

Senior Law Quarterly

South County Senior Law & Estate Planning Center, LLC

Volume IX, Issue 1

Spring 2012

Missouri DFS Issues New Annuity Policy

For a married couple in which the husband or wife enters a nursing home, the use of an annuity is sometimes an appropriate option to spend down excess assets, make the institutionalized spouse eligible for Medicaid nursing home assistance sooner, and increase the income of the at-home or community spouse.

On March 16, 2012, the Missouri Department of Social Services, Family Support Division, issued a new memorandum revising its policies with regards to annuities and Medicaid (Mo HealthNet) nursing home assistance. These new policies were issued in response to the Missouri Court of Appeals' deci-

sion in J.P., et al, v. Mo. Family Support Division, rendered on April 20, 2010, and apply to annuities which were purchased or began making payments on or after April 20, 2010.

The new policy statement provides that such an annuity will not be considered as an available resource or subject to a transfer penalty if the annuity:

1. Is irrevocable and non-assignable;
2. Is actuarially sound based on the life expectancy of the annuitant;
3. Provides equal or nearly equal payments (no balloon payments); and

4. Meets one of the following beneficiary options:

- Community Spouse is Owner – In this case, the annuity must name the institutionalized spouse as the primary beneficiary and the State of Missouri as contingent beneficiary, for the amount of Medicaid funds expended on behalf of the institutionalized spouse; or
- Institutionalized Individual is Owner – If the annuity is owned by an unmarried individual owner, the State of Missouri must be named as primary

(Continued on Page 2)

Inside this issue:

Missouri DFS Issues New Annuity Policy	1
VA Non-Service Connected Disability Pensions	2
Welcoming Justin Cardwell	3
Tossing Out Old Financial Records	3



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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.

VA Non-Service Connected Disability Pensions and Irrevocable Trusts

In 2011, the VA's Office of the General Counsel clarified its policy regarding irrevocable trusts to provide that if the Veteran or spouse may receive payment of any portion of the trust (including income only), the entire value of assets in the irrevocable trust would be counted in determining the Veteran's net worth when applying for VA non-service-connected disability pension.

Prior to this interpretation, if a Veteran or spouse was entitled to only the income generated by assets in an irrevocable trust, and the principal of the trust was unavailable to the Veteran, the income was con-

sidered available income to the veteran in calculating eligibility for such pension, but the principal of the trust was not considered in the calculation of the Veteran's net worth.

As a result of this new interpretation by VA, VA pension benefits may be terminated or denied if the Veteran or spouse created an irrevocable trust and transferred assets to the trust, giving up the right to the principal in the trust but retaining the right to income from trust assets. However, if the Veteran, the spouse, and any other family members residing with the Veteran do not have the right to income or

distributions from an irrevocable trust, the value of assets in the trust is not counted as part of the veteran's net worth when applying for VA pension.

If a Veteran transfers assets to a family member who does not reside with the veteran or to an irrevocable trust which provides for payment of income (and/or distribution of trust principal) to family member(s) not residing with the Veteran, the transferred assets or the irrevocable trust are not considered as assets when calculating the Veteran's net worth.

Missouri DFS Issues New Annuity Policy Statement

(Continued from Page 1)

beneficiary; if the annuity is owned by an institutionalized spouse, the community spouse may be named as primary beneficiary, with the State of Missouri named as contingent beneficiary, to the extent of Medicaid funds expended for the institutionalized spouse.

When utilizing community-spouse-owned annuities, it is important to remember that the annuity may be purchased from assets which are subject to spend-down (assets above the community spouse's separate share), and the community spouse's income is not considered as an available resource when calculating the institutionalized spouse's eligi-

bility for vendor benefits.

The use of annuities in the context of Medicaid planning must be analyzed on a case-by-case basis, is not appropriate in many circumstances, and should only be utilized upon the advice of an attorney after a complete analysis of the particular case.

Welcoming Justin Cardwell

The South County Senior Law and Estate Planning Center would like to welcome its newest Associate, Justin Lyman Cardwell!

Justin is graduate of the Saint Louis University School of Law where he

earned his Juris Doctorate with a Certificate in Health Law. Justin also worked in the St. Louis University School of Law's Elder Law clinic, representing clients in guardianship matters and estate planning matters. He is a member of



both the American Bar Association and the Bar Association of Metropolitan St. Louis.

Before attending law school, Justin attended Truman State University in Kirksville, Missouri, where he

obtained both a Bachelor's of Science in Psychology and a Master of Science in Biology.

Justin grew up outside of Jefferson City, Missouri, and graduated from Helias High School in 2001. He is the third of four

children born to Robert and Kathryn Cardwell of Holts Summit, Missouri.

In his free time, Justin enjoys leisure activities such as attending local sporting events. He keeps tabs on the Blues, Rams and Cardinals and watches their contests both live and on the television. He also enjoys playing sports, and is involved in recreational bowling, softball, volleyball, baseball and soccer leagues and was a three sport athlete in high school. Justin also enjoys outdoor activities such as camping, canoeing, fishing, and hiking.

Tossing Out Old Financial Records

We are often asked how long clients should keep tax and financial records. As a general rule, it is not necessary to maintain old tax returns and supporting documents for longer than six years. The IRS has three years to audit a return, but the audit could authorize the IRS to go back another three years if, as a result of the audit, income was under-reported by 20% or more.

Year-end investment statements and purchase information

(including price paid) for stock and mutual funds should be held for as long as you own the assets.

Purchase records and receipts for home improvements should be kept until three years after the home is sold.

As for these miscellaneous financial records:

- Toss out bank withdrawal and deposit slips after verifying that they appear on the next bank statement;

- Toss out pay stubs after comparing them to your W-2;
- Credit-card receipts—why hang onto these after comparing to your monthly charge card statement unless you are planning to return the purchase; and
- Monthly utility bills—get rid of these unless you need them for tax purposes.

This information borrowed from Kiplinger's Retirement Report, April 2012 issue.

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South County Senior Law & Estate Planning Center, LLC, has been serving the needs of our senior clients for over twenty years. The firm attorneys 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, will contests and other contested estate matters, financial exploitation of the elderly, 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).