputes, DUIs, contracts, military law, insurance, disability, workers compensation, employment matters, criminal charges, real estate, probate court, wrongful deaths, wills and trusts, and have gained invaluable experience in court. Over the years my focus has increased on personal injury cases, having represented injured persons in cases involving everything from bicycles to air-planes.

I have appeared in city courts, magistrate's courts (small claims courts), state courts, federal courts, and appellate courts. My cases have ranged from small traffic tickets to multiple-victim wrongful deaths. Oftentimes my practice takes me to the surrounding counties of Anderson, Spartanburg, Laurens and Pickens, where many of my clients live. I have also worked on many environmental cases, representing landowners, individuals, and groups in legal contests with big corporations, government agencies, and others.

I live in Greenville County with my wife, Carole Howard Lyles. Many of you knew her father, Ernest Howard, when he was alive and practicing law. We have three children: Jenna (20), Kitt (17), and Brennan (14). I enjoy my family, working on my "mini-farm," other outdoor activities, photography, and reading.

**"Law never is, but is always about to be"**

**-Benjamin Cardozo**

**"The Laws sometimes sleep, but never die"**

**-Legal maxim**

**"A verbal contract isn't worth the paper it's printed on"**

**-Samuel Goldwyn**

## Real Estate: Ever Heard of Zoning?

By Joseph Lyles

Vince, an investor, purchased a commercial building that had been foreclosed upon by a bank. He bought it at a steep discount to its appraised value. Unfortunately, he (and probably the appraiser) overlooked one crucial aspect of its value: the zoning.

The building was located right in the middle of a multi-family apartment area. The commercial activity was grandfathered in. If the building stopped being used for commercial purposes for four months in a row, it would lose its grandfathered status under the local zoning rules. Then the building could only be used for residential use. This particular building was not nearly as valuable as a

residence as it was as a business.

Whenever you consider buying a piece of real estate, be sure to confirm the zoning regulations for the area will permit the intended use. You cannot rely on the apparent use of the property at the time you are exploring buying it because prior uses could have been grandfathered in and, thus, be subject to severe restrictions upon change of hands or change of use.

Also, the boundary lines between one zone and another have to be drawn somewhere. Make sure you don't fall on the wrong side of the line.

Keep in mind that zoning can sometimes be changed, particularly for a large tract of land. But changes for small parcels are not generally permitted. The zoning of nearby land can adversely affect the value of your



land if it is in a different zone, but near the boundary.

For example, your nice retail property could drop in value if a big, ugly industrial facility were constructed within sight.