

The Elder Law Extra

Karren Pope-Onwukwe, *Chair*

Morris Kline, *Vice-Chair*

Nicole Livingston, *Editor*

Message from the Chair...

I am humbled by the opportunity to serve as chair of the Elder Law Section of the Maryland State Bar Association, my path to the legal profession was circuitous and as author Maya Angelou stated, "I wouldn't take nothing for my journey now". I have been a high school social studies teacher, an international flight attendant, a paralegal and now an elder law attorney. As we look forward to the year ahead of us, I am excited that our section will be a part of some important changes within our practice area.

LEVEL OF CARE

I recall the first elder law section meeting that I attended; we discussed level of care denials for Medicaid long-term care residents of nursing homes. Now, armed with the Brown decision we can be a part of the process that will help define the new level of care regulations.

ELDER LAW / DISABILITY LAW

The first time I read the Olmstead decision I had no way of predicting how many waiver and community-based programs would begin to open the door for individuals to live their lives to the fullest. Recently, I attended the Elder Law sponsored MICPEL entitled, "Representing Aging Clients and Children and Adults with Disabilities". Amazingly, our conversation has grown from simply looking at housing waivers to identifying and exploring how to holistically plan for our clients and their families, recognizing that various legal disciplines may intersect or collide.

UNIFORM POWER OF ATTORNEY ACT

Last year the Elder Law Section worked with Senator Delores Kelley to pass legislation in the Maryland General Assembly Senate chamber to adopt the Uniform Power of Attorney Act, it was very disappointing when the House Judiciary Committee did not pass the house version of the bill out of com-

mittee. We plan to go back to Annapolis this year wiser and more confident in our ability to work with a broad coalition with the goal of building on our success in the Senate.

As Maryland faces one of the most critical times in our history, many will want to discourage us from working to provide a better future for our clients and their families because of financial constraints saying the time is not right. However, as elder law attorneys, we have worked long and hard to advance an agenda of change and we must stand firm. Remembering that in the midst of creating change we will be disappointed sometimes, but if we look back to where we started from, we will be able to encourage each other to continue to fight the good fight - even if they tell us there is no money in the budget!



Karren Pope-Onwukwe
Chair

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Foreclosure in Maryland

By Mary M. Aquino, Esq.

In Maryland and across the nation, the number of homes being foreclosed has skyrocketed due to a number of reasons such as subprime loans, hybrid adjustable rate mortgages (ARM), deceitful mortgage brokers and foreclosure rescue scams. Fortunately for Maryland homeowners a new state law became effective April 3, 2008 which has increased the foreclosure period from about two weeks to at least 90 days after a person has defaulted on their mortgage. This new law applies to all foreclosure actions docketed on or after April 4, 2008 and can be found in the Annotated Code of Maryland, Real Property Article § 7-105 and 3-104.1, 7-105.1 to 7-105.8.

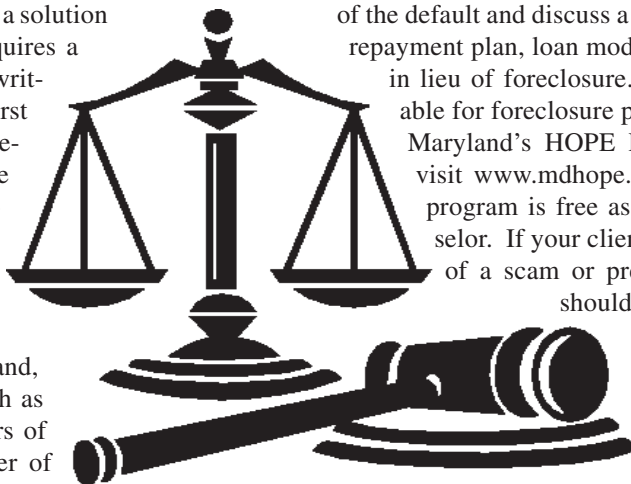
What does this new law do for a client who comes to you for help because they can no longer make their mortgage payment due to losing a job or whose mortgage payments will increase due to a hybrid ARM? The law gives many homeowners more time to find a solution and avoid foreclosure. It requires a lender to send your client a written notice by certified and first class mail of their intent to foreclose at least 45 days before filing a foreclosure action (order to docket) in court. The uniform Notice of Intent to Foreclose, pursuant to Real Property Article, § 7-105.1, Annotated Code of Maryland, must contain information such as the names and phone numbers of the secured party, the servicer of the loan, and an agent who has the authority to modify the terms of the loan as well as the amount required to cure the default and reinstate the loan. The lender must also send a copy of the notice to the Commissioner of Financial Regulation.

The law also requires an order to docket (complaint to foreclose) to include certain information such as a copy of the debt instrument and an affidavit of ownership; the original or a certified copy of the assignment of the mortgage (if applicable); and a uniform Notice to the defendant that the foreclosure action has been filed and complies with the statute.

Once the foreclosure action has been filed in court, the lender must personally serve the homeowner with the order to docket, together with all other papers filed with it and must make at least two good faith attempts at personal service on different days. In addition, the lender must wait another 45 days from the time the defendant was served before the foreclosure sale can occur. During that time period the lender must publish a Notice of Sale for three consecutive weeks in a newspaper of general circulation in the county where the action is pending; send a notice of the date of sale to the homeowner and accept from the homeowner payment to cure the default and stop the foreclosure up to one business day before the sale.

During this 90 day period, your client/homeowner can contact their lender and ask to speak with someone in the Loss Litigation Department to discuss the circumstances of the default and discuss a workout such as forbearance, a repayment plan, loan modification, a short sale or a deed in lieu of foreclosure. There is also free help available for foreclosure prevention assistance by calling Maryland's HOPE Hotline at 1-877-462-7555 or visit www.mdhope.org. One option through this program is free assistance from a housing counselor. If your client feels they have been a victim of a scam or predatory lending practice, they should call the Department of Labor, Licensing and Regulation at 1-888-784-0136.

Another source of information and possible representation by an attorney is the Foreclosure Prevention Pro Bono Project which is coordinated through the Pro Bono Resource Center. Since July, 2008, this project has trained 629 attorneys to help homeowners, at no cost, by providing assistance in one of three ways: 1) direct representation to homeowners, 2) brief assistance and advice to homeowners at foreclosure workshops, 3) serve as of counsel to non-profit housing counseling agencies working with homeowners. If you have a client with a foreclosure issue and you are not sure which way to turn or if you are interested in attending foreclosure training, contact Jennifer Larrabee, the Program Manager, at (410)837-9379.



Visit [www.msba.org/sec comm/sections/elder/](http://www.msba.org/sec_comm/sections/elder/) for all the latest updates!

HR3221's Effect on Reverse Mortgages

By Jessica Keeny

Reverse Mortgage Specialist, JBL Mortgage Network LLC

Reverse mortgages provide a unique opportunity to seniors who are 60 years of age and older. Reverse mortgages give borrowers the ability to convert a portion of their home equity into cash without ever making a monthly payment on the funds borrowed. This provides a tremendous benefit for seniors, many whose wealth is locked into the value of their home. The proceeds of the reverse mortgage are tax-free and there are no restrictions placed on how the funds are used. The home guarantees the loan; thereby, neither seniors nor their heirs are held responsible for the repayment of the loan in the event that the loan balance ever exceeds the value of the property.

The reverse mortgage is a flexible financial tool that allows us to customize the loan so it best fits the needs of the senior. The program is vastly different from years past and now provides the opportunity to seniors as young as 60 years of age. The well-known FHA HECM (Home Equity Conversion Mortgage) allows seniors to access their money as early as age 62.

“Seniors recognize the value of using a reverse mortgage as a tool to access the equity in their homes. Everyone is unique and every reverse mortgage is too. It’s exciting to work with seniors to craft a loan that meets their specific individual situation. My clients have used a reverse mortgage to pay off their existing mortgages and other debts, to make repairs to their home, pay for healthcare, to avoid foreclosure, to assist with their grandchildren’s college education and/or to supplement their retirement income. It’s up to the borrower to use the money as they choose.”

The Housing and Economic Recovery Act of 2008, passed into law on July 30 positively impacts reverse mortgages. HR 3221 makes the following changes to the HECM:

1) A single national loan limit of \$417,000 that can increase up to as much as \$625,500 in high cost ar-

reas. Currently, limits vary by county and range from \$200,160 to \$362,790.

2) Ability to use FHA-insured reverse mortgages to purchase homes.

3) Ability to get a HECM on a co-op property.

4) Reduced origination fees of 2% on the initial \$200,000 of maximum claim amount (lesser of the home value or county lending limit) and 1% on the balance thereafter with a cap of \$6,000. Lenders’ fees are currently capped at 2% of maximum claim amount.

5) Prohibitions on requiring the purchase of annuities and other financial products.

6) Restrictions around cross selling financial products.

7) Requirements on counseling protocols, funding and practices that promote independence and quality in counseling.

The National Reverse Mortgage Lenders Association believes that the changes for points one and two will become effective sometime between November 2008 and January 2009 as HUD’s lawyers have still not resolved whether the bill creates a single national loan limit at \$417,000 or \$625,500, or area limits at 115% of area median home value, with a floor of \$417,000 and a cap of \$625,500. If the lawyers conclude that there is a single national loan limit at either of the two option levels, HUD will be able to implement that fairly quickly, probably with a Mortgage Letter that will take effect 30 days after it’s issued. If the lawyers conclude that the maximum loan limit will be based on the 115% of area median standard, it will take until January 1, 2009 to implement.



Community Medical Assistance for Families

By Lawrence Adashek and Imtiaz Jindani

The Working Families and Small Business Health Coverage Act proposed by Governor O'Malley and passed by the legislature in 2007, went into effect this past July 1, 2008. This Act expands Medical Assistance eligibility for more people through a new program called Medical Assistance for Families. This program will give health care coverage to more families with more benefits than under any other programs currently in place.

Prior to this legislation, Medical Assistance would cover children in families with annual incomes up to three hundred (300%) percent of the Federal Poverty Level (about \$53,000 for a family of three). However, this Medical Assistance coverage did not include the parents or any other adult family members caring for children, unless the parents or other adult family members' annual income was thirty (30%) of the Federal Poverty Level (about \$6,000).

Now, under the recently enacted legislation, parents with dependent children and other family members who care for children with an annual income of one hundred sixteen (116%) percent (about \$20,500 for a family or household of three) may be eligible for Medical Assistance. Therefore more people will be eligible to receive comprehensive health care benefits from Medical Assistance, including coverage for doctor visits, emergency room visits, low-cost or free prescriptions, hospital stays, visits with specialists, x-ray and lab services. Most recipients of Medical Assistance under this new legislation will be required to enroll in Managed Care Organizations through the HealthChoice Program.

The Department of Mental Health and Hygiene (the "Department") has provided an income eligibility chart as shown below. According to the chart, if a household or family's income is below the income limit, the household will likely be eligible to receive Medical Assistance benefits under this program [See **Chart 1**].

Although this chart is used to determine eligibility, the Department has said that these figures are only estimates and that if a household's income is slightly higher that household is encouraged to apply as they may be considered eligible to receive benefits after going through the application process.

The Department has shortened the application process for this program to make the process easier for the applicants. The application is shorter. There is no asset limit. The Department is not requiring a face-to-face interview. Applicants have the option to apply online, by mail, by fax, or directly with local health departments. Along with general information about the household (i.e. names, social security numbers, address, and telephone numbers), proof of citizenship of all applying family members is required. Applicants are also required to disclose on other health insurance coverage as well as information on any child care expenses.

More information as well as the application can be found on the Department of Mental Health and Hygiene's website at <http://dhmh.state.md.us/ma4families/index.html>. Also, the Medical Assistance Hotline, 1-800-456-8900, is available to answer any questions and provide more information if needed.

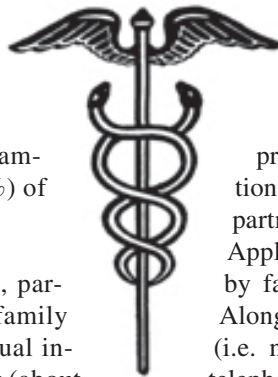


Chart 1

Household Size	Monthly Income Limit	Annual Income Limit
1	\$1,008	\$12,100
2	\$1,358	\$16,300
3	\$1,708	\$20,500
4	\$2,050	\$24,600
5	\$2,400	\$28,800
6	\$2,750	\$33,000
7	\$3,092	\$37,100
8	\$3,442	\$41,300

Karsenty, et. al. v. Schoukroun

By Benjamin Woolery

The Court of Appeals heard argument September 5th in the “Schoukroun” case, captioned there as Karsenty, et al. v. Schoukroun after Kathleen Schoukroun succeeded at the Court of Special Appeals in having the trial court reversed. With that said, what’s the case all about and what does it mean?

As Elder Law practitioners, we will have clients remarry (as the now-deceased Gilles Schoukroun did) without a Prenuptial Agreement to clarify what the new spouse can expect in terms of assets as compared to his children and spouse of the prior marriage. Gilles Schoukroun, instead, got married to the second Mrs. Schoukroun, Kathleen, without addressing these issues. Before widowing his second wife (Kathleen), however, he created in June 2004 a Will as well as a Trust to protect his assets of about \$500,000.00, with the Will “pouring over” into the Trust any assets he died possessed of – he was the sole Trustee of the Trust so long as he was alive, he retained full power to “amend or terminate” the trusts, and the Trust was the designated Payee for over \$400,000.00 in Transfer On Death accounts.

The circuit court judge ruled against the widow’s claim for an Elective Share to one-third of his half-million-dollar estate because only \$33,000.00 was in probate and Knell v. Price from 1990 (318 Md. 501) did not control this revocable trust case, although that trial judge included in the oral holding “If I’m wrong in that, it should be very easy to reverse me.”

Judge Murphy did just that for a three-judge panel of the Court of Special Appeals in a reported opinion filed December 11, 2007, the day before his promotion to the Court of Appeals – he was not among the seven judges at argument September 5th. Having been an observer in the gallery, it is hard to be sure how the high court will rule (it merits mentioning that during the more searching moments between the Court and counsel, no mention was made of Prenuptial Agreements even though they discussed irrevocable trusts, ‘marital property awards,’ and simple outright transfers without strings attached to frustrate the widowed spouse). It is also hard to conceive of how the high court can create a clearer rule for practitioners than what Knell v. Price gives us: a property owner cannot put an otherwise accessible asset beyond the reach of his spouse (or creditors, for that matter) if he’s maintained absolute control over the accessible asset through to the moment of his eventual death (in Judge Murphy’s words here, “Mr. Schoukroun’s decision to retain the power to revoke the Trust requires that the assets of the Trust be included in his estate for purposes of calculating Kathleen’s statutory share,” and “the deceased spouse’s TOD transfers were not complete, absolute, and unconditional.”).

The high court’s opinion may be a watershed case impacting ‘augmented estates’ and the like, but it is more likely that we will see affirmation of the Knell v. Price “control” principles.

MICPEL Update

Save the Dates:

Veterans Benefits (3 hour CLE course)

December 12, 2008

Life Care Planning

(Legal, Financial, and Social Challenges)

January 23, 2009

Medicaid Eligibility Update

March 4, 2009

Housing Issues and Options for Elderly and Disabled Individuals

April 2009

Elder Law Evening Series

4/23, 4/30, 5/7, 5/14, 5/21, & 5/28

Hot Topics in Elder Law

June 25, 2009

Emergency Guardianships

By Angela Grau

Attorneys often need immediate strategies when faced with incapacitated clients who are in danger. What remedies are available under Maryland law to protect clients on an emergency basis?

The definition of “emergency,” in the context of a guardianship, is that “a person is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others.” *Maryland Estates & Trusts Code Annotated* § 13-101(f). In the case of such an emergency, and upon petition by an interested person, a court may authorize the provision of protective services, including the appointment of a temporary guardian of the person, after a finding on the record, by clear and convincing evidence, that the person meets the statutory definition of incapacity found in *Maryland Estates & Trusts Code Annotated* §13-705(b), and that no one, who is authorized by law or court order to give consent for the person, is available to consent to the provision of emergency services. See *Maryland Estates & Trusts Code Annotated* §13-709.

Notice of the filing of a petition for emergency protective services shall be given, as required in the Maryland Rules, and to the director of the local department of social services in the political subdivision where the adult requiring protective services lives, at least 24 hours prior to the hearing for emergency intervention. The court may waive the 24-hour notice requirement upon a showing that (1) immediate and reasonably foreseeable physical harm to the person or others will result from the 24-hour delay, and (2) reasonable attempts have been made to give such notice.

In issuing an emergency order, the court can only order

such protective services as are necessary to remove the conditions creating the emergency, and must specifically designate the approved services in its emergency order. Further, the court shall issue for the record a statement of its findings in support of any order for emergency protective services. The emergency order cannot include hospitalization or a change of residence, unless the court specifically finds such action is necessary. Emergency protective services may be provided under an initial emergency order for not more than 144 hours (6 days). However, this time period may be renewed upon petition of the temporary guardian, filed before the expiration of the initial six-day period, after a showing that the emergency conditions found to exist will probably continue beyond the expiration of the extended emergency order. Such a petition shall be accompanied by a petition for appointment of a (permanent) guardian of the person pursuant to *Maryland Estates & Trusts Code Annotated* §13-705.

Similarly, the court may enter an emergency order to preserve and apply the property of an alleged disabled person or minor as may be required. See *Maryland Estates & Trusts Code Annotated* §13-203. An emergency, temporary guardianship of the property may only be granted while a petition for appointment of a guardian or other protective order is pending after a showing is made, under affidavit, that immediate, substantial, and irreparable injury will result to the applicant or to the minor or disabled person before an adversary hearing can be held. The court need not give notice to other persons prior to entering an emergency order regarding property, and the court may communicate informally with the minor or disabled person prior to taking action.



Representing Clients Before the Department of Veterans Affairs (VA)

Friday, December 12, 2008

9:00 a.m. – 1:00 p.m.

Ecker Business Training Center

6751 Columbia Gateway Drive, Columbia, MD

For more information on “Representing Your Client Before The Department of Veterans Affairs” contact MICPEL at 410-659-6730 or e-mail us at info@micpel.edu.

MICPEL, the MSBA Section of Elder Law, and the MSBA Military Law Committee, in cooperation with the University of Maryland School of Law and the University of Baltimore School of Law, have joined forces to present “Representing Clients Before the Department of Veterans Affairs”. The program will be presented on Friday, December 12, 2008 in Columbia at the Ecker Business Training Center.

The Code of Federal Regulations requires attorneys who are accredited by the VA to represent clients in benefit claims and appeals cases, to complete three hours of continuing legal education (CLE) within their first year of accreditation, then no later than three years from the date of accreditation, and then every two years thereafter. “Representing Clients Before the Department of Veterans Affairs” will meet all the statutory requirements for the CLE to be approved by the VA. You must be accredited by the VA to attend this training. Accreditation forms and instructions may be obtained by going to <http://www.va.gov/ogc/accreditation.asp>.

Attend “Representing Clients Before the Department of Veterans Affairs” and you will learn about the structure and organization of the VA, details of the claims procedure, including initial claims, claims to reopen old claims, and rating increases at the Regional Offices. General eligibility requirements will be updated, as will rights to appeal, and the process for securing disability compensation, dependency and indemnity compensation and pensions. Join nationally known veteran’s law expert Michael Taub, Director of the Veterans Project at the Homeless Advocacy Project in Philadelphia for this session, and you will leave with a clear understanding of VA benefit programs and substantive law, as well as practical tips for navigating the VA procedures.

Seminar Highlights:

Structure and Organization of the VA

- Representation Before the VA to Include:
- ♦ Claim Procedures for Initial Claims, Claims to Reopen Old Claims, and Rating Increases at the Regional Office
 - ♦ The Appeals Process B DROs, the BVA and the Courts
 - ♦ VA Healthcare

General Eligibility Requirements for VA Benefits

- ♦ Discharges Honorable vs. Other Than Honorable
- ♦ Discharge Upgrades
- ♦ Alternatives to Upgrades

Income Limitations

- ♦ Overpayments and Debts

Service-Connected Benefits (Compensation)

- ♦ Background
- ♦ Elements of a Claim
- ♦ PTSD Claims: Combat vs. Non-Combat, MST
- ♦ Alternative Theories on Service-Connection
- ♦ Total Disability Based on Unemployability (TDIU)
- ♦ Dependency and Indemnity Compensation
- ♦ Income Limitations and Effective Dates

Non-Service Connected Benefits (Pension)

- Elements of the Claim
- ♦ Length of Service Requirements
 - ♦ Total and Permanent Disability

Moving from Pension to Compensation

- ♦ Focus on PTSD Claims

Tuition for the program is \$209 for Members of the MSBA Elder Law and Young Lawyers Sections and the Military Law Committee. Tuition is \$229 for MSBA Members.

Attendees receive four (4) hours of lecture and discussion, written materials, a continental breakfast and a 15% discount on all MICPEL publications purchased on the day of the program.

We hope to see you in Columbia on December 12th!

Highlights of the 2008 General Assembly

By Morris Klein

THE GENERAL ASSEMBLY BEGAN ITS REGULAR SESSION last January in the wake of a special session that raised taxes in response to a budget shortfall. This left the legislature in a stingy mood, and most bills that came with a fiscal note (meaning that the legislation would require the spending of state money) did not become law. The General Assembly's parsimony was in fact ahead of the curve, as the stock market crash later in the year signaled the need for further spending reductions and budget cuts.

Here are the highlights:

1. HB 40/ SB 344 (Chapter 644) Authorizing employees of specified employers to use leave with pay for the illness of the employee's immediate family; providing that an employee may only use leave with pay that has been earned; providing that an employee who earns more than one type of leave with pay may elect the type and amount of leave with pay to be used; requiring an employee who uses leave with pay under the Act to comply with the terms of a collective bargaining agreement or employment policy with a specified exception.

2. HB 1452 / SB 682 (Chapter 614) Requiring the Department of Health and Mental Hygiene and the Department of Human Resources to develop a plan related to the determination of eligibility for Medical Assistance Program long-term care services; to include a plan to transfer caseworkers to the Department of Health and Mental Hygiene from the Department of Human Resources.

3. HB 733/ SB 566 (Chapter 590) Requiring health care facilities to allow domestic partners and specified relatives of domestic partners to visit a domestic partner at the facility; requiring two adults to be treated as domestic partners under specified circumstances related to medical emergencies.

4. SB 597 (Chapter 599) Exempting from recordation tax and State and county transfer taxes instruments of writing transferring property between domestic partners and former domestic partners under specified circumstances.

5. HB 510 (Chapter 79) Establishing, for purposes of the Health Care Decisions Act, that an electron-

ic signature shall have the same effect as a manual signature, if the electronic signature meets specified requirements; authorizing a competent individual to make an electronic advance directive; authorizing an advance directive to be revoked electronically.

6. HB 1351 (Chapter 690) Requiring continuing care retirement community providers to submit non-individually identifiable information about grievances to the Department of Aging and to the Health Education and Advocacy Unit in the Office of the Attorney General; information includes the number of grievances, a summary of each complaint and action taken.

7. HB 29 (Chapter 632) / SB 918 (Chapter 631) Prohibiting a carrier or insurance producer of a carrier that provides long-term care insurance from requesting or requiring a genetic test or from using a genetic test, the results of a genetic test, genetic information, or a request for genetic services to take specified actions with regard to long-term care insurance but providing for an exception if the use is based on sound actuarial principles.

8. HB 1584 / SB 545 (Chapter 589) Transferring certain funds from the Rate Stabilization Account of the Maryland Health Care Provider Rate Stabilization Fund to Medical Assistance, permitting a liberalization in the standards for the Medicaid medical level of care.

Note: Go to the General Assembly's web site for details on these bills and all other legislation: <http://mlis.state.md.us/>

Any Ideas?

Please contact the editor, Nicole Livingston, at Nicole@sinclairprosserlaw.com for article suggestions and member news for the next newsletter.



A Paralegal's Perspective

By Greg Wierenga

As the Final Signing Paralegal of Annapolis-based law firm SinclairProsser Law, I work closely with many clients in helping them to establish and finalize their estate plans. These range from straightforward wills or revocable trusts granting everything to a client's children to complex, advanced forms of planning to accommodate beneficiaries with special needs or Trustors seeking to distance themselves from their assets to qualify for Medicaid. There's a great deal of variety, but despite this legal diversity, there is one common thread that unifies our client base: that of their age.

I would estimate the average age of our clients to be somewhere in their 60s when they first set up a comprehensive estate plan. The youngest people I've signed a will or a trust with were in their 30s, and the oldest have been in their 90s. The latter are more common than the former.

A document-signing and review typically takes about an hour-and-a-half, and my discussions with a client or clients in that time ranges from the professional to the personal, and is often very revealing as to what constitutes a client's chief concerns. As such, I feel that I am in a unique position to discuss the issues that seem to most weigh on the minds of our firm's older clients as they attempt to "get [their] ducks in a row", as one gentleman with whom I recently met put it. There are 3 such issues in particular that stand out.

1) Obviously of paramount concern to our elder clients is the financial well-being of their descendants. The descendants in question, though, are often not merely—or even not primarily—the clients' children, but also the clients' grandchildren. It's very common for our clients to include cash provisions for the education or comfort of their grandchildren in their planning, and there's no one else they're happier to discuss.

2) Another of the main concerns of our elderly clients is the protection of their estate from nursing home expenses if they should require extended care. A common misconception of our clients is that a revocable trust will accomplish this (the other major misconception about our revocable trusts being that they will shield the Trustors from lawsuits; they will not). The concern about nursing home expenses is usually rooted in personal experience: sadly, many of the older clients we meet with have already seen this happen to one degree or another with their friends and/or family.

3) The final—and most common—concern that we run across relates to Health Care. In no other area do we encounter anywhere near as many horror stories. There is scarcely a client who crosses our threshold who does not claim knowledge of some terrible set of circumstances where a loved one's health care wishes weren't followed, or their life was terminated too soon, or doctor error contributed to death ... Almost without fail, there are strong feelings on the subject, which often makes it difficult to get a client to finalize a Living Will. One worry is that doctors—seeing the Living Will—will end life prematurely. The section on whether or not to be an Organ Donor is often of particular concern, the fear being that a choice of "yes" means that doctors will allow a patient to pass away in order to harvest the organs. On occasion, our clients will ask to take one of our Living Will Directive worksheets home so that they can think about it a little more, with the understanding that they can call us when they've decided and we'll draw up the document for them at that time. Very rarely do we ever hear from such clients on the matter again. The establishment of a Health Care Plan is approached very gravely and carefully, and even elderly clients who seem to have no problem with it at signing will cite it as having been the hardest part of the process for them from a decision-making standpoint.

Our older clients are, in the vast majority of cases, a pleasure with which to work; calm, settled, and comfortable with delegating, they've been around the block a few times and are far less likely than many of our younger clients to want to micro-manage our forms and procedures. This isn't to say that issues never arise, but as the presenter at the final meeting, I have the advantage of having to sell a product that—at that point—has really pretty much already been sold.

Of course, there are as many situations in Elder Law as there are elderly people, and the above list can in no way take into account even a fraction of the applicable issues that we or any business that services the elderly will encounter. However, based on this paralegal's perspective, a keen eye trained to the aforementioned issues would surely be of value to any such business, from the perspective of either marketing or simply creating a comfortable vibe and providing good service for an elderly client base.

Elder Law Section Meeting

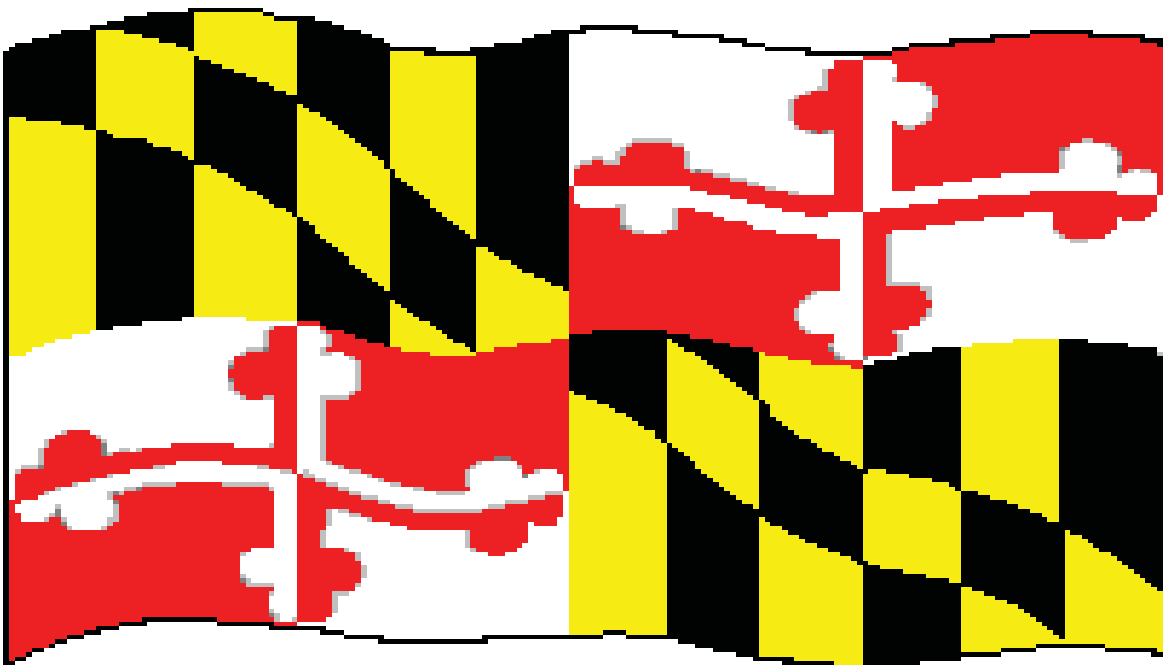
EXTRA



On February 17, 2009 we will have our section meeting in Annapolis, Maryland at the Miller Senate Office Building from 11:00 - 1:00 pm. Lunch will be provided.

Section members should RSVP to kpopeatty@msn.com so that we may make appropriate arrangements.

Our sponsor for the day is **Senator Delores Kelley** and our speaker will be **Maryland Secretary of Aging Gloria Lawlah**.



NAELA UPDATE

NAELA is a non-profit organization of over 5,000 attorneys nationwide who practice in a variety of areas impacting the growing elderly population and persons with disabilities. Items of note:

1. The next meeting of the MD/DC Chapter of the National Academy of Elder Law Attorneys will be held over breakfast at 8:30 a.m. on November 19, 2008 at Heartlands Assisted Living, 3004 North Ridge Road, Ellicott City, MD 21043. Our speaker will be Brian Lindberg, NAELA Public Policy Consultant, who will review recent election results and their impact on our practice and our clients. Contact Jacqueline Byrd, Esquire, at 301-464-7448 or jbyrd@byrdandbyrd.com for a reservation. MSBA members are invited.
2. NAELA held an Advanced Elder Law Institute in late October in Kansas City, Missouri. The keynote speaker, Stephen Kiernan, from the perspective of an investigative reporter, had recently published a book entitled "Last Rights, Rescuing the End of Life from the Medical System." He spoke quite eloquently on his vision to reclaim the dying process from the current medical model of aggressive treatment to a more peaceful transition. Modern medicine has rendered most instances of 'sudden death' from stroke, heart attack, and the like things of the past. Dealing well with long, lingering illnesses requires a paradigm shift within the medical profession and related fields. He concluded with an outline of action items to accomplish this goal.
3. NAELA offices are moving to Washington, D.C. this winter, to be closer to the legislative and administrative bodies which so greatly impact the quality of life of our senior clients and those with disabilities and their families.
4. The NAELA MD/DC Chapter filed an amicus brief in the Brown v. DHMH case in the Court of Special Appeals and the Court of Appeals. Chapter members Ron Landsman, Jason Frank and Morris Klein worked on the briefs pro bono. The decision by the Maryland Court of Appeals affirmed, in one sentence, the Court of Special Appeals ruling which will require the State of Maryland to follow federal 'level of care' regulations in administering Medical Assistance benefits to seniors, rather than the more restrictive Maryland regulations in use for the past several years."

ELDER LAW SECTION
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