Bifocal

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Coronavirus Special Edition

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5 Tips to Help Elder Law Practitioners in the Age of the Coronavirus

By Rajiv Nagaich

In the midst of the coronavirus pandemic, many people who had not created basic estate plans such as wills, powers of attorney, and advance directives are now desperately seeking to set up these documents. As officials currently demand social distancing and sheltering in place to stem the spread of the virus, in-person signings of estate planning documents have become a profound and often prohibitive safety issue, especially for older adults.

Having had more than a few calls from individuals in this situation, I felt that as a member of the legal community, we needed to be able to address this issue. All attorneys at our Washington State firm felt that we must help people have the ability to nominate surrogates to protect them from facing an uncertain future in these perilous times.

Researching and viewing this as a civil rights issue, we at Life Point Law believe current Washington State law does authorize the solution—one that many elder law attorneys have used in the past. I thought it was appropriate to share this in case you were thinking along the same lines in helping people who need us at this time. Here is the solution we implemented in our firm:

RCW 11.12.020 (Requisites of wills-Foreign wills) provides that a person other than, and in lieu of, the testator may sign testator’s will so long as that person acts: (1) “under testator’s direction” and (2) “in the testator’s presence.”

Similarly, witnesses may attest to the will via compliant affidavit signed “in the presence of the testator and at the testator’s direction or request.”

The statutory purpose of these minimal formality requirements is “to ensure that the testator has a definite and complete intention to dispose of his or her property and to prevent, as far as possible, fraud, perjury, mistake and the chance of one instrument being substituted for another.” In re Estate of Malloy , 134 Wn.2d 316, 322-23 (1998)(citing PAGE ON WILLS § 19.4, at 66.); see also In re Estate of Meeks, 421 P.3d 963 (Wn. App. 2018).

Does RCW 11.12.020 potentially permit a client to direct her lawyer and witnesses via video conference to sign and attest her will?

If so, community members could remain safely at home while we address their urgent estate planning needs. Though it would make a case of first impression and is the product of exigent circumstances, the answer is likely yes. The key issue is whether a video conference meets the statutory requirement for the signer of the will to be “in the testator’s presence.” In other words, does “presence” extend beyond physical proximity to include the virtual?

In other contexts, Washington authorities permit video conferencing as means to satisfy “presence” requirements. See, e.g., CrR 3.4(d)(1) Presence of Defendant, Video Conference Proceedings, Authorization (“Such [video conference] proceedings shall be deemed held in open court and in the defendant’s presence for the purposes of any statute, court rule or policy.”) [Emphasis added]; see also RCW 23B.07.080(3) Shareholder participation by means of communication equipment (“Participation in a meeting in accordance with this section constitutes presence in person at that meeting.”) [emphasis added]). Third-party video-conference signing is consonant with the statutory purpose of RCW 11.12.020 to ensure testator has a definite and complete intention. In re Estate of Malloy , 134 Wn.2d at 322-23.

Safety Concerns

Of particular relevance to the current crisis, federal courts have specifically recognized safety concerns that may render video conferencing an appropriate means to ensure “presence.” United States v. Baker, 45 F.3d 837, 847 (4th Cir. 1995) (holding that videoconferencing constitutes sufficient “presence” where “safety concerns inherent in transporting a potential mentally unstable person...are substantially alleviated by the use of the video conferencing procedure.”); see also Fed. R. Crim. P. 43(b) (2).

Practically speaking, we believe this is the best exigent solution for the present crisis. Once the pandemic passes, clients should come in and redo their documents in accordance with standard formalities. If a client passed during the crisis and the will is subsequently challenged on these grounds, we are optimistic a court would uphold it given the safety considerations driving it.

How to Implement Video-Conference Will Signing and Attestation

At a minimum, you should take the following steps:

- Signature block in conformance with RCW 11.12.030 RCW 11.12.030 requires: “Every person who shall sign the testator’s or testatrix’s name to any will by his or her direction shall subscribe his or her own name to such will and state that he or she subscribed the testator’s name at his or her request[,]” (Emphasis added)
- Witness affidavits in conformance with RCW 11.20.020(2)
• Ensure testator presents official identification, e.g., driver’s license or passport
• Video and audio should be of sufficient quality to ensure participants are easily seen and understood
• Video conference recorded and preserved

In these extraordinary times, the legal community is uniquely positioned to address and alleviate the anxiety of community members about the future. We must act boldly to serve our community in creative ways within the safety parameters that are in force now and likely in the near future. We urge everyone to embrace video conference will-signing and attestation as the best exigent solution for the present crisis.

I hope you will join us in aiding those who need help at this critical time. It is how we can do our part in this national crisis. People should be able to look to the elder law community for answers to this very vexing issue.

About the Author

Rajiv Nagaich is an elder law attorney in the Seattle area and a fellow of the National Academy of Elder Law Attorneys.

Economic Stimulus Payments Explained

By David Godfrey, senior attorney, ABA Commission on Law and Aging

The “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act,” authorizes economic stimulus payments of up to $1,200 to most Americans to replace lost earnings as a result of actions taken to slow the spread of COVID-19, and to stimulate economic activity. Up to $1,200 will go out (or has gone out) to adults 18 and over—with a payment of $500 per child to the parents of children from birth through 16. To receive payment the person must have a Social Security number.

The payments phase out for persons with income above $75,000 or $150,000 for married couples who file joint tax returns, at the rate of $5 for every $100 in adjusted gross income over that income limit. The payments are being made based on the adjusted gross income on 2018 or 2019 tax returns. The payments are actually a refundable tax credit for the 2020 tax year. If people receive a reduced payment based on the 2018 or 2019 adjusted gross income, but their 2020 adjusted gross income is less than what the payment was based on, they can claim the balance of the credit when calculating 2020 tax liability. (This article, published in the April edition of Voice of Experience by the ABA Senior Lawyers Division, has been updated to reflect new developments.)

Most will receive payments by direct deposit to the banking information on 2018 or 2019 tax returns, or on file for direct deposit of federal benefits payments such as Social Security. The IRS will use Tax Form 1099s from Social Security and other federal benefits to identify those eligible for payments.

This will still leave out a small number of people who do not file tax returns or are not listed as a dependent on another person’s tax return, such as children of Social Security or SSI recipients. The IRS created an online reporting tool for these persons, but placed short deadlines on the use of the tools that will have passed before this article is published. Advocates are urging extending those deadlines in an effort to get these stimulus payments into the hands of families with great needs. The advice from the IRS is that persons who are eligible but do not receive payments will be able to file a 2020 tax return in early 2021 asking for a refund (the payment is technically a refundable tax credit against 2020 tax liability). Bottom line: Some people who don’t typically file tax returns will need to do so for the 2020 tax year to receive their stimulus payment. We will need to remind people of this in January 2021.

For persons on means-tested benefits such as SSI, Medicaid, or federal income-based housing assistance, the payments will not count as income in the month received and will not be counted as a resource for 12 months. The takeaway: Recipients must spend the payment on their needs within a year.

ABA Tax Section is Here to Help You

As a response to the COVID-19 crisis, the CARES Act directs the IRS to issue Economic Impact Payments (EIPs) to eligible individuals, married couples, and families with children. The American Bar Association Tax Section offers information to help promote the availability of these payments, especially for those who assist lower-income clients, non-filers, and other vulnerable populations, and to warn against scams.

Please see the ABA Tax Section’s information and share widely with your colleagues and networks.

1. I have not been able to find an explanation of why persons age 17 were left out.
2. For example, if a person worked in 2019, but retired or lost a job in 2020, and the AGI is reduced in 2020, the balance of the credit will apply to the 2020 tax liability or increase the amount of a refund.
Working Remotely? Legal Delivery Tools You Need Now

By Hilary Dalin, Sarah Galvan and Liz Keith

The COVID-19 pandemic has upended many aspects of daily life, with shelter-in-place orders or some degree of physical distancing. This health emergency has affected individuals of all ages, but older adults and people with compromised immune systems are particularly at high risk if exposed to COVID-19. Additionally, older adult populations that were already marginalized have been predominantly affected by the health and economic impacts of the pandemic: low-income individuals, people of color, and those residing in long-term care facilities.¹ The need for legal help has not ceased, and legal providers even expect growth in certain practice areas such as housing, access to nutrition and health care, income, and elder abuse and neglect.

In early to mid-March legal aid shifted with remarkable speed and ingenuity to remote legal work to meet the needs of older adults and ensure continuity of services. This temporary change has been important for the health and safety of both clients and staff. While we are fortunate to live in a time when technology tools are widely available to assist with remote legal work, many legal providers have had to make the shift to remote work quickly, and are continuously working to make this change in service delivery as efficient and accessible as possible. Knowledge of the tools available and how to access them will be key to successful delivery of legal services during the pandemic. There are many lessons to be learned that can continue to inform legal assistance practice even after the public health crisis abates and preferred in-person attorney-client relationships again become more readily available.

Tech tools

Successful remote legal work requires access to communication tools, files, important documents, case management systems, and tools to support video or phone-based meetings. Technology tools can also be used to enhance existing phone-based services and streamline the workflow of legal staff. Some attorneys and support staff may be more comfortable with technology than others. For providers who need more training on using technology tools, the [Legal Services National Technology Assistance Project](https://www.lsn.org/) and [Tech Soup](https://www.technetcollective.org/) have libraries of trainings on basic topics, including using Microsoft Office. For larger offices, it may make sense to conduct an internal survey of staff to determine what tools individuals have access to at home and what hardware and software needs exist.

When using technology tools for remote work, privacy and security must be considered. [SANS Security Awareness](https://www.sans.org/) has resources available for creating a secure remote workforce. [Technology Safety](https://www.techsafety.org/) also has resources to help programs evaluate the security and privacy features of many technology tools, and offers a [chart for comparison of video conferencing tools](https://www.techsoup.org/factsheets/chart-video-conferencing-tools). Attorneys and staff should update (or install) anti-virus, anti-malware and firewall software on the equipment they are using for remote work.

This article shares examples and suggestions for current available technology tools, but these lists are not exhaustive and do not serve as an endorsement of any particular company or solution. Individual legal providers should evaluate their own needs before utilizing a tool and consider other factors, such as staff and client preferences, cost and compatibility with existing programs.

Getting connected

Access to internet is necessary for many of the technology tools that are highlighted in this article. Some service providers are offering discounted access for new customers, expanding special programs for low-income customers, and boosting speeds on low cost plans. These options will vary by location.

Legal providers can also consider purchasing hotspots (and/or cell phones with a plan that includes using it for a hotspot) to provide their staff with connectivity. [Mobile Beacon](https://www.mobilebeacon.org/) and [Tech Soup](https://www.technetcollective.org/) are potential sources for affordable hotspot devices when stock is available.

In addition to staff connectivity, legal providers may benefit from generating a list of connectivity resources for clients and potential clients. Some older adults with limited means may not have access to broadband services but could benefit from.

¹ Justice in Aging, Urgent Needs of Low-Income Older Adults During COVID-19 Crisis. (April 2020)
the discounted offers from providers during this time. This can expand the tools that you can use when interacting with clients.

**Phone services**

In this time of physical distancing, phone services are a critical component of continued operations for legal providers. For full service legal providers, phone service will be needed for intake and ongoing client interactions. Legal helplines that utilize phone-based service models will need to continue operations including brief service and referrals to other providers.

While legal staff may have personal phones available, concerns may exist about privacy and compensation for utilization of personal phones. Programs will also want to have the continuity of phone numbers that clients and the community are familiar with and receive from referral sources. Some options for continuing phone service remotely include:

- **VoIP (Voice over Internet Protocol):** VoIP can allow you to make a call directly from a computer, a specific VoIP phone, or a traditional phone connected to a particular adapter.²
- **Call-forwarding:** Redirect calls from an office number to ring at another number. This may be available from your current phone system, or you may wish to explore other options such as the examples below.
- **Vonage:** Currently offering 90 days of free services to help with business continuity, including voice & text messaging (SMS).
- **Google Voice:** Utilizes smartphones and internet to place and receive calls from anywhere.
- **RingCentral Office:** Can provide a business cloud-based telephone system, video meetings, team messaging, faxing and SMS. Currently, it is available to nonprofits for free for three months.
- **TalkRoute:** Offers a trial period, and provides a virtual phone system to make & receive calls from computers or smartphones.
- **Amazon Connect:** Creates a virtual contact center.

For example, a legal assistance provider with a statewide service area may find itself suddenly needing to set up a large number of staff members on a centralized phone and messaging system in order to continue to operate intake and a hotline. Using staff personal phone numbers and phones would not be ideal due to the limitations of service, possible confusion with new phone numbers, and lack of multiple line options. A service like RingCentral can be set up quickly, using existing office phone numbers so that on the client end, access points continue as usual.

Internal meetings

Legal assistance providers will want to continue collaborative efforts within their offices to both effectively share strategies for client services and provide office updates and information. Case management systems may have options for managing workflow associated with individual client cases. Some of these capabilities may not have been used before but could be helpful in this time. Your individual case management company’s website would be a good place to start to see what options may be available and how to set it up.

Additional programs are available for virtual office meetings and collaborative conversations, such as:

- **Microsoft Teams:** Integrated with Office 365, and can be used for meeting, calls, and collaboration.
- **Slack:** Helps organize communication channels for group discussions or one-to-one messaging. Currently offers a three month free trial for nonprofits.
- **Basecamp:** Online project management platform (document sharing, messaging boards, etc.)
- **Zoom:** For video conferencing. Offers a limited free version and a nonprofit discount.
- **Google Meet:** A service for business meetings and is now free for everyone.
- **LogMeln:** Offers nonprofits with free, organization-wide use of many products such as GoToMeeting for three months through its “Emergency Remote Work Kit.”
- **Gruveo:** One-click video conferencing. Offers a 45-day extended trial period.

**Document sharing tools**

The practice of law requires sharing documents between the attorney and client, often from the beginning to the end of representation. For example, an older adult may call a legal provider for assistance with a Social Security overpayment. From the start, the attorney may need to get a retainer agreement to the client and also get a copy of the notice of overpayment from the client. Without the option to have an initial in-person meeting, the representation would potentially start much more slowly, as the document exchange would have to rely on mailing documents back and forth.

However, there are options for remote scanning and e-signatures that can help in these situations. Even for staff and clients who have limited technology at home and lack a traditional printer and scanner, phone or tablet apps can facilitate a similar function. Some options for scanning include Microsoft Office Lens, ClearScanner App, Scanner Pro App, Adobe Scan App and the iPhone Notes App. E-signature tools include programs like SignRequest, DocuSign, Adobe Sign, Sign Now, and HelloSign and Dropbox.

Legal providers can also consider using a secure and HIPAA compliant mailing service, such as Postal Methods, which generates a mailed letter by uploading or emailing a document. There are even options for the inclusion of a pre-paid envelope for the client to mail documents back. This type of service can streamline office mailing operations during this time of remote service, and offer an option for clients who do not have smartphones or tablets.

For documents that require notarization, legal providers can look at remote online notarization options in their individual state. Some states already permitted remote online notarization, and others have issued emergency orders to allow it during the pandemic. The National Notary Association has some state information on their website. Unfortunately, some clients may not be able to participate in remote online notarization if they do not have a technology tool with video

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capability. For these situations, legal providers may need to explore options for notary services that exist in places where clients are going during physical distancing, such as grocery stores, or, for urgent matters, take steps to witness signatures through the window of a client’s home or residence.

Getting the word out

As legal assistance providers continue operations remotely, it is important that the community and partners are aware that legal assistance is still available to older adults and how it can be accessed. Some suggestions for distributing this information include:

- Prominent website banner in plain language
- Inform partners of changes to services and availability
- Press release
- Inform constituent services staff for elected officials
- Social media
- Information at grocery stores and pharmacies with special hours for older adults (AARP is maintaining an extensive list) and/or ask these stores to include a flyer with delivery services

Any materials that are being distributed to the public will benefit from being adapted to plain language and translated into additional languages. You can connect with other local community organizations to find out about translation options in your community. Positive messaging that emphasizes the services that are available, and that offers help and a path forward, can help reinforce the vital role of legal support for older adults during a turbulent time.

Also important is continued collaboration with the aging and social services community. While nutrition services, protective services and long-term care ombudsmen may be working differently at this time, all are present in the community in some capacity, especially with the renewed support awarded by the Administration for Community Living pursuant to the CARES Act. They can partner in identifying individuals experiencing problems with legal solutions, and can assist with referrals, document sharing, and communicating with clients who may lack access to otherwise available electronic, internet and phone channels.

Post-pandemic considerations

Even as the spread of the virus slows and restrictions begin to lift, some clients and legal staff who are at high-risk if exposed to COVID-19 will want to continue to practice physical distancing. Legal providers can serve the role of facilitating these practices by keeping some of these remote service options available for individuals who need them, and make it known that these options remain in place as preferred. Additionally, providers can advocate for clients and staff for whom court appearances may put their health in jeopardy, by requesting continuances and telephone or video appearances.

As moratoriums on evictions and foreclosures lift, legal providers are likely to see a surge in housing and income-related cases. Issues will continue to arise with access to income, health care, and food through public benefits programs such as Medicare, Medicaid, and SNAP. Additionally, issues related to the rights of nursing home residents, receipt of stimulus payments, and unemployment insurance may be expected. Older adults and others who may have been sheltering in place with an abuser may start seeking legal help once shelter orders are lifted. The tools and workflows that legal providers are putting in place now for remote work may be helpful in responding to this expected increase in demand for legal services.

The COVID-19 pandemic has called on us to reflect on how we can think about access to justice as we move ahead. The shift to remote legal services is a necessary one right now, but gives us the opportunity to evaluate ways that we can continue to make the entry points and delivery of legal help more widely available to the people who need it the most.

Additional Resources:

ACL & NCLER: Legal Assistance for Older Americans & COVID-19
Administration for Community Living: COVID-19 Tech Soup: Non-Profit Resources for Remote Work During the COVID-19 Outbreak
Prepare.Respond.SERVE.
Legal Services National Technology Assistance Project
LawHelp Interactive
Management Information Exchange: COVID-19 Resources

About the Authors:

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Liz Keith is a program director at Pro Bono Net.
The coronavirus pandemic, barreling across the U.S., highlights the dire need for estate planning and advance care planning documents to enter the digital world.

Rajiv Nagaich’s excellent analysis on this issue, which makes the case that Washington State law can and should be interpreted to allow remote witnessing of estate planning documents, points to the need to bring the entire range of personal and estate planning documents into the digital age. He creatively uses a state law option that allows the signing of a will by a third person at the direction of the testator and in the testator’s presence. Many states provide a similar option for health care advance directives. He also takes an expansive view of “presence” to enable remote signing by a third person who is visually and auditorily connected in real time.

We have become accustomed to being present with others through countless audio-visual technologies that now pervade our daily lives. The presence required of witnesses and notaries can be accomplished with similar technology and made as secure and accountable as physical presence. However, the laws regulating the validity of estate and personal planning documents are mired in the legal framework of the last century. Business and commerce have adapted well to electronic documents and digital signatures for quite some time under the federal Electronic Signatures in Global and National Commerce Act of 2000 (E-sign Act), and under state laws that conform to Uniform Electronic Transactions Act of 1999. But these statutes do not change any laws governing the creation and execution of wills, codicils, or testamentary trusts.

State advance directive laws

Only four states – Arizona, Florida, Indiana and Nevada – have adopted digital will legislation, and they vary significantly in the requirements for digital execution, witnessing, notarization, and secure storage of digital documents.

State advance directive laws generally require witnessing, typically by two persons, although about 20 states permit notarization alone as an alternative to witnessing for health care powers of attorney. Three states – Missouri, North Carolina, and West Virginia – mandate the most burdensome approach, both witnessing and notarization. Only California, Illinois, Louisiana, Maryland and Texas provide an option for digital advance directives, at least in theory. We have little practical information about whether and how those provisions are implemented. As with digital wills, there is little uniformity in the legislation.

In the face of our current public health crisis, the lack of remote digital execution and notarization options in personal planning has stifled personal legal planning options for countless Americans who are most at risk and need to ensure their wishes are known and their affairs are in order. The coronavirus outbreak has made advance planning more important than ever.

Fully digital advance directives require protocols that permit:

- Digital signatures
- Remote witnessing via live audio-visual technology
- Digital notarization where notarization is a requirement or option
- Digital storage

The last element, digital storage, is the one piece that has moved forward significantly. Online advance directive registries have become common, sponsored by states and by private companies such as MyDirectives.com, Docubank, American Living Will registry, and others. But the other elements are recognized in very few states and with little consistency.

The problem with POLST

Regarding notarization, some 23 states have adopted some form of remote notarization law, though they vary in scope, and a few states such as New York and Massachusetts are allowing remote notarization by executive order during the current public health crisis. Other governors could do the same to enable remote legal planning. Governors or state health commissioners could take similar emergency executive actions with respect to advance directives. Advance directives have a kind of double personality with respect to validity. Directives that meet strict state law requirements (statutory advance directives) carry the aura of state authority behind them and additionally give health care providers so-called statutory immunity for following them in good faith. However, directives in any other form, not in conformance with statutory requirements, still carry substantial weight as documented evidence of the individual’s wishes. It behooves health care providers to respect such directives under accepted medical standards as well as under common law and constitutional principles that require honoring the patient’s right to consent to or refuse treatment.

A related clinical problem has arisen in the use of portable medical orders such as Medical Orders for Life Sustaining Treatment (also called POLST, MOST, and other names). In the great majority of states, the patient’s or surrogate’s signature is required on the order. While not prepared by lawyers or by individuals on their own, they are equally important advance care planning documents targeting the most seriously ill. In the current crisis, consent almost always has to be obtained orally, but technically that is not valid. These, too, need to be made accessible by executive order or guidance that makes clear
acceptability of remote consent, at least for the time being.

Lessons learned

Down the road, a major lesson of the coronavirus crisis will be that remote and digital execution of estate and personal planning documents is safe, sensible, and should be recognized and regulated in state law. Consistency will be the greater challenge. That is where the Uniform Law Commission plays a central role by bringing together national legal experts to craft an authoritative model for state legislation.

The ULC released a Uniform Electronic Wills Act in 2019 that provides a uniform model for states that:

- Allow a testator to execute a will electronically, while maintaining the safeguards wills law provides for wills executed on paper
- Create execution requirements that, if followed, will result in a valid will without a court hearing to determine validity if no one contests the will
- Develop a flexible process that does not enshrine a particular business model in the statutes

Long-standing state laws and legal practices naturally resist change, but major national upheavals such as what we are experiencing now make the necessity for change clear. Going forward, solutions are within our reach.

* The views contained in this article represent the opinions of the author and should not be construed to be those of either the American Bar Association or the Commission on Law and Aging unless adopted pursuant to the bylaws of the Association.

**“Down the road, a major lesson of the coronavirus crisis will be that remote and digital execution of estate and personal planning documents is safe, sensible, and should be recognized and regulated in state law.”**

Notarizing Docs Amid Stay-in-Place Orders: the Evolving Status of State Laws

Notarization of legal documents presents special challenges in a time of social distancing, facility lockdowns, stay-at-home orders and quarantine. The ABA Commission on Law and Aging has researched where states stand in addressing these issues.

A number of states already allow remote online notarization for at least some estate planning documents. Some states have passed special statutes to allow for electronic or remote online notarization (RON); others have implemented RON or other options as part of temporary emergency executive orders.

Remote online notarizations allow individuals in any state (except Iowa) to get their documents notarized through a remote notary online.

The Commission has compiled a state-by-state guide to help you learn about the status of such requirements in your state. Please keep in mind that the coronavirus pandemic has rendered this a rapidly evolving area of the law. Our guide was created in late April, however, changes to states’ laws are ongoing.

Here’s the link to the Commission’s guide:

Other sites that track RON state laws and executive orders include:

- The Mortgage Brokers Association online map
- The National Notary Association online bulletin
- The National Association of Realtors

Research by Rebecca (Ana) Salido, an intern at the ABA Commission on Law and Aging

MYLO: The App You Need In These Uncertain Times

Mind Your Loved Ones, or MYLO, is a mobile app that gives individuals the ability to store their own and their loved one’s critical medical information, health care directives, and other related data on their Apple or Android phones, iPads® or tablets. Users can send this information directly to health care providers (their doctors, hospitals, insurance companies, etc.), to their family members or trusted friends by email, fax, text, or print.

Whether away at college, in a retirement community or nursing home, or during an emergency, MYLO has your information and documents, and those of your loved ones, accessible 24/7 with just a click. That’s the power of MYLO—the perfect “just-in-case” app.

ABA members – log in to download the app at the discounted price of $4.99
Non-members – download the app for $7.99
Download the app today.

Learn more about the app at https://www.mindyour-lovedones.com
Guidance for Guardians During the Pandemic

How does the coronavirus pandemic affect guardians’ responsibilities? What actions must they take to ensure proper access to health care? Have there been changes to submissions of reports?

You have questions. We have answers. The National Guardianship Association, the ABA Commission on Law and Aging and the National Center for State Courts have created a Frequently Asked Questions (FAQs) document to help guardians navigate their responsibilities through the pandemic.

Here’s what you need to know:

• Access to My Clients or Loved One in Nursing Homes. While federal guidance restricts in-person visits to residents in nursing homes, you have a responsibility to maintain contact and monitor well-being through remote access.

• Access to Courts. Each state determines its own procedures during the pandemic. While many are placing a priority on keeping courts open for cases involving the protection of vulnerable individuals, hearings may be delayed or conducted remotely, and there may be changes in requirements for timelines, notices and the submission of reports.

• Protecting My Clients’ or Loved One’s Rights and Well-Being. The pandemic makes it more difficult to exercise certain rights. Take actions to ensure the person receives fair health care treatment, facilities follow safety protocols, and support the individual during this difficult time.

• Visitation with clients. You have an ongoing duty to maintain contact with your clients, even if face-to-face visits are restricted.

Reports and assessments

The National Center for State Courts is recommending that, in addition to regular annual reports, all guardians conduct an immediate well-being assessment of each client’s circumstances such as:

• Current living arrangement
• Stability of living arrangement
• Health risks due to COVID-19 in current living arrangement, including to any caregivers
• Plans for backup guardian
• Current contact information for you, your client or loved one, including the backup or standby guardian
• Continuing availability of necessary in-home services when applicable

Questions about nursing homes

Are there any exceptions to the federal restrictions on visiting residents in nursing homes?

Under the Federal Guidance, access to a nursing home is allowed only for essential health care workers and government surveyors. “Essential” is interpreted very narrowly, given the risk to residents, and does not include guardians.

However, visits are allowed for “compassionate situations,” which include but are not limited to end-of-life care. Facility decisions about these visits are to be made on a case-by-case basis, with careful screening for COVID-19 symptoms.

What are the recommended safety precautions for entering a nursing home in a “compassionate care” situation?

Facilities should require you to wash your hands frequently, use Personal Protective Equipment (PPE) such as facemasks, and should restrict your visit to the resident’s room or other designated location.

What are the nursing home’s duties to facilitate communication with residents?

The Federal Guidance encourages nursing homes to facilitate contact with residents through alternative means of communication. Nursing homes “need to facilitate resident communication” with the ombudsman and other patient representatives important in safeguarding resident rights, including guardians, conservators, agents with a power of attorney, and representative payees. If a nursing home is slow to assist you, refer staff to the Federal Guidance.

Tips for maintaining contact with clients or loved ones:

If you cannot visit your client or loved one in person, you still have a duty to maintain contact and be as up to date as possible on his or her condition, needs, and concerns. Check with your court to see if it has issued any guidance for guardians on alternative means of maintaining contact.

• Try all possible modes of remote communication: phone calls, texts, video chats or email.
• Talk with facility staff including nurses, aides, social workers, activity directors, or anyone with direct access to the person. Be sure to participate by phone or video in care planning meetings. Inquire frequently about COVID-19 screenings and symptoms. If facility records are available electronically, ask to review them periodically.
• Plan ahead with staff to arrange a meeting with the person though a window, door or other reasonable barrier. Your physical presence may provide some measure of comfort, and you will be able to at least see the individual in person.

All of this content was taken from the FAQ. For other questions, updates and information, click on this FAQ.
BECOME A FRIEND of the Commission on Law and Aging

As part of the ABA Fund for Justice and Education, COLA fights for justice for all older Americans. Through national advocacy, policy development, education, and research, we work tirelessly to:

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Laid Off or Low Income? Read On for Tax Benefits You Might Not Know About

By Barbara Jones and Disha Patel

By now, many low- and moderate-income Americans have received a $1,200 stimulus check. However, recently laid off and other low-wage workers may qualify for other federal and state cash tax benefits and not know it. The IRS estimates that about 21 percent of taxpayers who file returns do not claim the tax credits they deserve.¹ Surveys have also found that many low-wage workers whose income is below the amount required to file a return are unaware that it nevertheless might pay to file one.

While some workers may be familiar with nonrefundable tax credits, which reduce your taxes but generate no refunds, they may be less familiar with refundable credits. Depending on the filer’s income, refundable tax credits can actually provide cash payments to qualified low- and moderate-income workers even when their tax liability is zero. Since refundable tax credits are treated as taxes paid, they trigger cash payments to filers who have paid minimal or no taxes.

For example, a worker who has paid $1,000 in taxes but qualifies for a $3,000 refundable tax credit can receive a $2,000 “tax refund.” However, to obtain such refundable tax credits, workers must file a tax return and request the credit even if they do not owe any tax or are not required to file a return.² Workers also must have had some income in the prior year. Earned income is usually how most workers qualify, but disability retirement benefits received prior to retirement age also qualify.

Earned Income Tax Credit

Since its inception, the Earned Income Tax Credit (EITC) has been one of the largest means-based anti-poverty cash assistance programs and is widely regarded as one of the most successful. Not only does the EITC provide a benefit to low-wage workers, but the cash received also goes back into the economy, creating an economic stimulus. The amount of the federal EITC for the 2019 tax year varies between $529 for workers with no qualifying children and $6,557 for workers with three or more qualifying children. In addition to the federal EITC, 29 states, and the District of Columbia, offer a state supplement to the federal EITC. The specific amount of a state EITC varies per state between 9 percent and 45 percent of the federal credit.³


Generally, married couples must file a joint return and cannot be claimed as a dependent or qualifying child on anyone else’s return.

The individual or couple must meet specific income guidelines. See, EITC basic rules. Eligible tax filers must reside in the U.S. for more than half the year.

Federal taxpayers without qualifying children must be at least 25 and under age 65 or have a spouse who is under age 65. However, tax filers over the age of 65 can qualify if they have minor children, grandchildren or stepchildren they claim on their return. Most state supplement EITCs follow the federal age guidelines with some exceptions, e.g., in California childless tax filers age 65-plus still qualify if they meet the other basic requirements.

Credits for past years

In addition to state and federal EITCs, laid off and other workers may qualify for other federal refundable credits:

- Individuals and families who purchase health insurance through the Health Insurance Marketplace may also qualify for the premium tax credit to help with health insurance costs. The American opportunity tax credit can help students pay for their first four years of higher education if they are enrolled at least half-time for at least one academic period.
- The child tax credit can assist taxpayers supporting dependent children.
- Some states also offer refundable rental tax credits even when the renter may have no income, while other states provide nonrefundable rental tax credits.

It’s not too late to claim EITC credits for the tax years 2016, 2017, 2018 and 2019, which can be done by filing a tax return for those years or amending an existing return. While many free tax preparer sites are closed because of the coronavirus pandemic, free online resources are available, such as Free File Alliance (www.freefilealliance.org), which partners with the IRS to help taxpayers e-file their taxes. AARP Foundation Tax-Aide (www.aarpfoundation.org/taxaide) has further information on filing taxes online.

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Lori Stiegel (1957–2020): Unwavering Elder Justice Advocate

By Erica Wood

In 1989, a bright young attorney joined the staff of the ABA Commission on Law and Aging. Lori Stiegel came with a solid background in elder rights, having already served in the Senior Advocacy Unit of Bay Area Legal Services in Tampa, Florida; as legal services developer at the Georgia state office on aging; and as legal staff at The Center for Social Gerontology in Michigan.

In the late 1980s, the recognition of elder abuse, neglect and exploitation was gaining national attention. There were Congressional hearings and reports by the U.S. House Committee on Aging. In 1987, reauthorization of the Older Americans Act included passage of elder abuse prevention provisions. In 1988, the National Center on Elder Abuse was established.

The ABA Commission had not yet developed expertise in the emerging elder abuse field, and Lori jumped in with vigor to fill the void, quickly becoming a major player in developing its legal aspects. From that time until her death in 2020, Lori was an unwavering elder justice advocate.

At the same time, this bright young attorney had a fun social side that touched the lives of friends and colleagues over the years. While rigorously analyzing elder abuse laws and policies on the one hand, Lori also was into fashion, loved cosmetics, took yoga, and was always eager to go shopping. She became a skilled knitter and was an avid foodie—to the delight of those with whom she arranged restaurant outings. And then there was her humor: She was witty with well-timed wry remarks.

Lori targeted the problem of elder abuse from many angles, always seeking to make law-related contributions and ultimately leaving an indelible mark that advanced change. Here is a synopsis of her accomplishments in the field.

How Lori Tackled Elder Abuse

Developed Judicial Guidelines. In her early years at COLA, Lori observed that there were significant barriers to effective judicial consideration of cases involving elder abuse. In 1995, with funding from the State Justice Institute, she produced Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse. This massive project involved some 300 individuals of diverse backgrounds in surveys and focus groups. As stated in the preface, it aimed to “benefit judges and court staff as they deal with the difficult issues and problems presented in elder abuse cases.” In 1997, Lori followed up with three model interdisciplinary curricula on elder abuse for judges and key court staff. The guidelines, together with the curricula, established a solid foundation on which future initiatives were to build.

Promoted Elder Abuse Fatality Review. Another creative way Lori jumpstarted action was through promoting development of elder abuse fatality review teams, a theme that spanned close to 20 years of Lori’s attention. These collaborative, cross-agency teams review deaths resulting from or related to elder abuse to identify system gaps and improve victim services. Through Lori’s leadership, COLA received a grant from the Office of Victims of Crime (OVC), U.S. Department of Justice, which provided seed funding for some of the earliest teams and led to publication in 2005 of Elder Abuse Fatality Review Teams: A Replication Manual. The comprehensive manual brought visibility to fatality review teams as an effective tool and offered resources and examples. A second grant by OVC in 2017 funded updates to the manual, a web page, and an assessment of the impact of the teams.

Influenced Advocates About Undue Influence. Another key theme for Lori was the role of undue influence in elder abuse, a topic on which she presented and wrote about over the years with Bonnie Brandl, Candace Heisler, Mary Joy Quinn and others. In 2006 Lori participated in the development of a training curriculum called Undue Influence: The Criminal Justice Response, funded by the Office of Violence Against Women, U. S. Department of Justice, and prepared for the YWCA of Omaha.

Magnified the Multidisciplinary Approach. Throughout her career, Lori staunchly supported bringing people from different disciplines together for the greatest impact on elder abuse. She was part of a six-person team that wrote a book setting out a “framework to begin and to build on multidisciplinary approaches at the local, state, and national levels to end elder abuse.” Each of the co-authors (Bonnie Brandl, Carmel Dyer, Candace Heisler, Joann Otto, Lori Stiegel, and Randy Thomas) was from a different field: adult protective services, legal services, law enforcement, prosecution, health care, advocacy, and civil justice. The book, Elder Abuse Detection and Intervention: A Collaborative Approach, was published in 2007. The common goal of the authors was to “promote elder victim safety through collaboration.” This collaborative theme clearly informed her work on fatality review teams as well as her later efforts on targeting abuses in guardianship.

Spotlighted Power of Attorney Abuse. In 2008, as financial powers of attorney were being dubbed “a license to steal,” Lori turned her attention to power of attorney abuse. In an AARP Public Policy Institute research report, Lori, along with ABA Commission colleague Ellen Klem, produced a hard-hitting
study that explored how state legislatures can protect vulnerable adults through safeguards in power of attorney laws. The report compared the abuse-related provisions of the 2006 Uniform Power of Attorney Act with provisions in state laws.

**Profiled Landmark Elder Abuse Case.** In 2009, jurors in a New York criminal court convicted 85-year-old Anthony Marshall of fraud and grand larceny against his mother, New York philanthropist and socialite Brooke Astor, who had Alzheimer’s disease in her final years.

Lori realized that the case presented an opportunity to raise awareness about elder abuse. She conducted a three-part interview with Alex Forger, an expert witness for the prosecution and a widely respected trusts and estate attorney who had earlier chaired the ABA Commission on Law and Aging.

In “The Brooke Astor Case: ‘An Appalling Set of Circumstances,’” Mr. Forger talked about the lessons lawyers who represent older people should learn from the case, and explained how he prepared for the complex case, why he did it pro bono, and the ways in which Brooke Astor’s long-standing estate plan were changed by the events at issue. The interview appeared in the ABA Commission’s 2009-2010 e-journal BIFOCAL and continues to be an informative source about the lawyer’s role in elder abuse cases.

**Assessed Court-Focused Elder Abuse Initiatives.** While Lori had laid a judicial foundation in 1995 with her court guidelines, she returned to it some 15 years later. Lori saw that some courts were focusing on elder abuse in a more holistic way through targeted judicial programs or partnerships. With an award from the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, Lori joined with Dr. Pamela Teaster at the University of Kentucky College of Public Health Department of Gerontology to take a closer look at these court programs.

The result was a pioneering 2011 *Multi-Site Assessment of Five Court-Focused Elder Abuse Initiatives.* The purpose was to determine, through surveys, interviews and site visits, whether these innovative programs improved the criminal justice response to elder abuse. Overall, the findings said the five initiatives accomplished nearly 90 percent of COLA’s relevant 1995 recommended guidelines, enhanced access to justice for victims, and offered benefits to courts and other agencies.

**Educated Lay Fiduciaries.** Millions of Americans manage money or property for a loved one who is unable to pay bills or make financial decisions, either as a court-appointed guardian, an agent under a power of attorney, a trustee of a revocable living trust, or as a government fiduciary. Under a contract from the Consumer Financial Protection Bureau, Lori led an ABA team that helped the CFPB develop a plain-language guide for each of the four types of fiduciaries. Published in 2013, the four national *Managing Someone Else’s Money* guides were followed by selected state versions – ultimately 28 separate booklets plus Spanish translations. The columnist *Dear Abby* featured the guides twice, and close to 2 million copies have been distributed. Lori’s eye for precision and her rigorous review ensured the guides were practical tools that could instruct caregivers and lay fiduciaries throughout the nation.

**Created Pocket Tool for Law Enforcement.** Lori had wide-ranging contacts including with police and sheriffs. She heard a remark by a retired sheriff that prompted a very creative idea. He said, “My colleagues and I need to know that when we’re told, ‘I could spend Dad’s money because I have his power of attorney,’ we shouldn’t just say, ‘Oh, OK,’ and walk out.” Lori conceived of a pocket-sized guide for law enforcement that would be easy to read, easy to carry, and could even be attached to the visor of a patrol car. In 2014, with funding from the Bureau of Justice Assistance, U.S. Department of Justice, COLA published *Legal Issues Related to Elder Abuse: A Pocket Guide for Law Enforcement,* along with a longer desk guide providing more information. It was a huge hit!

**Educated Lawyers on Financial Exploitation.** With elder financial exploitation being billed as the “crime of the 21st Century,” and elder investment fraud becoming more prominent, Lori secured a grant from the Investor Protection Trust and Investor Protection Institute to educate lawyers to recognize elder financial exploitation and investment fraud, and to report suspected cases to authorities. In her project survey of almost 700 legal practitioners, more than nine out of 10 said elder financial exploitation was a serious problem, and, shockingly, more than one in three said they were or may be dealing with such a victim. The kickoff event for the project was an ABA Annual Meeting Showcase Program with a distinguished multidisciplinary panel—including Lori as an expert panel member—meant to serve as a model for states continuing legal education programs. In 2017, the project developed an “Elder Investment Fraud and Financial Exploitation Checklist for Lawyers.”

**Tackled Guardianship Abuse.** While Lori did all of COLA’s work on elder abuse, and I focused on adult guardianship, we increasingly worked together at the intersection of these two areas. For example, in 1996 we co-authored an article exploring the potential of family court for strengthening elder justice. In 2009 we co-authored another article on ways in which the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act can help to address cross-border elder abuse issues. An early project for Lori was an examination of less restrictive alternative to guardianship.

We both worked with the National Center for State Courts on a project funded by the Office of Victims of Crime, U.S. Department of Justice, to examine financial exploitation by conservators (guardians of property), which resulted in publication in 2019 of *Eight Background Briefs on Financial Exploitation by Conservators* for policymakers and practitioners. Lori and I were jointly interviewed several times by the U.S. Government Accountability Office and joined forces in drafting congressional letters that involved both guardianship and elder abuse. We had many a good-natured debate about the extent to which the abuse side of guardianship should be emphasized as compared to issues of self-determination and autonomy.

But it wasn’t until WINGS (Working Interdisciplinary Networks of Guardianship Stakeholders) that our work completely coalesced. COLA in 2016 received funding from the Administration for Community Living (ACL) to establish,
expand or enhance state WINGS. The goals were to promote options for decision-making that were less restrictive than guardianship, improve state guardianship systems, and address guardianship abuse.

Under the grant we funded seven state courts to create or strengthen WINGS. Lori brought all of her elder abuse background to bear on the WINGS grant as well as her strengths in connecting people from different disciplines. She also brought tremendous experience in contract management, grant administration, and budgeting. We had not anticipated the complexity of managing seven state grants while navigating through both the ABA bureaucracy and the federal bureaucracy. Lori could be a stickler for detail (sometimes frustratingly so!) and it really paid off in WINGS. As a result, today we have active WINGS to varying degrees in some 23 states – groups that are engaged in reform to improve the lives of adults in, or potentially subject to, the guardianship system.

A knitter’s life

About 10 years ago, Lori took up knitting. I remember the first thing she knitted was a simple blue scarf. Before long, with help from her colleague Trisha Bullock, she was showing us an assortment of her colorful creations.

Lori became a member of Ravelry, an online social media database of knitters and knitting patterns. Then she joined “Yarn Hoars,” a group made up of knitters from all over the world who work with hand-dyed luxury fibers like cashmere, silk and luxury blends. She made close friends in the group, and together they shared their love of making things, as well as fine dining and shopping.

She and her colleague Trisha Bullock visited yarn and fabric stores in the Washington, D.C., area. “There was rarely a day at work where we didn’t eagerly discuss what projects we were working on, what new techniques we were trying, what luxury yarn or fabric we recently bought, or what festival we were planning to attend,” Trisha said.

Lori looked forward to special events such as the Maryland Sheep and Wool Festival, New York Sheep and Wool, and the Homespun Yarn Party in Savage, Maryland. On Instagram, she proudly displayed items she had knitted.

Unwind at work

Lori always brought her knitting to staff meetings. She founded a weekly knitting group at the ABA called Unwind. Attendees joined together for an hour to work on projects and “to just unwind.” At these meetings Lori found opportunities to increase her proficiency in more complex knitting skills such as sweater knitting, lace knitting, brioche and mosaic knitting.

Lori loved knitting for her family, yoga instructor, friends, and ABA staff. She gave many gifts. Trisha recalled the last item Lori completed in December 2019. It was a test knit of a hat pattern Trisha had designed in honor of Trisha’s sister who had recently passed away.

“It was clear that Lori was ill when she knitted this hat for me. I can only imagine the effort it took her to finish it. I will carry that memory and gesture of love for me and her love for knitting forever,” Trisha said.

Erica Wood is a former assistant director at the ABA Commission on Law and Aging.

To learn more about the Commission’s work on elder abuse, and specifically Lori’s work involving Elder Abuse Fatality Review Teams, go to https://www.americanbar.org/groups/law_aging/resources/elder_abuse/

Why Am I Left in the Waiting Room? Updated for 2020!

Your parent or other relative is getting legal advice. Shouldn’t you be included? After all, you might be very involved in helping him or her with important matters. Perhaps you even arranged the appointment. This consumer-friendly brochure helps family members understand the relationship between a lawyer and an older client by explaining the ethical guidelines that lawyers follow when meeting with their clients.

In easy-to-understand terms, this brochure explains the “Four C’s” of elder law ethics: client identification, conflicts of interest, confidentiality, and competency.

Cost: $1. Order here: https://www.americanbar.org/products/inv/brochure/211008886/ For orders of more than 100 copies, use the promo code AG15WHFD100+ for a discounted price of $0.50 per brochure.
Remembering Lori

Many of Lori’s former and current colleagues and friends share their memories:

Lori was in the vanguard of the elder abuse and neglect field. Her work at the ABA Commission on Law and Aging was groundbreaking and visionary. She provided solid reliable guidance to practitioners both in the legal field and the social services field. She could be depended upon to ‘tell it like it is.’ She was a stalwart friend and mentor. Her voice will be sorely missed. —Mary Joy Quinn

In the 30 years Lori and I worked together, I always relied on her not only for her analytic expertise in law and aging, but even more so for her insistence on the highest standards for research and project management, and her ability to see how the bigger picture of personal and professional relationships and our mission can be in sync. Still deeper than her professionalism was her honest friendship, quick humor, and abiding loyalty. —Charlie Sabatino

Lori impressed us immediately with her sharp mind and her dedication to the public interest. Like me, she had started her career in legal services for low-income and older adults, so we had a bond. She was a true idea person and lively conversationalist. —Naomi Karp

I will always remember Lori for her extraordinary intelligence and attention to detail; nothing slipped past her. —David Godfrey

As the newest Commission attorney, I had the good fortune to be Lori’s mentee for the last four years. Lori was a patient teacher, welcoming discussion and questions. She could also be a formidable critic, demanding excellence and accuracy in research and writing. She had a phenomenal political instinct and taught me a great deal about crafting effective policy. She has left so much behind in her legacy, including influencing me and no doubt many other attorneys working in the elder justice field. —Dari Pogach

Lori was passionate about yoga, knitting, shopping, and good food. Many of my fondest memories with Lori involve shopping for fun earrings and other jewelry. Whenever we were in the same city presenting at a conference, we would try to find artsy stores where we could escape for a few hours of laughter and fun. —Bonnie Brandl

Lori Stiegel will be remembered for her devotion to cause and commitment to caring. Anyone who had the pleasure to work with her in any capacity was the better for it. I personally learned from Lori, was nudged by Lori, was even chastised by Lori on occasion and she was usually right to do so. Her contributions were many and will last for years.” —Bob Blancato

Thanks to Lori, there are Elder Abuse and Fatality Review Teams all across the nation. —Joanne Otto

Lori was there at the beginning with elder death review teams. Her work has stood the test of time and in fact may be one of the most significant projects in elder abuse to date. —Ricker Hamilton

She was a pioneer in many areas of the legal and policy needs of older adults including fatality review teams. —Carmel Dyer

We came from different disciplines and wanted to demonstrate how each of us, working collaboratively across systems and disciplines, could improve the detection and response to elder abuse. Some two years later we had written a book and were still friends. —Candace Heisler

Lori’s contributions touched the lives of many vulnerable older Americans. We are grateful for her work. —Carole Fleck

We quickly discovered we shared a passion for the issue of elder abuse and how systems should address the problem. She and I had those conversations that all friends should address the problem. She and I had those conversations that all friends should have: food, how the elder abuse field doesn’t measure up to our exacting standards, and how to retire gracefully. —Randy Thomas

I remain forever grateful for Lori and her ability to fuel and launch advocacy from case to cause. By advancing the cause of elder justice nationwide, Lori was also able to help those of us who were close to the [Brooke Astor] case come to closure. —Philip Marshall

I was honored when Lori asked me to be an investigator on [the court-focused elder abuse initiatives study]. I worked with Lori’s high standards and her commitment to making the world more just and safer for older people. It was during this project that I got to know Lori best – her love of great food, her love of knitting, her ability to drive and navigate to places, and her dexterity with computers. I also learned that Lori loved fashion, and I owe her my expanded understanding of fabric, style, and cut. —Pam Teaster

Some of my very favorite knitterly memories are of Lori and the shenanigans she was a part of as booth neighbors at Homespun Yarn Party. She always had the best wry one-liners. And she always, always would come over to check on me. Not just on how I was doing then, in the moments of sometimes craziness, but with life. —Sandra

It’s been lovely to share memories of our time with Lori, how she loved being part of these [knitting] groups. I hope Lori can feel our love and admiration of her friendship, her sage advice and her wry sense of humor. —Lynn

I have known Lori for more than 16 years. Lori was unique, smart and intelligent. Her passion and dedication to her work was admirable. You will be missed, Lori. Rest in peace. —Sonia Arce
Seniors Facing Foreclosure Get Temporary Reprieve: Evictions Halted During COVID-19 Outbreak

By Odette Williamson

The COVID-19 pandemic has resulted in widespread health and economic upheaval for older adults and other consumers. For borrowers with reverse mortgages who are facing foreclosure, recently enacted federal protections and guidance will provide temporary relief, allowing them to stay in place. The protections, however, will expire in the near future and borrowers must rely on existing foreclosure avoidance options and tools to keep their homes. This article discusses newly enacted protections related to the pandemic and existing options for reverse mortgage borrowers and spouses facing default and foreclosure.

It is important to note that guidance regarding post COVID-19 pandemic protections may shift. For the latest updates on federal and other protections, please see National Consumer Law Center, Major Consumer Protections Announced in Response to COVID-19.

Reverse mortgage 101

Reverse mortgages allow older borrowers to convert home equity into cash and receive the loan proceeds as a lump sum, as a stream of payments, or through a line of credit. No payment is due on the loan until the borrower dies, sells, or permanently moves out of the home or is unable to meet other loan obligations. Unlike a conventional mortgage, the amount owed on a reverse mortgage will increase over time as the borrower receives payments from the lender and interest and fees are added to the loan.

There are two types of reverse mortgages: Home Equity Conversion Mortgages (HECMs) and proprietary reverse mortgages. Proprietary reverse mortgages are developed and backed solely by private financial institutions. Most reverse mortgages are federally-insured HECMs. The U.S. Department of Housing and Urban Development (HUD) manages the HECM program and provides guidance to approved lenders on originating and servicing the loans.

The amount of money the borrower receives under the reverse mortgage is based on age, interest rate, and housing value (or HUD-established limits, whichever is less). Loans originated after April 2015 are subject to a financial assessment that includes a review of the borrower’s credit history and cash flow. The borrower must have a satisfactory credit history that demonstrate an ability to pay property charges, including property taxes and insurance, and meet other financial obligations. A portion of the HECM proceeds will be set aside to pay future property taxes and insurance as a condition of the loan’s approval if the borrower does not meet the financial assessment criteria.

Protections for HECM Loans Borrowers under the CARES Act

In recent years, defaults on HECM loans jumped from 2 percent in fiscal year 2014 to 18 percent in fiscal year 2018, the Government Accountability Office (GAO) reports. Most defaults were due to borrowers falling behind on property taxes or insurance, or not meeting the loan's occupancy requirement. More borrowers will likely fail to meet these financial obligations in the future and incur non-mortgage related expenses due to the pandemic.

The federal Coronavirus Aid, Relief and Economic Security Act (CARES Act) imposes a moratorium on foreclosure for a 60-day period until May 17, 2020, for all federally backed mortgage loans, including HECM loans. The lender may not start or continue the foreclosure process, order or conduct a foreclosure sale, or conduct a foreclosure-related eviction. The moratorium does not apply to properties that are vacant or abandoned.

An additional layer of protection is provided by HUD. Before passage of the CARES Act, HUD imposed a 60-day moratorium on foreclosure and eviction from properties with FHA-insured single-family mortgages, including properties with HECM loans. HUD later extended the foreclosure timeline and deadlines for HECM foreclosure avoidance program options, including those discussed below.

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3. Federally backed loans are those where Fannie Mae or Freddie Mac is the investor or where the Federal Housing Administration (FHA), Veterans Affairs (VA), or the U.S. Department of Agriculture’s Rural Home Service (RHS) insure or guarantees the mortgage. This protection does not apply to proprietary reverse mortgages, unless Fannie Mae is the investor.
For HECM loans in default or at risk of foreclosure, the servicer must delay calling the loan due and payable for six months until October 1, 2020. This extension is not automatic; the borrower must request this delay from the lender or servicer of the loan. No proof of hardship or documentation is required. An additional six-month extension is available with HUD approval. During this period, the lender must waive all late charges, fees and penalties, if any. If the foreclosure process has already started, and the loan is due and payable or in deferral, the lender has the discretion to extend the foreclosure process for six months or longer with HUD approval.

In addition to the coronavirus-related foreclosure protections, HUD recently made several changes to the HECM program. The most significant changes allow more leeway for surviving non-borrowing spouses to remain at home after the borrower on a reverse mortgage dies.

More flexibility for borrowers and non-borrowing spouses

HECM loans generally must be paid off when the last borrower dies, sells, or permanently relocates from the home. Since August 4, 2014, the HECM loan documents explicitly allow for a non-borrowing spouse to remain in the home after the borrower’s death, until the non-borrowing spouse either dies or moves out. For HECMs made before August 4, 2014, a non-borrowing spouse living in the home can end up in foreclosure unless they take action. HUD created the Mortgagee Optional Election (MOE) to allow non-borrowing spouses with pre-August 2014 loans to remain at home after the borrower dies if they meet the eligibility criteria and continue to fulfill the terms and conditions of the loan. Under the revised guidelines issued September 2019, non-borrowing spouses no longer must provide proof of marketable title or a legal right to remain in the home. The prior requirement and the strict program deadlines proved to be a barrier for many spouses wishing to access the program. The new policy relaxes program deadlines and requires servicers to notify borrowers about the existence of the option and request the names of spouses who may potentially qualify for the option. Borrowers will receive the notice and form with the annual occupancy certification.

The reverse mortgage lender is not required to offer a MOE to a non-borrowing spouse. The decision is up to the lender. To avoid being financially penalized, a lender must elect the MOE option within a reasonable period, typically within 180 days of the death of the borrower. This period is temporarily extended due to the pandemic. Lenders may choose the MOE option even after starting the foreclosure process. A surviving non-borrowing spouse who is offered the MOE must establish eligibility under the program’s guidelines. Eligible non-borrowing spouses include those who were married to the borrower at the time of loan closing (or engaged in a committed relationship); live in the home as a principal residence; and have a loan that is not due and payable for other reasons. If the borrower was enrolled in a plan to repay property charge arrears, the non-borrowing spouse must bring the delinquency up to date before the lender assigns the loan to HUD. If the non-borrowing spouse qualifies for the MOE, the due and payable status on the loan will be deferred and the loan will not be subject to foreclosure until the spouse moves out of the home, dies, or fails to meet the terms and conditions of the loan. The non-borrowing spouse must certify annually that the conditions are met.

Foreclosure avoidance options

Borrowers with a reverse mortgage must pay property-related charges including real estate taxes, hazard and flood insurance premiums and, if applicable, HOA fees, condominium association fees, ground rents, or other special assessments. Lenders may use various options to address property charge defaults. Despite the menu of options, lenders can exercise their discretion and refuse to offer any of the listed below:

- **Repayment Plans:** Repayment plans of 60 months or less are offered based on the borrower’s surplus income. The calculation involves consideration of all available sources of income and the borrower’s necessary living expenses and property charges (i.e., taxes and insurance) due over the next 90 days. In some instances, repayment plans can be renegotiated if the borrower suffers a new hardship or again fails to pay property charges.

- **At Risk Extensions:** Borrowers 80 years or older may qualify for an “at risk extension” of the foreclosure timeframe if they meet certain critical conditions such as suffering from a terminal illness, long-term physical disability or a unique occupancy need (i.e. terminal illness of a family member receiving care at the home). HUD must approve this extension, which is renewed annually.

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• **Delay calling the loan due for a low amount of property charge arrears**: If the property tax and insurance arrears are less than $2,000, lenders can delay calling the loan due while they work with the borrower to get caught up. HUD lenders have up to 12 months from the date of the first missed property charge to contact the borrower and work out repayment.

• **Lender Payment of Outstanding Property Charges**: Lenders may use their own funds to pay a borrower’s outstanding property charges but they are not permitted to add that amount to the loan balance or seek reimbursement from HUD. They also are subject to other limitations.

A borrower may pay off outstanding property charges such as property taxes and insurance at any time, even after foreclosure proceedings have begun, and the loan will be reinstated, subject to certain limitations. Aside from foreclosure avoidance options, a HECM may be refinanced if there is sufficient equity and if the borrower can meet enhanced underwriting guidelines, including the financial assessment criteria. Direct aid from nonprofit organizations and state government may also help delinquent borrowers, where available. Assistance may be available from a HUD-approved housing counseling organization to access these options.

A reverse mortgage may be called due and payable if the home is not the principal residence of at least one borrower for longer than 12 consecutive months. Lenders seek to establish occupancy primarily by sending a certification form annually (or more frequently if they suspect the property is vacant) to be signed and returned. Non-borrowing spouses who qualified for a deferral of foreclosure must also provide a certification of occupancy. HUD has taken steps to temporarily ease documentation requirements during the COVID-19 pandemic by allowing an email or verbal certification from the borrower.7

Unfortunately, many lenders may still rely on the signed occupancy certification or fail to take additional steps to verify occupancy of the home. Borrowers and non-borrowing surviving spouses can defend against a loan called due prematurely by providing proof of occupancy with utility bills or other such records.

### Pandemic Fallout Could Worsen Foreclosure Trend

Federally-insured HECM reverse mortgages allow older homeowners to use the equity in their home as resource to age in place. Unfortunately, an increasing number of older homeowners are defaulting under the terms of the mortgage and facing foreclosure and eviction from their home. This trend is likely to worsen as older homeowners deal with the fallout from the COVID-19 pandemic. Use of foreclosure avoidance options and other alternatives can ensure that borrowers with reverse mortgages and their surviving spouses stay at home and age in their community.

### Help for Older Adults Facing Foreclosure


- Find a HUD-approved housing counseling agency: [www.hudexchange.info/programs/housing-counseling/customer-service-feedback](http://www.hudexchange.info/programs/housing-counseling/customer-service-feedback)

### Housing Counseling & National Advocacy Organizations

- Senior Homeownership Preservation Project (SHOPP): (773) 262-7801. This project works with HECM borrowers who are facing default on their mortgages due to non-payment of property taxes or homeowners insurance.
- National Consumer Law Center: [www.nclc.org](http://www.nclc.org)

### Legal Assistance

- National Association of Consumer Advocates: [www.naca.net](http://www.naca.net)

### Publications

- National Consumer Law Center, Home Foreclosures (1st ed. 2019)
- National Consumer Law Center, Mortgage Lending (2019 3rd ed.)

### About the Author

Odette Williamson is an attorney with the National Consumer Law Center who focuses on housing sustainability, issues impacting older adults, and directs the Racial Justice and Equal Economic Opportunity initiative.

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In a world where many older adults already feel isolated and lonely from inconsistent contact with family and friends, the extreme isolation measures taken to combat the COVID-19 pandemic have only heightened these feelings. Today, nearly everything it seems has gone virtual, from telework to telehealth. Yet society seems to have forgotten one critical group: Americans with no access to reliable, affordable high-speed internet. For older adults, the consequences can be enormous.

According to the U.S. Department of Commerce, some 31 million Americans, including a large portion of seniors, do not have access to a high-speed internet service. Other reports have put that figure much higher. In my community in St. Albans, West Virginia, with a population of more than 10,000, I have access to one high-speed internet provider. The cost is exorbitant and the quality is average at best. Just 10 miles south of my home, there is no fixed high-speed internet access, and this holds true for about 30 percent of the state. When you couple this with the areas of the state that lack cell phone service, you can see we have a real connectivity problem in West Virginia. But this is not just a statewide problem. Lack of access to reliable fixed high-speed internet is a national problem.

A Pew Research Center survey found that 24 percent of Americans living in a rural setting said that access to high-speed internet was a major problem in their everyday lives. Rural Americans make up about 20 percent of the population and generally encounter the largest barriers to such access. But 13 percent of urbanites and 9 percent of suburbanites also claimed lack of high-speed internet access as a major problem, according to the Pew survey, which was conducted in 2018. This internet connectivity problem tends to suppress the growth and productivity of communities because most businesses need access to reliable high-speed internet services. The lack of business development leads to fewer jobs, less revenue and reduced services such as access to health care.

Future challenge

The pandemic has locked many Americans in their homes and amplified these challenges. How can we better prepare for the future? We need a broadband infrastructure upgrade, which requires a collaboration between providers and government. We need private sector know-how and capital along with significant government funding and oversight. We need the most technologically advanced broadband system in the world for our citizens.

The pandemic did not cause America’s connectivity problem; it unmasked it. Now we need to take this opportunity and use it to ensure that we have system to meet the demands of a virtual society for people of all ages.

About the Author:

Jeremiah J. Underhill is the legal director at Disability Rights of West Virginia, and a co-coordinator for Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) in West Virginia.
As a prisoners’ rights attorney in Vermont, I watched with horror as the coronavirus pandemic wreaked havoc on carceral facilities throughout the nation. At the Rikers Island complex in New York, 319 current prisoners and 573 staff members had tested positive for COVID-19 as of April 12.\(^1\) Over the course of two weeks at the Cook County Jail in Chicago, the number of confirmed coronavirus cases exploded from two to more than 350.\(^2\) Six prisoners at a federal prison in Oakdale, Louisiana, have died from the virus.\(^3\)

Overall, 2,818 federal inmates and 262 prison staff members tested positive for COVID-19 nationwide. At least 50 inmates have died; all staff members have recovered as of May 12, according to the Bureau of Prisons.

My incarcerated clients in Vermont were watching in horror, too. Vermont has the second oldest prison population in the country, meaning that many of the inmates are at higher risk for contracting and dying of COVID-19. This elder population makes up a large portion of my caseload, as I spent my first year after graduating law school in 2018 as a legal fellow providing representation exclusively to older adults in Vermont’s correctional system. As the pandemic intensified in March, my calls with my clients became less about their open cases and more about their fear of catching the virus and dying behind bars. For a few weeks, I could reassure them that there were no known cases in Vermont prisons.

That reassuring fact is no longer valid. The first staff member at Northwest State Correctional Facility in Swanton, Vermont, tested positive for COVID-19 on April 1. The second and third tested positive on April 6. On April 8, the news broke that a person incarcerated at the facility had been infected. Over the course of the next three days, facility-wide testing revealed a full-fledged outbreak: 32 of the 199 people incarcerated at the facility and 17 staff members tested positive for COVID-19.

**Pleas for early release**

Epidemiologists, public health experts, and advocates have suggested that decreasing the prison population is the most effective way to prevent explosive outbreaks in correctional facilities.\(^4\) Fewer people means more space to socially distance and a greater ability to ration hygiene and cleaning products,

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Matthew J. Akiyama, et al., Flattening the Curve for Incarcerated Populations — Covid-19 in Jails and Prisons, NEW ENG. J. MED.:
medical supplies, and personal protective equipment to keep both prisoners and staff safe.

Many courts and public officials have subsequently released prisoners accordingly. Many courts and public officials have subsequently released prisoners accordingly. In California, officials announced March 31 that it would grant early releases to 3,500 prisoners, 3% of its prison population, according to the Public Policy Institute of California. Elsewhere, more than 100 inmates have been released from Boulder County Jail in Colorado following efforts from the district attorney’s office to reduce the jail population based on preexisting medical conditions and utilizing personal recognizance bonds as of April 4, according to the nonprofit Prison Policy Initiative, which is tracking infection rates and deaths. The Hawaii State Office of the Public Defender asked for the release of over 400 people detained in local jails on April 2. County jails in the Detroit, Michigan, area have released hundreds of people in April. In March, West Virginia jails have reduced their overall population by over 600 people.

Through bail review motions, petitions for sentence reconsideration, and other litigation and advocacy strategies, defense attorneys and civil rights lawyers are pushing for the same outcome in Vermont. However, for many of my older clients, planning for their release has been nearly impossible. Many transitional housing programs have temporarily suspended admissions. Social service agencies and non-profits, which are already strapped for resources, are struggling to keep up with the increased demand following the surge in unemployment.

While solutions like telehealth, online grocery shopping, and mail-order prescriptions are connecting people to the resources they need while allowing them to socially distance, a person who has been incarcerated for decades with little or no access to modern technology will not know how to navigate these. Older adults in prison do not receive Social Security benefits, so my eligible clients need to reactivate their benefits. With the closure of all Social Security offices, this process now requires either phone or Internet access—amenities that many newly-released people cannot easily access.

Housing challenges

These pandemic-related obstacles have only exacerbated a problem that existed long before the coronavirus outbreak. It is especially difficult to find housing for formerly incarcerated elders, many of whom are unable to live alone. After years—sometimes decades—of living communally in prison, the transition to independent living can be jarring. Other formerly incarcerated elders may require full-time care due to physical or cognitive limitations. One 90-year-old veteran in Vermont gained the attention of the local media when he remained incarcerated on a misdemeanor charge for months because he could not find a place to live. While securing housing is a major obstacle for many formerly incarcerated people regardless of age, the options are even more limited for those who require accessible or supportive housing. For many of my clients, the age-related characteristics that make them excellent candidates for release from prison due to their low risk of recidivism are the very same characteristics that make coordinating their release so challenging.

Bottom bunk beds and other necessities

Prison life is harsh. Living in prison as an older adult is even more difficult. Unlike traditional long-term care facilities, prisons were not designed for older adults. It is well documented that prisons across the country fall short of basic accessibility standards, and incarcerated people with disabilities may become victims of abuse and harassment. It can be a struggle for older prisoners to receive simple accommodations such as being assigned a bottom bunk bed or getting audio and visual aids and mobility devices. Also, prisoners are often subjected to grossly inadequate medical care, particularly in systems with privatized prison healthcare.

The rigidity of prison life, which is enforced through strict rules and regulations, is usually unforgiving for people with cognitive and physical decline. These issues may prevent older inmates from following orders or adhering to the strict time limits imposed on activities such as dining and bathing. Because prison employees are rarely trained to work with older adults, they often misinterpret genuine confusion as insolence, and sincere requests for accommodation as attempts to manipulate the system.

An aging population

The inability of prisons to provide care and accommodations for older adults is becoming increasingly pronounced as the prison population in the United States continues...
to age. Most studies categorize incarcerated people who are age 55-plus as “older adults” due to what’s called “accelerated aging,” whereby people in prison tend to experience age-related health issues about 10 years earlier than their free world peers.  

Between 1999 and 2015, the number of people 55 and older incarcerated in state and federal prisons increased by 264 percent. This was not simply a result of an increase in the overall prison population, as the proportion of incarcerated people aged 55 and older rose from 3 percent to 11 percent during this time period. Instead, the aging of the prison population is a result of harsh sentencing practices in the 1990s and early 2000s that have left many people incarcerated for decades, as well as an increase in prison admissions among older adults.

Since most currently incarcerated people will eventually be released, the increase in older adults behind bars will translate to an increased need for re-entry supports designed to meet their unique needs.

A call to action

In light of the current pandemic and the risk it poses to incarcerated elders, we cannot wait for older adults in prison to complete their sentences. There is greater urgency now than ever to advocate for early release. This means pushing for legislative reforms, such as presumptive parole, expansive compassionate release laws, and additional avenues for sentence reconsideration that will allow courts to reduce sentences at any time.

It is imperative that we also ensure that the people who benefit from these legislative changes will receive the re-entry supports they need. What I have found is that our existing re-entry support systems do not address the needs of older adults, and our existing elder support systems do not address the needs of formerly incarcerated people. This siloed approach to legal services has left so many currently and formerly incarcerated elders without anyone to advocate for them. To bridge this gap, we need to think creatively and collaboratively, to rely on one another’s expertise, and to widen our understanding of who our services are designed to reach.

About the author:

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11. Id.
12. Id. at 26.