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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.

Getting Your Affairs in Order

If we had a crystal ball and could see into the future, we would not need to prepare ahead for end of life decisions.

James was 62 years old when a stroke made it impossible for him to communicate with his family. Neither his wife nor children knew anything about his financial or medical information. James had always taken care of things himself and left no written directives in his behalf. Besides having to locate important documents, the family was left to make their own decisions about James' long term care. Without durable financial and healthcare powers of attorney in place, his wife will have to go to court to be appointed his guardian and conservator before she can make medical decisions for James or manage his finances.

The National Institute on Aging gives three simple, but important steps to putting your affairs in order:

- "Put your important papers and copies of legal documents in one place.
- Tell a trusted family member or friend where you put your important papers.
- Give consent in advance for your doctor or lawyer to talk with your caregiver as needed. Without your consent, your caregiver may not be able to get needed information."

National Institute of
Aging, www.nia.nih.gov.

Preparing Advance Directives or Living Will

Advance Directives are legal documents that state the kind of medical care or end of life decisions you want made on your behalf. They are a way for you to communicate your wishes to family or health care professionals. Your advance directive gives your consent or refusal for sustained medical treatment

when you are not able to give it yourself. Your health care agent makes other medical decisions when you are unable to express your own wishes.

Choosing a Power of Attorney

A General Power of Attorney authorizes someone to handle your financial, banking and possibly real estate and government affairs as long as you remain competent. A durable power of attorney will remain in effect or take effect if you become mentally incompetent. Many people are unaware that a General Power of Attorney which is not also "durable" is invalid if the person granting that power becomes incompetent or incapacitated. One's spouse or responsible adult child should be given a "general durable power of attorney" to act on behalf of the spouse or parent.

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

President Signs Two-Year Extension of Bush-Era Tax Cuts, Payroll Tax Relief, Estate Tax Compromise

PAYROLL TAX CUT

The 2010 Tax Relief Act reduces the employee-share of the old age, survivors, and disability insurance (OASDI) portion of Social Security taxes from 6.2 percent to 4.2 percent for wages earned during the payroll tax holiday period (calendar year 2011) up to the taxable wage base of \$106,800. Comment. The 2010 Tax Relief Act makes no changes to the Medicare (HI) portion of Social Security taxes, which is 2.9 percent (1.45% paid by the employee and 1.45% paid by the employer).

FEDERAL ESTATE TAX

2000 estate tax legislation which was passed during the Bush administration, gradually raised the tax exemption over a period of years, and abolished federal estate tax for persons dying in 2010. The pre-2000 estate tax (with a maximum tax rate of 55 percent and a \$1 million applicable exclusion amount) was scheduled to be revived after 2010.

The 2010 Tax Relief Act revives the estate tax for decedents dying after December 31, 2009, but at a significantly higher applicable exclusion amount and lower tax rate than had been scheduled. The maximum estate tax rate is 35 percent with an exclusion amount of \$5 million. This new estate tax regime, however is itself temporary and is scheduled to expire on December 31, 2012.

Together with the revival of the estate tax, the 2010 Tax Relief Act eliminates the modified carryover basis rules and replaces them with the stepped up basis rules that had applied until 2010. Property with a stepped-up basis receives a basis equal to the property's fair market value on the date of the decedent's death (or on an alternate valuation date). Under a modified carryover basis that was put in effect only for 2010, the executor may increase the basis of estate property only by a total of \$1.3 million, with other estate property taking a carryover basis equal to the lesser of the decedent's basis or the fair market value of the property on the decedent's death. For 2010, an executor may increase the basis of other

assets passing to a surviving spouse by an additional \$3 million (for a total of \$4.3 million).

OPTION FOR 2010

The 2010 Tax Relief Act provides estates of persons dying during 2010; the options to elect to either (1) have the estate be taxed based on the new 35% top rate and \$5 million applicable exclusion amount, with stepped up basis, or (2) pay no estate tax and utilize modified carryover basis rules that were in effect during 2010. Any election would be revocable only with the consent of the IRS.

For persons dying in 2010 who owned appreciable assets (typically securities and real estate), the executor, surviving spouse or other heirs should consult with their attorney and tax preparer to determine the actions they need to take to obtain the step up in basis.

PORTABILITY

The 2010 Tax Relief Act provides for "portability" between spouses of the estate tax applicable exclusion amount. Generally, portability would allow a surviving spouse to elect to take advantage of the unused portion of the estate tax applicable exclusion amount of his or her predeceased spouse that would provide the surviving spouse with a larger exclusion amount. A "deceased spousal unused exclusion amount" would be available to the surviving spouse only if an election is made on a timely filed estate tax return. Portability would be available to the estates of decedents dying after December 31, 2010. Under the Tax Relief Act of 2010, the portability election will expire on January 1, 2013. Because this provision is scheduled to expire after 2012, under current law, the utility of the portability election is limited to situations where both spouses die within the two-year term (that is, 2011-2012)

Excerpts from article from CCH Tax Briefing, December 21, 2010

Choices for End-of-Life Caregiving

There are many decisions to be made when imminent death is approaching for a loved one. Questions regarding what type of care, medical assistance and even physical location for their last days confront us.

If care at home has been given, should loved ones be moved to a facility or remain at home? If in a care facility should they be moved home for their last days? Will 24-hour care become necessary and more medical assistance be required?

If you are asking these questions, a hospice service might be a good solution. Hospice can be provided to a person who has a life-limiting illness wherever that person lives. A nursing facility or long-term care facility can receive visits from hospice personnel in addition to the other care and services provided by the facility.

Hospice care is a special way of caring for a patient who is in the last stages of life. Hospice provides a team of professionals who aid the patient and family caregivers. This could include nurses, social workers, physicians, clergy and aides who all work together to plan and coordinate care, 24 hours a day or as needed.

The Hospice Foundation of America outlines the services of hospice, which include the following:

- To provide comfort and support to patients and their families when an illness no longer responds to cure-oriented treatments.
- To neither prolong life nor hasten death, but offer specialized knowledge of medical care, including pain management.
- To improve the quality of a patient's last days by offering comfort and dignity.
- To deal with the emotional, social and spiritual impact of the disease on the patient's family and friends.
- To offer a variety of bereavement and counseling services.

To be eligible for hospice a physician must certify the patient to be terminally ill with a life expectancy of six months or less, and treatment for a cure is no longer provided. The focus for the patient changes to supportive care and quality of remaining life.

Hospice is paid for by private insurance, Medicare or Medicaid Hospice Benefits or personal funds. Special benefit periods apply to Medicare hospice care and some services do not apply. Be sure to understand the rules and requirements of Medicare payment before you commit.

"Many families or their loved ones' doctors often wait too long to order hospice. Hospice is a very valuable service and should be ordered at an earlier stage of illness. Many do not consider hospice for Alzheimer's, degenerative old age or other debilitating illnesses where a person is going downhill fast. They should.

It is unfortunate that many people who died in a hospital emergency room or who received heroic treatments to prolong life in a hospital may have had the alternative of dying at home in familiar surroundings, with family or other loved ones at their side.

When there is no longer hope for prolonging life, especially when this decision is made months in advance, hospice is usually a better alternative to other medical intervention". [National Care Planning Council](#)

The days leading up to the moment of death of a loved one can be rich with meaning and expressions of love. Family and caregivers should allow others to help with the care and daily responsibilities. They need to free themselves from the details of caregiving and instead need to use hospice to allow more time to reminisce, give thanks for a life shared and say goodbye.

Pea and Bacon Risotto for One-(Adapted from Epicurious.com)

Bring **1 3/4 cup chicken broth** and **1/2 cup water** to a simmer in a small sauce pan. Cook **1 slice bacon**, chopped, in a heavy saucepan until crisp. Transfer to paper towel to drain. Add **1 large garlic clove**, finely chopped, to bacon fat and cook until golden, about 1 minute. Add **1/3 cup Arborio rice**, stirring to coat in fat, about 1 minute.

Add 1/4 cup broth mixture and simmer briskly, stirring constantly, until broth is absorbed. Continue simmering and adding hot broth mixture, 1/4 cup at a time, stirring frequently and letting each addition be absorbed before adding next, until rice is just tender and creamy-looking but still al dente, about 18 to 22 minutes. Add **1/3 cup frozen peas** and cook, stirring, for 2 minutes.

Stir in **2 Tlbs. Parmesan cheese**, **1 Tlbs. butter**, **1/4 teas. grated lemon zest**, and **1/4 teas. fresh lemon juice** and season with **salt and pepper**. Top with reserved bacon. 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).

National Healthcare Decisions Day

April 16, 2011 marks the fourth anniversary of National Healthcare Decisions Day. The state and community organizations committed to ensuring that all adults with decision-making capacity in the United States have the information and opportunity to communicate and document their healthcare decisions.

What is an advance directive?

All adults can benefit from thinking about what their healthcare

choices would be if they are unable to speak for themselves. These decisions can be written down in an advance directive so that others know what they are. Advance directives come in two main forms:

- A "healthcare power of attorney" (or "proxy", "agent" or "surrogate") names the person you select to be your voice for your healthcare decisions if you cannot speak for yourself.
- A "living will" documents what

kinds of medical treatments you would or would not want at the end of life.

The Missouri Bar website contains a Durable Power of Attorney for Health Care and Health Care Directive which can be downloaded for public use. The website is : www.mobar.org.