

SOUTH COUNTY SENIOR LAW & ESTATE PLANNING CENTER, LLC

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National Academy of
Elder Law Attorneys, Inc.

MEMBER

The articles in this newsletter are written by the attorneys of South County Senior Law & Estate Planning Center, LLC as an informational resource for our friends and clients. Nothing in this publication is intended as legal advice for anyone's particular legal situation. If you have a specific legal issue, please call our office for assistance.

Be Smart When Hiring An Estate Attorney

Every adult should have an estate and incapacity plan. With such a plan, you decide what you want to happen to your assets when you die, and who should manage your finances if you become incapacitated.

When you are ready to begin your planning, it's time to hire an attorney who specializes in either estate planning or elder law. Either specialist can prepare the documents you need, and the elder law attorney will likely also have experience with relevant government programs and other long-term care issues.

The attorney should review your situation, finances and goals with you. Planning should cover the possibility that you will become incapacitated, and include your wishes if long-term care becomes necessary, in addition to determining what you want to happen to your assets when you

die.

A basic legal planning documents package consists of a will and two powers of attorney (one for health care decisions, one for financial matters). Depending on your particular goals and monetary situation, a living trust might also make sense.

How to choose

In choosing an attorney, look for the three Cs (capability, cost and compatibility).

For capability, find an established attorney or firm who has helped many families with similar planning and has done a good job. Professional affiliations, such as NAELA membership, can provide evidence that the attorney keeps current on changes in the law.

Concerning cost, while we don't suggest endless shopping, some is necessary. Have an initial consultation with the attorney and discuss the work to be done, and what you can expect to

pay before services begin.

As to compatibility, there are lots of attorneys to choose from. Don't work with an attorney you don't like or who doesn't seem to listen to you. If you aren't comfortable talking with the attorney, the planning results will suffer.

Finding attorneys

Organizations, friends, family, private attorneys, accountants, financial advisors, etc. can be a source for attorney references. When checking these sources, ask about the results the attorney has produced for other families.

Ask the referral source for the name, telephone number and available background information for the attorney. Check websites, if available. Call the attorney, discuss your needs and the initial consult arrangement. Determine if you are obligated to pay a fee for the initial consultation. If so, what is the fee you will be obligated to pay? If you are satisfied, schedule

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

Beneficiary Deeds—Probate Avoidance or Probate Nightmare?

In November of 2005, Doris G, who was hospitalized for terminal lung cancer, executed a Beneficiary Deed to transfer ownership of her home, outside of Probate, to her sister Carolyn. Doris had one son, John, who had severed any relationship with his mother years earlier. It was important to Doris that her sister, not her son, receive her home after her death. Doris died within weeks of executing the deed.

Doris was a woman of modest means, Medicare-Medicaid dual eligible, who received \$21,700 in Medicaid benefits during her lifetime. However, Carolyn had no idea how much Doris had received in Medicaid assistance or whether Carolyn was required to pay that back. After Doris death, Carolyn called the Missouri Department of Social Services in Jefferson City to ask for clarification. She was told to do nothing—if the State was planning to collect the debt, she would be notified within a year.

Hearing nothing from the State of Missouri on a Medicaid lien, Carolyn sold the home in January of 2006. In June of 2006, Carolyn was served with a Summons. With no notice to Carolyn, the Missouri Attorney General's Office had petitioned the Probate Court to open an Estate for Doris in order to collect its \$21,700 debt. Doris' estranged son, John, was appointed Personal Representative of the Estate. John sought repayment of the State's Medicaid lien from Carolyn; in fact, he asked that the Court transfer the home back to the Estate, to which he would be sole beneficiary under Missouri intestacy laws!

A lengthy court battle ensued, that ultimately ended in the Missouri Court of Appeals,

Eastern District, in Saint Louis. Carolyn contended that

Be Smart When Hiring An Estate Attorney

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Be a smart consumer

In addition to what we mentioned about the three Cs, check the attorney's references and reputation. Determine what professional organizations the attorney belongs to. How long has the attorney been in practice? How long have they specialized in estate planning

or elder law? Use reliable sources, such as National Academy of Elder Law Attorneys, Inc. (NAELA) www.NAELA.org.

When you meet, tell the attorney what your concerns are and what you hope to accomplish. Bring all background information and documents to the initial consultation. Avoid surprises—before

proceeding, have a clear understanding (in writing) of the work to be done by the attorney, the fee and other costs. Try to work out a fixed-charge arrangement.

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Charitable Giving Tips—Questions and Answers

Donate Appreciated Stock Instead of Cash

I'm 64 and I would like to give away some stock to charity. I have some shares that have gone up significantly over time. I keep hearing that giving away appreciated stock is a good idea, but I'm not sure I understand why that is so. Could you please explain?

An example is the easiest way. Say you bought \$5,000 worth of stock that has doubled in value since you bought it many years ago. If you sell the stock, you'll owe 15% federal capital gains tax on the \$5,000 profit, costing you \$750, plus you would owe a 6% Missouri Income Tax, another \$300. If you give the remaining \$8,950 to charity, you get to deduct that amount, (assuming you itemize and are in the 25% bracket) which will save you about \$2,237.50 in tax. When you donate stock you have owned for more than a year, you get to deduct the full market value—\$10,000 in this example, and you avoid the capital-gains tax. So, the gift saves you \$1,050 in tax and provides a bigger tax deduc-

tion, which saves you an extra \$262.50. And the charity comes out ahead, too, receiving the full \$10,000. It owes no tax when it sells the shares for \$10,000. It's a winning situation for all.

Transferring IRA Assets to a Charity

You have mentioned in several articles that people who are older than 70 1/2 can make a direct transfer from an IRA to a charity and have it count toward a retiree's required minimum distribution. I have non-deductible contributions that I have made to a couple of my IRA's. Can I transfer those assets to a charity? If so, would there be any benefit to doing that?

You're only allowed to transfer IRA assets that are taxable, which would be your deductible contributions and account earnings. This actually helps you. By transferring only the taxable assets to charity, you avoid having to pay income tax on that money. Also, you end up leaving nontaxable amounts in your IRA that you or your

heirs can withdraw later tax-free. Usually when you make a required distribution, you must withdraw a pro-rata share of your nontaxable contributions. This IRA-to-charity transfer is an exception to the pro-rata rule. This transfer rule is set to expire this year, but Congress is considering making it permanent.

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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, 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 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.

**Getting to Know Us:
Mavis Kennedy**

Attorney Mavis Kennedy, partner in South County Senior Law & Estate Planning Center, LLC, joined Mr. Mertz at the firm's Oakville location in late 2002. Prior to focusing on estate planning and elder law issues, Ms. Kennedy was involved primarily in corporate and mortgage law.

Ms. Kennedy lives in Oakville with her daughter Mikah, a student at Oakville Senior High. Her son Jason is a PhD

candidate at St. Louis University, and her daughter Ashley a senior at Murray State University.

Her passion for helping seniors with legal needs drew Ms. Kennedy to South County Senior Law, where she works primarily in estate planning, Medicaid and long term care planning, Special Needs Trusts and trust administration, and contested estates.

When not working, she enjoys writing, golf, and just hanging out with her children and friends.

