

# Senior Law Quarterly

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## NEW ROTH IRA CONVERSION OPPORTUNITIES IN 2010

Beginning in 2010, almost anyone can convert a traditional IRA to a Roth IRA — and take advantage of potential tax benefits. Barring any last-minute changes to the tax code, a provision of the Tax Increase Prevention and Reconciliation Act (TIPRA) of 2005 will permanently repeal the income limit for Roth conversions, permit conversions by taxpayers who are married but filing separately, and allow taxpayers to report income from Roth IRA conversions completed in 2010 equally

over tax years 2011 and 2012.

### Why convert at all?

While you'll pay taxes now on the pre-tax assets you convert, your money will grow tax-deferred in the Roth IRA, withdrawals will be tax-free, and account holders are not required to take minimum distributions. Without required minimum distributions, if you don't need the money, the pot will grow larger, leaving more tax-free money for your beneficiaries.

### How do the 2010 conversion rules make conversions to a Roth IRA attractive?

**No income limit.** The \$100,000 income limit that currently exists for Roth IRA conversions will be repealed for 2010 and future years.

**Special tax treatment for 2010 conversions.** Income from 2010 conversions can be reported either on your 2010 tax return or equally on your 2011 and 2012 returns.

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National Academy of  
Elder Law Attorneys, Inc.

**MEMBER**

## What is Elder Law?

Your attorneys at South County Senior Law & Estate Planning Center, LLC are members of the National Academy of Elder Law Attorneys, Inc. (“NAELA”). NAELA’s stated mission is “to establish its members as the premier providers of legal advocacy, guidance and services to enhance

the lives of people with special needs and people as they age.” The organization was founded approximately twenty-five years ago when the American Bar Association did not respond to the needs of lawyers who were developing a new specialty of practice, Elder Law. President of NAELA, Stephen J.

Silverberg, CELA, recently published the following overview of Elder Law in “The President’s Message” column of our organization’s periodic professional journal, NAELA News, a portion of which is excerpted here:

“Over the past 20-plus

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*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.*

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

## Naming Your Children on Your Accounts

Recently, a client came into my office to discuss estate planning. The client's husband had died a few months ago, and she wanted to make things easy for her children and avoid probate when she died. She had three children, and wanted her estate divided equally among her children at her death. She stated she had already added her oldest daughter and one of the other two children to all of her bank accounts. When I asked why, she explained that she wanted her daughter to be able to pay her bills if something happened to her, she wanted to avoid probate, and she trusted her daughter. She stated that she wanted to add her daughter to her home as well.

What this client did is quite common. However, there are a number of reasons why it may not be desirable to make your children joint owners of your assets. The following is a list to consider before designating an adult child as a joint owner:

1. If the child declares bankruptcy, develops a tax problem with the IRS, is sued, or becomes involved in a divorce, the client's assets could be affected. Even if the client ultimately avoids an attachment of the client's assets in such instances, the client may incur substantial legal fees to do so.
2. If the client becomes incompetent and the oldest daughter is paying the bills, there is the likelihood of a dispute among the children as to which accounts should be used to pay the client's expenses. If the assets are unequally titled, some children may be left with nothing while others receive the full amount in the account at the client's death.
3. Once the client adds a child as a co-owner, the

client may not be able to make changes to a bank account, liquidate stock, or sell a home without the child's consent.

4. If the client adds her child to her home and other appreciable assets (such as stocks), the child will owe capital gains taxes when the child sells the assets after the client's death.

5. Transferring assets to her child or adding her child as a co-owner could result in a five-year period of ineligibility for Medicaid if the client needs and would otherwise qualify for nursing home care within five years after the transfer.

6. The child, regardless of how trustworthy he or she is, may not elect to evenly share the client's wealth with the other siblings. The child may feel entitled to a larger share for taking care of the client, or may harbor ill feelings toward a sibling that affect distributions. Even if the child does want to share the client's estate evenly with siblings, the child may be obligated to file a gift tax return in distributing the client's assets, and the child's own taxable estate could be adversely affected.

These pitfalls to joint ownership can be avoided with relatively simple estate planning. Instead of naming children as joint owners, pay-on-death designations, including beneficiary deeds, or creating a trust and transferring ownership to the trust, will insure that assets pass equally to the children outside of probate. The client's child can manage the client's financial affairs as Successor Trustee or attorney in fact under a durable power of attorney, and avoid the potential risks of joint ownership.

## Creating Your Ethical Will

An ethical will is a letter or recording created for your descendants or other loved ones. It may be a one-page letter, or a full manuscript. Its purpose is to communicate your feelings, values, wisdom, family stories, or wishes, and it is created to last beyond your lifetime. Ethical wills have their roots in ancient history. The biblical patriarch Jacob's deathbed blessings for his twelve sons are an ancient example of an oral ethical will. Some of the earliest written documents trace back to 12<sup>th</sup> century father-to-son writings by Jewish men. This ancient practice is enjoying a renaissance. It speaks to people of all ages and traditions seeking a pathway to reflect on their own life journey and transmit their core values to the next generation.

An ethical will is not legally binding, so it should not contradict or cloud any provisions of your will or estate plan. Your ethical will compliments the distribution of your assets, as expressed in your estate plan, with your

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## NEW ROTH IRA CONVERSION OPPORTUNITIES IN 2010

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**Nondeductible IRA conversions.** Income limits for Roth IRA conversions are going away but income limits for Roth contributions remain in place.

**Low market value opportunity.** IRAs and qualified plans with depressed values are especially advantageous to convert. The current value will be taxed at conversion and the future growth will be tax-free (if qualifications are met).

**Estate planning strategy.** Roth IRA

conversions can reduce the size of your taxable estate because of the income tax already paid and can allow you to pass income on to beneficiaries income tax-free. Roth assets may still be subject to estate tax.

### Talk to your tax advisor about Roth IRA conversion

Converting to a Roth IRA is not for everyone. To find out whether a Roth IRA conversion makes sense for you and to help you take advantage of the changes in 2010, talk to your tax advisor.

## Creating Your Ethical Will *(Continued from page 2)*

values and your voice. It may include sharing of personal life stories, asking for forgiveness for regrettable acts or events, expressions of gratitude, blessings, dreams, and hopes for the future, as well as specific instructions on things like funeral services. You should avoid negative or critical comments in the writing – you will be remembered for your words.

Any time is the right time to start writing your ethical will. Often an ethical will is not one discrete writing, but a series of pages created over time and kept together in a folder. It may take the form of an audio recording or videotape. Consider the document a “work in progress,” to which you can add and revise over time.

Often, ethical wills are shared during the writer’s lifetime. However, you may prefer that it be read only after your death. In that instance, make sure your loved ones know where the document is kept. Keep a copy with your legal documents, or make a note about where it can be found.

There is no form book for an ethical will. There are, however, a number of resources that can help you get started. Two publications are [Ethical Wills: Putting Your Values on Paper](#) by Barry Baines, and [Grandmother’s Memories to her Grandchild](#) by Candy Paull and Thomas Kinkade. Or, visit the website [www.yourethicalwill.com](http://www.yourethicalwill.com).

## What is Elder Law?

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years, there have been numerous changes in the practice of Elder Law. The eligibility provisions for Medicaid long-term care have been changed at least three times. There have been numerous revisions to the Internal Revenue Code that affect our clients; especially the increase in the estate tax credit. Many attorneys have seen their tax practices evaporate as the credit increased. This is where the Elder Law attorney can begin to apply the concepts originally used for tax-benefit planning in different ways.

Unlike the traditional estate

planning attorney, the Elder Law attorney is experienced in the use of trusts and other devices to protect assets. Health care and taxes are only two items that can deplete a family’s assets. By utilizing the concepts learned over the years, it is a short reach to extend asset protection devices used by the Elder Law attorney to protect against depletion of assets from creditors, litigation, and matrimonial issues. Doing this allows the Elder Law attorney to provide a holistic approach to asset preservation planning. What it boils down to is, if family assets are depleted by \$50,000, does it really matter why? Whatever the cause,

the money is gone.

I envision one of the missions of NAELA is to help our members maintain, restructure, and even reinvent their practices in a changing environment. By expanding and using techniques in ways that were not previously contemplated, the NAELA member can always be ahead of the curve in providing quality services to their clients.”

The attorneys at South County Senior Law believe that Mr. Silverberg’s message describes what Elder Law is, from an attorney’s point of view.

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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.

**New Addition to South County Senior Law**

Proud parents Scott Vogt and our Paralegal Sara Vogt welcomed their first child, Eliza Kate Vogt, who was born on June 22, 2009 at St. Luke's Hospital in Chesterfield. Scott is currently employed as a Registered Respiratory Therapist at St. Luke's Hospital.

After taking maternity leave for the summer, Sara returned to her position here at the firm on a part-time basis in September.

Scott and Sara are "over the moon" with happiness in taking care of their little girl and watching her grow. "Being parents is so much more fulfilling than we ever dreamed."



**Eliza Kate Vogt-Born June 22, 2009**