

When A Loved One Dies

By Attorney Joseph P. Lenahan



Attorney Joseph P. Lenahan

In the nearly twenty-five years I have been handling cases of medical malpractice one of the most common problems I have confronted is when a loved one dies due to apparent malpractice and no autopsy has been performed. In many of these instances, we have been forced to reject such potential cases, especially where the remains of the loved one have already been cremated by the time we are contacted about the case.

Even when the remains of a loved one have been buried, it is almost always necessary to exhume the body for an autopsy before we can properly evaluate the merits of a potential case. Not only is an exhumation difficult for family members to consider from an emotional standpoint, but exhumation and autopsy can be expensive, and due to deterioration of and the embalming of the decedent's remains, an later autopsy will prove inconclusive as to the deceased's actual cause of death.

Therefore, when a family asks us to investigate whether a loved one's death resulted from malpractice, one of the first questions we ask is whether an autopsy was performed before the deceased's remains were removed from the hospital. The question is critical to our determination as to whether we will accept a malpractice claim that has resulted in the death of a loved one. We are often questioned by family members as to why an autopsy is necessary, since, for many, an autopsy is seen as an unnecessary violation of the body of the deceased.

We frequently hear stories that the doctors or hospital staff tell the family that an autopsy "was not necessary", or that the coroner/funeral director/death certificate already "established" the cause of death for this decedent. Many family members tell us that the healthcare providers "discouraged" them from seeking an autopsy, claiming that the costs of an autopsy would be substantial, and may not be covered by insurance.

The simple truth is that if a family desires to pursue a medical malpractice claim for a deceased loved one, the timely performance of an autopsy is critical to the case. The reason for this is that, to win the case, we must prove not only that the healthcare providers were negligent, by rendering sub-standard care to the loved one, but also that such sub-standard care caused the death of that loved one. Sick patients can die for many reasons, including the natural progression of their illness. We are obliged, under Pennsylvania law, to prove that the negligent healthcare was a "factual cause" of the deceased's death, and causation cannot be proven unless a timely autopsy has been performed.

Thus, a timely autopsy is an essential ingredient to the successful prosecution of a medical malpractice claim for Wrongful Death. A timely autopsy is a post-mortem examination performed shortly after decedent's death and, preferably, before the decedent's remains have been embalmed.

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A timely autopsy should not be expensive, and should cost no more than \$2,000, and, perhaps, less. It should be performed at the hospital where death occurred, or in the funeral home before the body is prepared for viewing, interment or cremation. If the decedent intended to be an organ donor, vital organs cannot be harvested, as these will have to be examined by dissection during a timely autopsy.

Family members in such cases should immediately request an autopsy at the time of death, and should not be dissuaded or discouraged from doing so. The old adage that doctors "bury their mistakes" has proven to be true time and again.

The expense of an autopsy may be covered by health insurance in certain instances. However, if need be, family members should "pool" their resources to ensure an autopsy can be performed. Moreover, if the hospital refuses an autopsy, the family can, and should, request a private autopsy by a Pathologist of their own choosing (Lenahan & Dempsey can recommend local pathologists willing to perform or participate in an autopsy). Requests for an autopsy can be directed to the attending physician, the hospital, the coroner or the funeral director, or all of them, to ensure that an autopsy is performed in a timely manner.

The general public is not aware that death certificates do not actually establish a cause of death. Not only are death certificates, in most instances, inadmissible at trial to establish the cause of death, but these are nothing more than "educated guesses" as to why decedent died. Many times a death certificate is prepared by a layperson (not a doctor), who is not allowed to offer an "opinion" on cause of death at a malpractice trial. Moreover, a death certificate does not eliminate other possible causes of death, necessary to establish that the negligence of the healthcare providers was the "factual cause" of the death of a loved one.

In short, contrary to common and accepted wisdom, the critical factor to successfully investigating and prosecuting a malpractice claim for Wrongful Death is a timely autopsy. We at Lenahan & Dempsey are prepared to help your family obtain an autopsy in any case where a loved one has died and malpractice may be involved.

If you have a question about a possible medical malpractice case, or any personal injury, please feel free to call me at 1-888-LENAHAN (1-888-536-2426). The call and consultation are of course free of charge.

Avoiding A Mortgage Foreclosure: COMMUNICATION IS THE KEY

By Attorney Thomas Daniels



Attorney Thomas Daniels

If a homeowner fails to make timely payments on their monthly mortgage obligation, foreclosure may occur. This is the legal means that your lender can use to repossess (take over) your home. When this happens, you must move out of your house. If your property is worth less than the total amount you owe on your mortgage loan, a deficiency judgment could be pursued by your lender. If that happens, you not only lose your home, you also could owe your lender an additional amount.

Both foreclosures and deficiency judgments could seriously affect your ability to qualify for credit in the future. So every homeowner in financial distress should avoid foreclosure if possible.

In today's troubled economy, there are many reasons why individuals who have never before defaulted upon a loan obligation are suddenly, and unexpectedly faced with extenuating circumstances that force them to stop making timely mortgage payments. Here are a few of those reasons:

- Job loss / unexpected unemployment
- Sudden illness or medical emergency
- Death in the family
- Divorce / loss of second income
- Excessive debt obligations
- Job demotion or promotion denials
- Inability to pay an adjustable interest rate that increases
- Unexpected major home maintenance expense

WHAT SHOULD YOU DO?

The best way to avoid foreclosure is to prevent the filing of a Notice of Default. Lenders do not want to foreclose but will file a Notice of Default to protect their interests, if necessary. In today's depressed real estate market, most lenders prefer not to own real estate since it will cost them significant money to maintain and preserve such properties pending a sale, which will likely result in a sale at less than the lender's outstanding loan balance.

If you know you are unlikely to meet your mortgage obligation, the first thing you should do is call your lender and initiate discussions that may lead to a result that helps both lender and homeowner to avoid an unwanted foreclosure.

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Above all, do not ignore the letters or notices you may receive from your lender. An open and candid line of communication with your lender is key. Don't put it off, be embarrassed or ignore letters from your lender because those responses will make the situation worse, not better.

If you are having problems making your payments, call or write to your lender's Special Assets or Workout Department without delay. Explain your situation. If possible, be prepared to discuss a revised payment schedule which, at a minimum, covers much of your monthly interest obligation. Be prepared to provide them with financial information, such as your monthly income and expenses and tax returns. Without this information, they may not be able to help.

The attorneys of Lenahan & Dempsey have many years of experience representing both lenders and homeowners, so we are uniquely poised to represent you in such negotiations with your lender. Call me for a free no obligation consultation.

WHAT ARE MY ALTERNATIVES?

Depending on your particular situation and hardship circumstances, here are some options your lender might propose to you:

An Extension of time to make up your payments. Lenders might agree to wait before taking legal action against you and let you work out a repayment plan that is affordable for you. This is called forbearance.

Forgiving a payment. If you can agree on a way that you will be current after missing a payment or two (without the means to pay it back), the lender might give you a break and waive your obligation. This is called debt forgiveness, however it rarely happens.

Spread out the missed payments over a longer term. For example, if your regular payment is, say, \$1,200 a month, and you are currently behind in payments, the lender might let you add \$100 a month to each payment for a year until you are caught up. This is called a repayment plan.

Changing the terms of your loan. If your mortgage is an adjustable loan, the lender might freeze the interest rate before it increases or change the interest rate to a more manageable rate for you.

A lender might also extend the amortization period. This is called a note modification.

Add the back payments to your loan balance. If you have sufficient equity and meet the lender's lending guidelines, the lender might increase your loan balance to include the back payments and re-amortize the loan. This is called a refinance.

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WAYS TO STOP A FORECLOSURE

When the lender files a Notice of Default, your options are limited. That is why it is better for you to contact your lender before falling behind on your payments, because lenders are often reluctant to work out repayment schedules after foreclosure proceedings have commenced. You will be given a certain time period to bring the payments current, pay the costs of filing the foreclosure and stop the foreclosure. This is called reinstatement of your loan. If you cannot make up the missed payments and the lender will not work with you, here are a few other options to stop foreclosure:

Upon receipt of a Notice of Default, file for the Pennsylvania Homeowners' Emergency Mortgage Assistance Program (HEMAP). If you qualify and are approved for HEMAP assistance, a loan is created (secured by a mortgage on the property being threatened by foreclosure) to bring the delinquent payments current. Two types of assistance are available to the homeowner depending on their income and financial situation: continuing mortgage assistance loans and non-continuing mortgage assistance loans.

If a homeowner qualifies for a non-continuing mortgage assistance loan, their mortgage is brought current to a specified date and the homeowner is responsible for making all subsequent monthly mortgage payments to their lender along with a monthly payment to HEMAP. The homeowner may also be required to make a cash contribution toward the mortgage delinquency at the time the HEMAP loan closes.

If a homeowner qualifies for a continuing mortgage assistance loan, their mortgage is brought current to a specified date and then HEMAP subsidizes their monthly mortgage payment to their lender.

SELL YOUR HOME

If you are unable to qualify for assistance under HEMAP, interview multiple real estate agents to get an opinion to determine if its market value meets your needs and time frame. If so, place the home on the open market for sale without delay, particularly if there is any equity which you may be able to realize from a sale.

Remember, if your lender ultimately forecloses, you will not only lose your home, but any equity you may have built up during your years of ownership.

Consider a Short Sale.

If your home is worth less than the amount you owe, you might be a candidate for a short sale. A short sale affects credit but it's not as bad as a foreclosure. You or your attorney will need to negotiate with your lender to find out if the lender will cooperate on a short sale. This is called a pre-foreclosure redeemed.

Sign and Deliver a Deed-in-Lieu of Foreclosure.

This is called deeding the home back to the lender. The homeowner gives the lender a properly prepared and notarized deed, and the lender forgives the remainder of the mortgage, effectively canceling the foreclosure action. Lenders tell me that deeds-in-lieu of foreclosure affect credit the same as a foreclosure.

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Occasionally, the lender might also work an arrangement where a home owner can remain in the home until finding a place to move into. Owners in default should negotiate the right to retain occupancy, arguing that if the lender followed through on the foreclosure, an owner would still enjoy the right of possession during that procedure. Alternatively, the lender might be open to a leasing arrangement with you so that you can remain in the home until the lender is able to sell the property.

Foreclosure or avoiding a foreclosure can be a long, difficult and confusing process, especially if you try to do it alone. Call me for a free no obligation consultation and perhaps I can help you through the process and determine what options are best for your particular situation.

Did you know Lenahan & Dempsey...

- Can be found on the daily email blast from WNEP-TV? Find out what stories will be featured on NEWSWATCH 16 and receive legal updates from Lenahan & Dempsey on your email. Sign up for free at www.wnep.com and click on "NEWSWATCH 16 INBOX Update" under "What's Hot".
- Offers home, hospital and nursing home visits?
- Offers free, no obligation consultations?
- Is home to 3 attorneys named to Best Lawyers in America and 8 named as Pennsylvania Super Lawyers in Philadelphia Magazine?*
- Was founded in 1948?
- Has been named to Newsweek Magazine's Top U.S. Law Firm Showcase?

Learn more about Lenahan & Dempsey by visiting at www.LenahanDempsey.com or by calling toll-free 1-888-LENAHAN (1-888-536-2426).

* Selection criteria can be found at www.LenahanDempsey.com

Lenahan & Dempsey Distributes Back Pack Buddies To Regional Schools

The law firm of Lenahan & Dempsey has been recently distributing Backpack Buddies to students at regional schools.

The flashing bright light on the Backpack Buddy is designed to make children more visible to cars. The Backpack Buddies are also intended to get school age children thinking about safety issues.

Lenahan & Dempsey has made the Backpack Buddies available free to police departments and schools as part of the Firm's initiative to promote the safety of local children.



Front Row - Children representing their classmates from Dunmore Elementary School accept Back Pack Buddies from representatives of Lenahan & Dempsey and Dunmore Police. Back Row left to right: Dunmore Police Chief Patrick Reese, Assistant Principal Peggy Hart, Attorney Matthew Dempsey of Lenahan & Dempsey, Attorney Michael Dempsey of Lenahan & Dempsey, Dunmore Police Officer Ray Reynolds and Principal Matt Quinn.



Left To Right - Tunkhannock Area Middle School Principal Cynthia Basila, children from the Middle School representing their classmates and Attorney Thomas Daniels of Lenahan & Dempsey's Tunkhannock Office. Back Pack Buddies were also distributed to students at the Roslund Elementary, Mill City Elementary, Mehoopany Elementary and Evans Falls Elementary in the Tunkhannock Area School District.



Students representing their classmates at Prescott Elementary School in Scranton receive Lenahan & Dempsey Back Pack Buddies to distribute. Back row from left to right: Kristen Clark of Lenahan & Dempsey, Attorney Joseph Lenahan of Lenahan & Dempsey and Prescott Elementary School Principal Al O'Donnell.



Students at the Mill City Elementary School in the Tunkhannock Area District pose with their Principal Joseph Moffitt and Teacher Anna Longstreet and their Lenahan & Dempsey Back Pack Buddies.

Visit us online and see what we have done for other seriously injured clients.

Call us and find out what we can do for you.

LENAHAN & DEMPSEY REPRESENTATIVE
VERDICTS AND SETTLEMENTS*



\$ 15,000,000.00	Verdict	Medical Negligence
\$ 13,600,000.00	Settlement	Insurance Bad Faith
\$ 6,775,000.00	Verdict	Motor Vehicle Collision
\$ 5,000,000.00	Settlement	Mistreatment of Disabled Children
\$ 4,601,387.00	Settlement	Insurance Bad Faith
\$ 4,500,000.00	Settlement	Work Place Injury
\$ 4,350,000.00	Settlement	Motor Vehicle Collision
\$ 3,078,825.00	Verdict	Insurance Bad Faith
\$ 2,700,000.00	Verdict	Motor Vehicle Collision
\$ 2,600,000.00	Settlement	Motor Vehicle Collision
\$ 2,520,809.00	Settlement	Motor Vehicle Collision
\$ 2,500,000.00	Verdict	Motor Vehicle Collision
\$ 1,700,000.00	Settlement	Motor Vehicle Collision
\$ 1,625,000.00	Settlement	Motor Vehicle Collision
\$ 1,600,000.00	Verdict	Medical Negligence
\$ 1,460,000.00	Settlement	Pedestrian Injury
\$ 1,350,000.00	Settlement	Pedestrian Injury
\$ 1,200,000.00	Verdict	Medical Negligence
\$ 1,130,000.00	Settlement	Work Place Injury
\$ 1,000,000.00	Settlement	Motor Vehicle Collision
\$ 1,000,000.00	Verdict	Personal Property
\$ 1,000,000.00	Settlement	Motor Vehicle Collision

* The facts of each case are different. No specific results are implied. Descriptions of awards in previous cases are no guarantee of future results and should not create any expectations that our firm, or any firm, can achieve similar results in another case.

Lenahan & Dempsey Offices

We maintain offices throughout Northeast, Central Pennsylvania and The Poconos to serve our clients. We also offer home, hospital and nursing home consultations.

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To visit Lenahan & Dempsey, [CLICK HERE](#).