

# Senior Law Quarterly

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## National Healthcare Decisions Day is April 16th

On April 16, 2010, the third anniversary of the first National Healthcare Decisions Day, all people regardless of age or current health are reminded of the importance of making their healthcare wishes known to loved ones and their care providers.

This year, South County Senior Law & Estate Planning Center, LLC is teaming up with St. Anthony's Charitable Foundation to host a free clinic where individuals can meet with an attorney and complete a Healthcare Power of Attorney and Advance Directive.

The clinic will be open from 12:00 p.m. to 7:00 p.m. on Friday, April 16<sup>th</sup>, at the St. Anthony's Medical Center in the Highland Educational and Training Center Building, 10020 Kennerly Road, Saint Louis, Missouri 63128. For more information, please contact South

County Senior Law at (314) 845-0541, or visit our website at [www.STLseniorlaw.com](http://www.STLseniorlaw.com).

An advance directive is a legal document that informs healthcare providers who it is that you wish to make medical decisions for you and what treatments you would want or not want, in the event you would be unable to communicate with your healthcare providers because of a medical emergency or life-limiting illness.

"Over the past year, the number of people who have actively sought out information about making their wishes known and then have taken the steps to request an advance directive form has been remarkable," said Kathy Brandt, vice president of the National Hospice and Palliative Care Organization and a

member of the National Healthcare Decisions Day ("NHDD") executive committee. "Just as important as putting this information into peoples' hands is making sure they complete the directives and take time to talk about their wishes with their loved ones and healthcare providers."

National Healthcare Decisions Day is an initiative to encourage patients to express their wishes regarding healthcare through conversations and the completion of advance directives. NHDD is also working with providers and facilities to ensure that individual wishes are respected, whatever they may be.



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*The choice of an attorney is an important decision and should not be based solely on advertising.*

## THE NEXT FINANCIAL FIASCO? IT COULD BE REVERSE MORTGAGES

Excerpts from Consumer Reports, September, 2009.

Reverse mortgages can be valuable as a last resort for seniors who want to stay in their homes and have significant equity but need money to supplement income or eliminate an existing mortgage payment. With a reverse mortgage, they can trade some of that equity for a lump sum and/or monthly payouts.

But these loans can prove to be terrible for customers who don't understand the complicated rules governing them and how quickly high fees and interest charges can balloon. Homeowners can end up stranded in their homes without any remaining equity to cover unexpected costs later in life.

A Consumer Reports investigation has found more cause for concern:

- Loan bailouts have soared. The annual number of reverse mortgages taken over by a federal insurance fund has more than quadrupled in four years, from \$81.3 million in 2004 to \$381.3 million in 2008, according to analysis of more than 500,000 loans over two decades.
- Taxpayers are being tapped to subsidize reverse mortgages for the first time.
- Marketing can be misleading. Too often sales pitches emphasize the positives and play down the high costs of the loans. At a March, 2009, industry conference in New York City, one speaker delivered advice on the "10 Commandments for Selling to Seniors," including appeals to emotions, rather than reason.
- Unsuspecting borrowers have become cash cows for lenders and others who encourage them to use their mortgage proceeds to buy financial products such as deferred annuities that can be inappropriate for their situation. The required counseling for the mortgages can be inadequate.

### A Different Kind of Debt

Reverse mortgages started out as a niche product to give cash-strapped seniors supplemental income. The loan allows people 62 years and older to cash in some of their home equity and receive a lump sum, regular payments, or a credit line.

Existing mortgages can be paid off with a portion of proceeds. Borrowers make no monthly payments. As long as the homeowner keeps the home in good repair, pays property taxes and property insurance, the loan

does not have to be repaid until the last borrower dies, sells, or lives elsewhere for 12 consecutive months.

If the market value of the home is less than the loan balance when it comes due, federal insurance compensates the lender for the difference.

The fees on a reverse mortgage can add up. A reverse-mortgage borrower living in a \$300,000 house could expect to pay about \$15,000 in up-front costs (insurance premiums, broker's fees, and other closing costs) for the federally backed reverse mortgage plus another \$15,000 over the life of the loan in monthly insurance premiums and servicing fees. That's \$30,000 in fees, or one-sixth the amount borrowed.

Two of our firm's clients have had very unsatisfactory experiences with reverse mortgages. In one case, the clients owned a residence for many years that was appraised at \$200,000. Because of the worldwide financial crisis, our clients' home now has a market value of substantially less. The clients were granted a loan principal limit of \$151,762. Their closing costs were \$10,655, which included \$8,550 to the bank as loan fees (a/k/a points). In addition, other closing expenses were \$2,105. Also, a pre-payment for future servicing fees of \$4,597 was paid from the loan proceeds. After deducting the charges made at closing, the net loan amount available to the clients was \$136,510. The clients paid off two mortgages (which were held by the same bank who made the reverse mortgage), and ended up with a line of credit of \$34,329. Compare this to the total charges paid at closing of \$15,252, which were paid from their existing equity and which they will have to pay interest on for the rest of their lives. The bank came out great—they converted the homeowners' pre-existing loans that had a balance of \$102,180 (which were not guaranteed by the federal government) to a total loan package of \$151,762, which was now 100% guaranteed by the federal government, and they received loan fees of \$10,655 for their trouble.

If you need cash, consider other sources first. Perhaps your neighborhood bank will make you a home equity loan where closing costs are a fraction of those of reverse mortgages. If you can't afford to make a monthly payment on your existing loan or on a new loan, the best option may be to sell your home outright, downsizing.

If you do not subscribe to Consumer Reports, and would like a copy of their entire article, please call any member of our staff and request a copy.

## Estate Tax Exemption

Fixing the estate tax will provide the impetus for another tax bill. Even though the Bush cuts don't expire until 2011, the estate tax lapsed on December 31, 2009 and will return in 2011 after a one-year hiatus with a \$1-million exemption and a 55% top rate. Hopefully, Congress will act this year so that does not happen. A new bill introduced by Senator Max Baucus (D-MT), the top tax legislation drafter in the Senate, is a good indication of what lawmakers will eventually agree upon.

The estate and gift tax changes that Senator Baucus proposes are significant. The current estate tax exemption would remain at \$3.5 million for 2010 (\$7 million for couples) and adjust annually to reflect the rate of inflation. The top rate would remain at 45%. The exemption for the generation-skipping tax would be set at \$3.5 million, as well.

It is possible the exemption could go even higher. Senate Republicans and conservative Democrats may have the votes to push it as high as \$5 million. The lifetime gift tax exemption, currently set at \$1 million, would soar to \$3.5 million. In effect, Senator Baucus is proposing to reunify estate and gift taxes, which were decoupled in 2004.

Senator Baucus also wants to

give married couples a major estate easing: Any unused exemption would go to the surviving spouse automatically, starting in 2010, and be available for use when the survivor dies. Thus, the estate tax exemption for married couples would be \$7 million. Under current law, if a spouse passes away without having fully used his or her exemption, the remaining exemption is wasted. Senator Baucus' proposal would simplify estate planning for couples, eliminating the need for taxpayers to set up complicated separate trusts solely to save on estate taxes. In addition, couples wouldn't be forced to re-title their assets to equalize estates.

The higher \$3.5 million estate tax exemption has a hidden effect: Many credit shelter trusts\* should be reviewed and may need to be revised to eliminate problems created for some surviving spouses, who might otherwise see a decline in the amount of assets they'd have to live on. Credit shelter trusts are set up for non-spousal heirs and are funded with enough assets to take full advantage of the exemption amount. Amounts transferred aren't taxed. The remaining balance of the assets can pass to a surviving spouse free of estate tax via the marital deduction. But when a trust's funding formula is tied to the amount of the exemption, more assets are

diverted to the trust as the exemption increases. Without an adjustment to the trust, the spouse may not be left with enough assets that are outside the credit shelter trust. If Congress approves Senator Baucus' estate tax bill, credit shelter trusts won't be necessary.

Expect a political fight on the numbers. A handful of Democratic senators are joining with Republicans to support a \$10 million exemption and a 35% top rate. Two things remain certain: death and death taxes.

While it is the general consensus that the law will be reinstated retroactively, keep in mind that the general consensus was that we would not be in this position now. To put it concisely, there currently is no estate tax, a \$1 million gift tax exemption, a gift tax rate of 35 percent, and carry-over basis subject to some exemptions.

### STAY TUNED IN

Excerpts from *The Kiplinger Tax Letter*, Vol. 84, No. 7, April 3, 2009

\*A credit shelter trust (a/k/a bypass trust) is a share of the trust assets of the first spouse to die that holds assets that are taxed for federal estate tax purposes when the surviving spouse dies.

### Scallop Salad with New Potatoes In Creamy Vinaigrette (Adapted from Epicurious.com)

Dressing: 1 Tlbs. Olive oil, 2 Tlbs. white wine vinegar, 1 teas. hot English mustard, 1 teas. Dijon mustard, 1/2 cup mayo, 1 Tlbs. Whipping cream, 2 Tlbs. Chopped fresh chives: Whisk all, season with salt and pepper and set aside.

8 small red-skinned potatoes-boiled until tender, about 12 minutes, cooled and each sliced into 4 slices.

16 medium sea scallops (about 1 pound) halved-horizontally

5 ounces mixed baby greens

Heat 2 Tlbs. olive oil in heavy skillet over high heat. Add potatoes and sauté until golden, about 2 minutes per side. Transfer to plate. Add scallops to same skillet and sauté about 1 minute per side. Toss salad greens with half of the dressing. Arrange greens on 4 plates, top each plate with potatoes, scallops and remaining dressing. Enjoy!

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**South County Senior Law & Estate Planning Center, LLC has been serving the needs of our senior clients for twenty years. The firm attorneys, Dennis B. Mertz, Mavis Kennedy, and Christine F. Hart are members of NAELA, Inc. (National Academy of Elder Law Attorneys), dedicated to meeting the legal needs of all persons of all ages, including seniors.**

**We concentrate our practices in the areas of estate planning, trusts and estates, powers of attorney, probate, asset preservation, including Medicaid planning and tax advice, Special Needs Trusts and trust administration, nursing home abuse, will contests and other contested estate matters, financial exploitation of the elderly, personal injury, and guardianships and conservatorships. The initial consultation with any of our senior law attorneys is always at no charge or obligation to employ our firm. Call us at (314) 845-0541 to schedule an appointment to discuss any of your legal questions.**

**SHARE YOUR NEWSLETTER**

We encourage you to share this newsletter with anyone who is interested in issues pertaining to seniors. The information in this newsletter may be disseminated without charge or permission, but with appropriate citation to Senior Law Quarterly.

Anyone wishing to be added to our newsletter mailing list should contact our office at (314) 845-0541 with your request.

\*Mavis Kennedy is a Certified Elder Law Attorney by the National Elder Law Foundation, the only elder law certification program accredited by the American Bar Association. Certified Elder Law Attorneys offer the specialized knowledge, skills and experience to resolve legal issues that affect older people and the disabled.

*(Neither the Supreme Court nor the Bar of Missouri reviews or approves certifying organizations or specialist designations).*

**Can You Name the Baseball Teams Below?**

- |                                    |  |   |
|------------------------------------|--|---|
| 1. Communists:_____                | 13. Warm Water Fish:_____              | 25. Striped Asian Cats:_____            |
| 2. Forest Caretakers:_____         | 14. Rattlesnakes:_____                 | 26. Steak & Cheese Sandwich:_____       |
| 3. Nickname for Americans:_____    | 15. Native American Warriors:_____     | 27. Large Public Displays:_____         |
| 4. Spanish Patriarchs:_____        | 16. Alabaster Foot Coverings:_____     | 28. People Who Play Sports:_____        |
| 5. Tricksters:_____                | 17. Gemini:_____                       | 29. Capt. Kidd & Long John Silver:_____ |
| 6. Relating to Stars & Space:_____ | 18. Cerulean Tenth Letter:_____        | 30. Calcutta Natives:_____              |
| 7. Men of the Sea:_____            | 19. Mountain Range:_____               |   |
| 8. Was Introduced:_____            | 20. Cherubim:_____                     |   |
| 9. Young Wolves or Bears:_____     | 21. Kings, Queens, Princes, etc.:_____ |   |
| 10. Yellow & Black Songbirds:_____ | 22. Beer-Makers:_____                  |   |
| 11. Red Birds:_____                | 23. Behemoths:_____                    |   |
| 12. Demon Beans:_____              | 24. Crimson Foot Coverings:_____       |   |

Answers will be provided in our  
Summer Newsletter