

Who Makes Medical Decisions for Me When I Can't?

Making Medical Decisions and Choices for Yourself Ahead of Time

Who makes medical decisions for you when you can't? You can decide about some issues now and name who you want to make decisions about your medical care if you are no longer able. You should understand and know how to use three legal documents:

- Durable Power of Attorney for Health Care Decisions
- Living Will
- Out-of-Hospital Do-Not-Resuscitate Order

*By Fred Nelson and Bill Nassif**

Have you thought about who will make medical decisions for you if you can't? You may not want to think about this but it is important. Who would you want to make vital medical decisions for you if you are not capable of making these decisions? Who knows your wishes for health care? Who do you trust to make these important health care decisions for you?

If you are married, your spouse would generally make these decisions. If you don't have a spouse, then your children may be asked to make decisions. If you don't have children, your parents may be asked to make decisions. What if family members disagree about decisions? What if family members don't see health care and medical decisions the way you do? What if family members don't want to make health care decisions for you?

Even when married, you should make clear whether you want your spouse to make medical decisions for you. This includes listing who should make decisions if your spouse is not able to decide what to do. **DON'T LEAVE THESE IMPORTANT DECISIONS TO CHANCE.**

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Message from the Director

“Justice in the Balance: Low-income Iowans and the Courts”

My last message in the *Equal Justice Journal* included how Iowa Legal Aid’s ability to serve low-income Iowans has been significantly reduced. I wrote about the Board of Directors’ response - adopting the *Justice in the Balance: Low-income Iowans and the Courts* initiative at its August, 2012 meeting. The main factors behind this initiative are more people need legal help and program revenue is down. This means Iowa Legal Aid is less able to help people who need legal assistance.



Dennis Groenenboom, Executive Director of Iowa Legal Aid

More People Need Help:

- The latest census data says 499,474 Iowans qualify for free legal help under Iowa Legal Aid’s income guidelines. This is a 39% increase in eligible persons since the last census.
- Iowa Legal Aid closed 19,357 cases in 2012. This benefitted an estimated 46,625 Iowans, close to half of whom were children. The number of cases closed in 2012 was more than 27% less than the number of cases closed two years ago.

Revenue is Down:

- In 2013, federal funding from the Legal Services Corporation was down \$500,000 compared to 2010.
- Funding from the Supreme Court’s IOLTA Commission to Iowa Legal Aid and its subgrantee of LSC and state funds, HELP Legal Assistance, is \$192,111. This is 79% less than the \$935,195 received five years ago.

Goals of the “Justice in the Balance” Initiative

The *Justice in the Balance* initiative takes a 3-pronged approach. It is designed to:

- Increase financial resources,
- Increase volunteer resources, and
- Increase awareness of the court’s role in the lives of low-income Iowans.

Successes to Date

Iowa Legal Aid asked for \$2.4 million in state funding. While the full amount was not appropriated, funding for the year starting July 1, 2013, was increased from \$1,814,831 to \$2,107,416. The Governor’s budget request for the state fiscal year starting July 1, 2014, included the full \$2.4 million. The Governor and the legislature will address this issue in the 2014 legislative session.

The Iowa Supreme Court created a new emeritus practice license for lawyers. This is for attorneys not currently or never licensed in Iowa. In order to get a *Certificate of Emeritus Status*, the attorney must have been in good standing either in Iowa or the other state prior

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Assignments for Parents of Children Getting Ready to Go Back to School

By Brooke Chesney*

As fall approaches, parents and children are preparing to go back to school. Kids should be excited about seeing their friends, not dreading harassment at school. For a peaceful school year, it’s important for parents and children to learn about bullying, harassment and protecting a child’s privacy online. While children get new pencils and notebooks ready to go, here are three assignments for parents to prepare for the school year:

1. Know the difference between bullying and other bad behavior.

Not everything bad done by one child to another is bullying. To see if some behavior is bullying, look at the reason behind it. When someone harasses another person because of a protected area listed below, the bullying policy would apply:

- Age, color, creed, national origin, race, religion, marital status, ancestry;
- Sex, sexual orientation, gender identity, physical attributes;
- Physical or mental ability or disability; or
- Political party preference, political belief, socioeconomic status or familial status.

If a schoolmate is harassing your child at school or school activities for any of these reasons, the school administration should take action to make the bullying behavior stop.

Schools should have an anti-bullying policy. If you do not receive a copy of the policy at the beginning of the school year, you should be able to request it from the school’s administration office.

For information on who is at risk and how to help victims of bullying, this website created by the federal government has tips to help parents and children cope: www.stopbullying.gov.

2. Find out what to do about harassment in your child’s school.

When children are picked on at school, it may not be bullying. Sometimes it’s kids being mean to each other for no good reason. When



the teasing of a child goes too far, parents want school administration to deal with the problem. While there are usually anti-harassment policies in schools, most are defined carefully and may not include what is happening to your child.

Working with the school counselor or a trusted teacher can often help a child keep his/her confidence and overcome the teasing. There are websites, like <http://kidshealth.org/>, that can help parents, kids, teenagers, and educators learn how to cope with the ways kids act at school and online in social media.

3. Learn how to protect the privacy of your children online.

While children want the highest amount of friends on their Facebook page, it is not always a good idea. Whatever is posted on Facebook stays online and can be viewed by all the friends. It is difficult to retract the images after they have been seen.

The *Parent’s Guide to Facebook* on the Iowa Department of Education website teaches teens how to protect their privacy and stay safe online: http://educateiowa.gov/index.php?option=com_content&task=view&id=1030&Itemid=1293.

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Recent Changes in Child Abuse Law

By Shellie Mackel*

There were some important changes to Iowa’s child abuse law recently. These changes are meant to make the process fairer while still keeping children safe. Before this new law, all allegations of child abuse were treated the same. The Iowa Department of Human Services (DHS) would complete an assessment and make a determination of whether there was child abuse present. If a case was “founded” then the person responsible for the abuse was placed on the Child Abuse Registry. Below is a summary of two important changes that the DHS will begin to follow starting January 1, 2014.

1) The new law sets up a two-track approach to allegations of child abuse. These two tracks are called Child Abuse Assessments and Family Assessments. The Family Assessment is the new track. This track is only for cases where the reported abuse is Denial of Critical Care and there is no immediate danger to the child. The category, Denial of Critical Care, means situations where a caregiver doesn’t provide for a child’s basic needs, including food, shelter, and supervision. If a report deals with Denial of Critical Care with no immediate danger, then the case would go on the Family Assessment track. With a Family Assessment, there is a greater focus on services and support for the

family. Also, people who go through the Family Assessment are not placed on the Child Abuse Registry, unless there are other reasons to put them on it.

- 2) The new law also changes the amount of time some people will be on the Child Abuse Registry. Rather than every founded abuse report being put on the Registry for 10 years, there are now categories that will mean placement for 5 years. As long as there is no serious injury or death of a child, the following types of cases will result in a person being placed on the Child Abuse Registry for 5 years, instead of 10:
- a. Denial of critical care,
 - b. Physical injury,
 - c. Presence of an illegal drug in the child that is the fault of the caregiver.

However, if there are other findings of abuse during those 5 years, placement on the Registry will end up being longer.

*Shellie Mackel is Managing Attorney of Iowa Legal Aid’s Equal Justice Project.

Message from the Director
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to having his or her license lapse. The new *Emeritus* license will allow more volunteers to provide legal assistance to low-income Iowans. They will work through Iowa Legal Aid, an approved legal aid organization under this new rule.

Iowa Legal Aid is most fortunate to have committed Boards of Directors for the organization and for the Iowa Legal Aid Foundation. The Iowa Legal Aid Foundation works to raise private funds for Iowa Legal Aid. In 2013, the Foundation's annual event *Equal Justice After Hours* was the most successful to date. Also, the Advisory Councils in each regional office are working on the *Justice in the Balance* initiative.

Presentations on how important access to the justice system is for low-income Iowans have been given around the state by representatives of Iowa Legal Aid. These presentations are part of the third prong of the *Justice in the Balance* initiative. If you would like a speaker for a group to which you belong, please contact Iowa Legal Aid at 515-243-2980, extension 1621.

Impact of changes

Iowa Legal Aid has been able to hire a few new staff members. They are the first new staff to join the program in nearly four years. Hiring new staff is the result of increased state funding as well as more revenue coming in from a variety of sources. These new staff will enable Iowa Legal Aid to serve more low-income Iowans in need of critical legal services.

Iowa Legal Aid is working to form more partnerships with agencies, service providers and others who help address problems of low-income Iowans. For instance, in the Des Moines, Mason City, and Cedar Rapids areas, Iowa Legal Aid partners with agencies under a grant to assist veterans' families. The goal of this federally-funded project is to keep veterans from becoming homeless.

Thank you for your support of Iowa Legal Aid. Access to the justice system is important for everyone. It is especially important for low-income Iowans who need access to the justice system for issues related to basic needs like shelter. The goal of the *Justice in the Balance* initiative is to provide low-income Iowans the access they need and increase awareness of this important issue among all Iowans.

Dennis Groenenboom

For details or to take part in the "Justice in the Balance" initiative, write to Iowa Legal Aid, 1111 9th Street, Suite 230, Des Moines, IA 50314 or send email to dgroenenboom@iowalaw.org.

PUBLIC NOTICE

Meetings of the Iowa Legal Aid Board of Directors are open to the public. We encourage the public to attend.

The next meeting of the Board of Directors is scheduled to take place on November 16, 2013. The Board of Directors meets at least four times each year. For details on the next meeting of the Board, call toll-free: 1-800-532-1275.

Changes to Iowa's Landlord-Tenant Law

By Todd Schmidt*



Governor Branstad signed House File 495 in May, making some major changes in Iowa's Landlord and Tenant Law. Now landlords can charge more in late fees. The law also lets tenants sue for more in money damages if the landlord does something illegal. Some of the changes in the new law are described below.

- **Increase in fees for late rent.** The old landlord-tenant law let a landlord charge \$10 per day, up to \$40 per month, if late fees are part of the lease. Under the new law, how much a landlord can charge in late fees depends on how much rent is. It is now legal for a landlord to charge these late fees:

RENT	LATE FEE
\$700 or less	\$12/day up to \$60/month
More than \$700	\$20/day up to \$100/month

- **Increase in punitive damages a tenant can win against a landlord who in bad faith refuses to return the tenant's security deposit.** The old law had a limit of \$200 in punitive damages if a landlord wrongfully withholds a deposit. Under the new law, a tenant can get up to two months' rent if a judge decides the deposit was wrongfully withheld.
- **Now tenants can get punitive damages if the landlord illegally shuts off utilities or locks tenants out of an apartment.** A judge can now award up to two months' rent in punitive damages against a landlord who takes "self help" steps against a tenant without going through proper eviction procedures. Under the old law, a tenant could only get actual damages but could not seek punitive damages.
- **A statement was included in the law that a tenant who damages the apartment on purpose can now be charged with criminal mischief under Iowa Code Chapter 716.** Before this change, a tenant could be charged with criminal mischief if the tenant damaged the apartment on purpose. All the amendment did was add the language into the landlord/tenant law.

The new law took effect on July 1, 2013.

A tenant facing an eviction or other landlord/tenant law problem should get advice from a lawyer. To find out if you may be able to get free legal help from Iowa Legal Aid, call 1-800-532-1275.

*Todd Schmidt is a staff attorney at Iowa Legal Aid's Northeast Iowa Regional Office in Dubuque.

What is Iowa's New Health Insurance Marketplace?

Iowa's Health Insurance Marketplace was created by the Affordable Care Act as a new way to find health coverage that fits your budget and meets your needs. With one application, you can see all your health insurance options and enroll. The insurance plans are offered by private companies, but the Iowa Marketplace is run as a partnership by the state and federal governments.

What you'll learn when you apply for health insurance in the Marketplace

When you use the Health Insurance Marketplace, you will fill out an application and see all of the health plans available in your area. You will find out if you can get lower costs on your monthly premiums for private insurance plans. You will learn if you qualify for lower out-of-pocket costs when you see a doctor or go to a hospital.

The Marketplace will also tell you if you qualify for free or low-cost coverage available through Iowa's new Health and Wellness Plan or Iowa's Hawk-I insurance plan for children.

The Marketplace simplifies your search for health coverage by gathering the options available in your area in one place. You can compare plans based on price, benefits, quality, and other features important to you before you make a choice.

The Marketplace information about prices and benefits will be written in simple language. You get a clear picture of what premiums you will pay and what benefits and protections you will get before you enroll. You will be able to compare plans based on what is important to you, and choose the combination of price and coverage that fits your needs and budget.

Compare options in the Health Insurance Marketplace

Insurance plans in the Marketplace are offered by private companies and they cover the same core set of essential health benefits. No plan can turn you away or charge you more because you have an illness or medical condition. They must cover treatments for these conditions. Plans cannot charge women more than men for the same plan.

Apply online, by mail, or in-person

You can apply for health insurance from the Marketplace beginning October 1, 2013. Plans and prices will be available then. If you apply by December 15, your insurance coverage may start as soon as January 1, 2014.

You can apply for health insurance from the Marketplace in three ways: online, by mail, or in person with the help of a Navigator or other qualified helper. Apply by telephone by calling 1-800-318-2596, 24 hours a day, 7 days a week. (TTY: 1-855-889-4325). Apply online at www.healthcare.gov. The website will also have a list of qualified organizations that can help you apply at no cost.

Iowa Legal Aid is a not-for-profit organization providing free legal help to low-income Iowans. Financial support comes from a wide range of sources including federal, state and local governments as well as individual donors and private organizations. Iowa Legal Aid's services are supported by contributions from many United Way Agencies in Iowa.



They're Violating the Order – Now What?

By Donna K. Bothwell*

What happens if an order is entered in a custody action but the other party refuses to do what it says? This article explains how you can file a contempt action to get back in front of a judge to make the other party obey the court order.

Talk to a lawyer before filing a contempt action. The attorney can assess your case and how likely you are to win. Sometimes a letter to the other party explaining the violation and asking them to fix it can resolve the problem and avoid the time and expense of filing a contempt action.

File an application for contempt with the clerk of court.

This document is also known as a Motion for an Order to Show Cause or an Affidavit to Start Contempt Proceedings.

- You must include an affidavit about what the other party did.
- There is a filing fee to file the application with the court (\$50 at this time), except in protection order cases.
- Be sure to use the correct number and caption for your case.
- The application must be filed in the same county as the order you are trying to enforce.

The court will schedule a hearing on your application for contempt. Ask the clerk if you need to do anything else to get a hearing set.

- The other party must get notice of the contempt action at least five days before the scheduled hearing.
- Because the other party could go to jail for the violation, he or she has the right to court-appointed counsel.
- The person filing the contempt does not have the right to court-appointed counsel.

The Hearing

At the hearing, you must show the other party knowingly violated a court order.

- The burden of proof in a contempt case is high.
- Your evidence must show beyond a reasonable doubt that the other party:
 - ▷ had a duty to obey a court order, and
 - ▷ willfully failed to perform that duty.
- The order must clearly and specifically tell the other party what he or she is to do or not do (such as give you a visit on a certain day).
- If the court order is vague or unclear as to the other party's duty, it may be hard to show the other party willfully violated the order.



After the Hearing

If the other party is found in contempt, the court can punish him or her. The court may let the person in contempt purge the contempt (fix what was done), modify the order, or sanction the other party.

- **Purge:** If a court allows the other party to purge the contempt, it means the other party gets a chance to correct past actions.

Example: A parent is in contempt for failing to allow court-ordered visitation with the other parent. The court may find the parent in contempt of the order. However, the court may allow the parent to purge the contempt by allowing the other parent to make up all missed visitation.

- **Modify:** Sometimes the actions of the party in contempt are bad enough that the court determines that the original order should be modified. The court could transfer custody or change the visitation schedule.

- **Sanctions:** The court may order a party found in contempt to do specific things or impose sanctions.

Example: In divorce and custody cases, the court may order the parties to take part in mediation. The court could order the party in contempt to take parenting classes. In extreme cases, the court may order the party in contempt to go to jail. The sentence for contempt could be up to 30 days in jail for each violation of the order.

If you think a contempt action is necessary, contact Iowa Legal Aid. You may be able to get free legal assistance.

*Donna K. Bothwell is a staff attorney at Iowa Legal Aid's Southwest Iowa Regional Office in Council Bluffs.

Iowa Legal Aid Helps With Pension Problems

Iowa Legal Aid provides FREE help with your pension issues! You can call our toll-free number at 1-800-992-8161. Des Moines area residents can also call 282-8161.

The **Pension Rights Project** provides help with employer, union and government pensions. This includes traditional defined benefit plans as well as plans like 401(k)'s. Services include:

- Contacting pension administrators on your behalf;
- Finding "lost" pension funds when companies merge or go out of business;
- Helping you apply for your benefits;
- Helping with appeals if your pension is denied;
- Getting survivor benefits;
- Checking benefit calculations;
- Assisting with pension issues in divorces;
- Sending out information about pension issues.

The **Pension Rights Project** is partially funded by the U.S. Administration on Aging. Services are free to all Iowans without regard to age or finances.



FREE

Legal Help

1-800-992-8161
(282-8161 in Des Moines)

**The Legal Hotline
for Older Iowans
(60 & Over)**

An Iowa Legal Aid Project

Iowa Legal Aid helps low-income Iowans

Did you know...

After calling what looked like a local number for "legal aid" in the phone book, some Iowans got return calls from somewhere in Georgia?



lowans got return calls

from somewhere in Georgia?

Don't be misled ...

- Iowa Legal Aid provides **FREE** legal assistance to those who qualify.
- Iowa Legal Aid helps low-income Iowans with civil legal problems including:
 - Domestic violence
 - Housing
 - Public Benefit Programs

The intake number for Iowa Legal Aid is 1-800-532-1275

Iowans age 60 and over, call Iowa Legal Aid's Legal Hotline for Older Iowans at

1-800-992-8161



Visit us
online at

iowalegalaid.org

Rental Deposits

Disputes over deposits are a frequent problem between landlords and tenants. A landlord can make a tenant pay up to two months' rent as a deposit. This is in addition to a month's rent in advance. Tenants need to take steps to be sure landlords return deposits after they move out.

Checking A Landlord Out

A landlord/tenant relationship is long-term. Few tenants go through the hassle of packing up all they own, finding a vehicle, loading and unloading, cleaning and unpacking, just to do it again next month. You are going to rely on your new landlord to maintain and repair the unit, and provide other services. Therefore, it is a good idea to learn as much as you can about your future landlord.

One way to learn more about your new landlord is asking previous tenants. You can ask your future landlord what other properties the landlord owns or manages. Then find the tenants who live there. You may want to speak to the tenants who are in the unit you plan to rent. Ask them how prompt the landlord is with repairs. Ask if the landlord has a good or bad reputation about returning deposits.

Many towns have Housing Codes. If you live in a town with a Housing Code, check with the City Inspector. See if any of your landlord's properties violate the code. Also find out how long the violation has existed. The landlord might have let a serious Housing Code violation go a long time without fixing it. You should also check whether other tenants have made complaints to the housing inspector about this landlord.

You can also get information from Small Claims Court. That is where most deposit claims are decided. Therefore, you may want to go to the Small Claims Court Clerk and ask for help looking up your landlord's name in the Index. This is a book where the clerk writes down Small Claims suits. This would tell you if tenants have sued this landlord to get their deposit back. An easier and faster way to learn about a landlord's history in court is by using the Internet. If you have Internet access, visit <http://www.iowacourts.gov/>. Go to Online Court Services and then to Online Docket Record. From this page, follow the instructions to find out information from all 99 counties in Iowa, including case numbers you can take to the county clerk and ask to see files about the landlord. If the landlord is in court a lot, you should be especially careful!

Negotiating the Deposit

Under the new law, a landlord can charge up to two months' rent as a damage deposit. This deposit is in addition to asking that you pay your first month's rent before moving in. This means if your rent will be \$500 per month, you may have to give your landlord up to \$1500 before you move in.

Even though the law says a landlord can charge up to two months' rent as a deposit, this does not mean that the landlord must ask for that much. Some landlords charge only one-half month's rent or even less for the deposit. There are several ways to try to negotiate with the landlord about the amount of the deposit payment.

One way is to give your new landlord letters of reference from your former landlords. The letter should state that you were prompt in paying your rent. It should say you kept your house in a clean and habitable condition and gave prompt notice of any problems. It would help to have the letter say you were courteous to other tenants, and left the apartment clean and in good repair.

It may be that your last landlord was not a good one. You may not be able to get a good reference. If this happened to you, or if this is your first apartment, references from other people may help. Your employer, teachers, and social workers, may be willing to give you references.

Another way to negotiate the deposit is asking your landlord to let you pay it off over time. Suppose your landlord requires one month's rent for deposit, and it is \$500. Your landlord may let you pay \$100 per month in addition to your regular rent payment of \$500. Be sure to get this kind of agreement in writing and signed by the landlord. You should also be careful to get a separate receipt for



your rent payment and your deposit payment. This may avoid confusion later, so your landlord won't forget and think your rent was actually \$600 per month and say you never paid your deposit.

It is never a good idea to pay your landlord in cash. A tenant should pay with a check or money order, and keep a copy of it. On the check or money order a tenant should write what the payment is for, for example: "March Rent".

Using Your Deposit For The Last Month's Rent

Sometimes tenants do have to move. Many renters won't have enough cash on hand to pay the deposit and first month's rent to the new landlord. Some tenants ask their old landlord if they can use the deposit for the last month's rent. The landlord does not have to agree to do this. If the landlord will let you use the deposit as the last month's rent, be sure to get it in writing signed by your landlord. If your landlord forgets about your agreement, and you fail to pay rent on time, your landlord could evict you for non-payment of rent. A written agreement signed by your landlord is proof of your arrangement.

Moving In

Under Iowa law, the landlord must give you a "habitable" unit at the beginning of your tenancy. This means that your apartment or house must not have any serious health or safety problems. Your unit should not have signs of rodent or pest infestation, leaky pipes, exposed wiring, etc. The basic functional parts of the unit should be in working order. Functional parts of the unit include plumbing, heating, and structural parts like ceilings, walls, windows, and floors. All should be in good repair. If there are problems, tell the landlord. This will give your landlord time to make repairs before you move in.

Under Iowa law, tenants must return the unit to the landlord in the same condition it was at the beginning of the tenancy. "Normal wear and tear" is allowed. This means that you should document the condition of the unit on the day you move in. This can be done by taking pictures, making a checklist, and doing a "walk-through" with the landlord.

Pictures are helpful to show how much cleaning you did when you moved in. You must be careful that the picture actually shows what was in front of the camera when you took it. Be sure the picture is in focus. If size is important, be sure to put something in the picture that will help show the size. For example, if there are water stains on the wall or ceiling, put a ruler next to the stain before taking the picture. You could use this picture later to prove you didn't cause the problem.

You will also want to prove the date the picture was taken. You may want to use a camera that has film which prints the date of the picture on it. You should take pictures of your apartment on the day you move in, and when you move out.

Another way to show the condition of the apartment on the day you moved in is to make a checklist of the condition of the unit. Start with the functional areas first. This includes electricity, plumbing, walls, ceilings, floors, doors, windows, heating, air-conditioning, etc. Under each of these areas you should note any problems. For example, under "floors" you may want to note anything wrong with the carpet including loose threads, worn spots, cigarette burns, stains, cleanliness, etc.

After you have put together a complete list, you may want to do a "walk-through" with your landlord. Make an appointment with your landlord to go through your apartment and note all the problems you have set down on the list. You may add

How To Get Your Rental Deposit Back:

- Get a receipt for your rental deposit that shows the amount and the date paid.
- Check the apartment or house for damage before you move in. List any damages. It is best if the landlord and tenant would sign the list. Have a witness if you can.
- Put the place back in the same or better shape it was in when you moved in. Normal wear and tear is okay.
- Take pictures of the home right before you leave. Have a witness if you can. Ask the landlord to check out the place before you leave and let you know if there are any problems.
- Give the landlord in writing a mailing address at the time you move out or before. If no mailing address is given within a year, the tenant loses the right to get the deposit back.

anything your landlord points out. After the walk-through, have the landlord sign and date the list. If your landlord is not available for a walk-through, you may want to call the City Housing Inspector to help you. If they are not available, then you can ask a friend. In any case, you may want them to sign and date the checklist.

Care of the Unit During Tenancy

Both the landlord and tenant have a responsibility to keep the dwelling unit in a fit and habitable condition. The landlord must meet housing codes if any apply. The landlord must do any repairs that are necessary to keep the unit in a fit, safe, and habitable condition. This includes all functional areas like electric wiring, plumbing, heating, ceilings, wall, etc. Also, the landlord is responsible for maintaining the safety and habitability of building areas used by other tenants (stairwells, sidewalks, laundry facilities, etc.).

The tenant has a similar responsibility to keep his or her unit in a clean, safe, and habitable condition. If the tenant deliberately or carelessly damages the unit, the tenant probably will have to pay for it. The tenant will be responsible if he or she knowingly permits someone else to damage the property. The tenant should report any problems to the landlord before the problems get worse. When you speak to the landlord, be sure to document your conversation in writing. Send a letter summarizing what you said, and keep a copy of the letter for your records.

Moving Out

The tenant is responsible for returning the apartment or house to the landlord in the same condition it was at the beginning of the tenancy. Any change in the condition of the dwelling resulting from normal wear and tear is allowed. If you followed the instructions above, you have documented the condition of the apartment at the beginning of your tenancy. The question remains, "What is normal wear and tear?"

A good way to think about whether damage is due to normal wear and tear is to think through three questions. The first question is, what object was damaged? The second question is, what kind of damage? And the third question is, would that kind of damages result from normal use of that object?

For example, suppose the kitchen water taps did not drip when you moved into your apartment. Now, after living in the unit for three years, they are dripping. The first question is what object was damaged? -The kitchen taps. The second question is, what kind of damage? -The taps drip. The third question is would three years of normal use of kitchen water taps result in dripping? -Yes, probably. Therefore, it is unlikely that you would be responsible for damage of leaky water taps under these circumstances.

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RENTAL DEPOSITS

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When you move out, document the condition of the unit after you have moved everything out and cleaned. Do this the same way you did at the beginning of your tenancy. You can document your apartment's condition by pictures, checklists, and walk-throughs.

A walk-through with your landlord is critical at the end of your tenancy. If your landlord signed a statement that your apartment was clean and in good repair at the end of your tenancy, the landlord has much less to complain about after you have gone.

Return Of The Deposit

Under Iowa law, your landlord does not have to return your deposit until thirty days after you have left the unit and you have given the landlord instructions about where to send the deposit. If the landlord keeps all or part of your deposit, the landlord must tell you so in writing. The letter from your landlord must explain specifically the reason for keeping the deposit. A letter that merely says you damaged the apartment and therefore the landlord is keeping your deposit is not specific enough. The landlord must tell you what was damaged, and how the landlord arrived at that specific amount. Under Iowa law, the landlord must send this letter to you within thirty days of the date you leave and you give instructions about where to send the deposit, or else the landlord does not have a right to keep any of your deposit. The tenant may also be able to recover twice the monthly rental payment, or more, if the landlord is acting in "bad faith." Other rules apply to deposits as well.

Negotiating Return Of Your Deposit

Sometimes you don't have to sue your landlord to get your deposit back. If you took the steps set out above, you can contact your landlord and tell the landlord what you have. You will have signed move-in and move-out checklists. You may have pictures, and the landlord's signed statements that the apartment was clean and in good repair. With these documents, you can often convince the landlord to return your deposit without having to go to court.

Suing Your Landlord

Sometimes, the landlord refuses to work with you and must be sued to get your deposit returned. You can go to iowalegalaid.org for information on Small Claims Court including an online version of the Iowa Legal Aid booklet Small Claims Court (also available in print). This booklet describes the basic court procedures used in Small Claims Court, where you would probably file your lawsuit to recover your deposit. There are court forms that you must use. You can get the forms at http://www.iowacourts.gov/Representing_Yourself/Civil_Law/Small_Claims/. You can contact your local Iowa Legal Aid office and may be able to get advice on how to proceed in your lawsuit. Finally, you may be able to find a private attorney who will help you.

Any tenant with problems involving an eviction, or other landlord/tenant law questions should see an attorney for advice. To find out if you may be able to get free legal help from Iowa Legal Aid, call 1-800-532-1275.



Will I lose my home?

If you cannot make your house payments, you may be able to get free legal help from Iowa Legal Aid. Call toll-free: 1-800-532-1275. Or visit our website at iowalegalaid.org

For help with your financial problems, call the Iowa Mortgage Help Hotline: 877-622-4866 or visit the website: www.iowamortgagehelp.com. They may be able to help you find out if a loan modification or other solution is available.

What to Do In a Car Accident & Who Pays the Damages

By Bill Nassif*

Even careful drivers have car accidents. Knowing what to do in an accident can protect you and your family from legal and financial problems, help injured parties and even save lives. It also is helpful to know how fault is determined under Iowa law.



What to Do In an Accident

If you are in an accident in Iowa, you should follow these steps and precautions:

- **Stop & Take Precautions to Avoid More Damages or Injuries.** Stop your car as soon as you can and try not to block traffic or put yourself or others in danger. Consider turning on your flashing hazard lights or using a flashlight or other safety device to alert others to use caution. Note that leaving the scene of even a minor accident can result in criminal penalties.
- **Check for Injuries.** If someone is injured, call 911 immediately!
- **Call The Police.** Even if no one is injured, you should call the appropriate law enforcement personnel (police, sheriff, highway patrol). Law enforcement personnel will investigate and produce an Accident Report unless no one is hurt and the total damages to all property is less than \$1,500.
- **Talking About the Accident.** Do not talk about what happened except to law enforcement personnel. Do not tell the other parties or the police it was your fault. It is up to the insurance companies and, if necessary, a court to decide who was responsible. Many times more than one person is at fault.
- **Get Information.** Exchange information with the other driver, including driver's name, address, car license, driver's license number and auto insurance information. Also gather names and contact information from any other witnesses, including passengers in the other vehicle(s), pedestrians, residents, or anyone else who witnessed part or all of the accident. Be sure to also get the name of the investigating officer(s). If you have a camera, and if it is safe to do so, take pictures of the scene and the damages to the vehicles or property.
- **File An Accident Report.** As soon as you can after the accident, make notes and diagrams of the accident. This will help you remember the details of what happened. It will also help you prepare an Iowa Accident Report Form if necessary. An accident that happens anywhere in Iowa causing death, personal injury, or total property damage of \$1,500 or more must be reported on an Iowa Accident Report Form. You must file this report unless the accident is investigated and reported by a law enforcement agency. If you do not file an accident report form within 72 hours of an accident, your driving privileges could be suspended.
- **Call Your Insurance Agent.** Contact your insurance agent or company as soon as possible after the accident to report the accident and file your claim. Contact your insurance agent even if you think the accident was not your fault since your insurance agent can help you with your claim against the other driver.

Iowa's "Fault" and "Comparative Negligence" Law

Once the accident is over and you have followed the above steps, it is important to know how fault is determined. Under Iowa law, the driver legally at fault for an accident is responsible for damages. The car insurance of that driver, if he or she has insurance, generally pays this amount. Iowa has a system called "modified comparative

negligence" to determine whether an injured party can sue for damages. Under this system, persons who are **50% or less** at fault can recover part or all of their damages. A party who is **more than 50%** at fault, however, cannot recover anything. For example, if Ned, who is speeding, hits Alice, who went through a stop sign, both parties may have some level of fault. Assume Ned has damages of \$10,000 to his car and Alice has \$20,000 in damages because her car is totaled. If a court decides that Alice is 75% at fault and Ned is 25% at fault, then Alice cannot collect anything since the accident was more than half her fault. Ned, on the other hand, can collect because he was 50% or less at fault, but his damages are reduced 25%, the percentage of his fault. So Ned can collect only \$7,500 [$\$10,000 - (\$10,000 \times 25\%) = \$7,500$].

What If The Other Driver Caused the Accident and Does Not Have Insurance?

When uninsured drivers cause accidents that damage others and their property, the injured parties often have trouble collecting. This is because many people who do not have insurance do not have any money to pay you. To protect against this, many people buy uninsured or underinsured motorist coverage. With this coverage, your insurance company will pay your damages if you are hit by an uninsured or underinsured motorist. This coverage is usually not very expensive.

What If the Accident Was Your Fault and You Did Not Have Insurance?

If you do not have liability insurance and cannot pay for damages from an accident that is your fault, the Iowa Department of Transportation (IDOT) may suspend your license and all your vehicle registrations. If this happens, the IDOT will generally not lift the suspension unless you pay the damages, agree to a payment plan, place a security deposit with the IDOT, or file bankruptcy. Fines may need to be paid. You may be found liable if the injured party files a lawsuit to collect damages. See the Iowa Legal Aid website resource titled *Accidents with No Car Insurance* for more information.

*Bill Nassif is a staff attorney with Iowa Legal Aid's Legal Hotline for Older Iowans.

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Supreme Court Decision Changes Impact of Tax Law on Same-Sex Married Couples

By Christopher Rottler*

In June of this year, the U.S. Supreme Court found Section 3 of the Defense of Marriage Act (DOMA) unconstitutional. Section 3 barred same-sex married couples from being treated as “spouses” under federal laws. It also prevented any federal marriage benefits, such as:

- Providing health insurance for a federal employee’s spouse;
- Allowing use of a spouse’s earnings record after retiring to get higher social security benefits; or
- Establishing many tax benefits and responsibilities tied to a person’s marital status.

The impact this case will have on same-sex couples is just starting to be explored. Because Iowa recognizes same-sex marriages, this decision will impact many Iowans.

Details about how the decision will be put in effect are not yet available. The IRS has not given taxpayers or preparers any specifics yet. It is safe to say married same-sex couples are now able to file federal tax returns using the status “married filing jointly.”

- There may be many advantages to filing a joint tax return with a spouse.
- Couples may qualify for multiple tax credits such as the Earned Income Tax Credit, the American Opportunity and Lifetime Learning Credits, the exclusion or credit for adoption expenses, and the Child and Dependent Care Credit.
- Joint filers also get higher income thresholds for certain taxes and deductions – this means they can earn more income and still qualify for certain tax breaks. See the resource “Taxes and Marriage” at www.iowalegalaid.org for some pros and cons to think about before filing jointly.

Same-sex couples may also be able to claim benefits they could not claim for some past tax years when joint returns were not an option.

- Normally, the IRS allows taxpayers up to three years to amend prior tax returns and still claim a refund.
- Same-sex marriage became legal in Iowa after the unanimous ruling of the Iowa Supreme Court in 2009. This means many same-sex couples can now amend returns for tax years 2010, 2011, and 2012.
- Couples may be able to take advantage of this to receive larger refunds.

Some tax preparers say there should not be a three-year limit to amend returns. They argue same-sex couples should be able to go back to when they were legally married but kept from filing jointly by the unconstitutional sections of DOMA. Hopefully, the IRS will provide some guidance on this issue but the answer may not come until after someone files a lawsuit. Until there is a final answer to this question, you may want to consider filing an amended return for years prior to 2010 to preserve a claim to a refund.

The information in this newsletter was correct as of the date it was printed. The laws may have changed. **DO NOT ASSUME THAT THE INFORMATION IS CORRECT AFTER THE DATE PRINTED ON THE FIRST PAGE.**

You should see a lawyer to get complete, correct, and up-to-date legal advice. Do not rely on the general information in this newsletter for your specific case. If you need a lawyer but can’t afford one, contact Iowa Legal Aid. You may be able to get free legal help. Call or write Iowa Legal Aid. **AS YOU READ THIS NEWSLETTER, REMEMBER IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.**



Changes to DOMA will mean changes in tax law. How alimony and property transfers are treated for divorced or divorcing same-sex couples might result in one getting a higher tax bill. Many questions wait for answers. Same-sex couples would be wise to talk to a tax preparer or lawyer before making decisions with potential tax consequences.

The information in this article was not intended or written to be used and cannot be used to avoid penalties under the Internal Revenue Code.

*Christopher Rottler is a staff attorney at Iowa Legal Aid’s Central Iowa Regional Office in Des Moines.



FREE LEGAL TAX HELP

- Find out about the Earned Income Credit
 - Get Assistance With Tax Controversies
- Call Iowa Legal Aid for details on the **Low-Income Taxpayer Clinic**.

1-800-532-1275

PAGEVIEWS from iowalegalaid.org

Catching up on Filing Taxes Doesn’t Have to Be Hard ... (It can even be rewarding!)

I got behind on filing my tax returns and I want to catch up. How do I do it?

The IRS has tax forms for several prior years and instructions at its website, www.irs.gov. If you do not have access to the Internet, a local library might print the forms or have a computer for you to use.

- Select the “Forms and Pubs” tab and
- Click “Prior Year Forms” to download the years you need.

If you feel comfortable filling out the forms, this is probably the easiest and fastest way to complete old returns. If you don’t, some free tax preparation sites will help with returns for prior years. These sites are generally open January thru April. In most areas, you can call 2-1-1 during tax season to find one near you.

I moved several times and don’t know if I have all my W-2s and 1099’s. How can I make sure?

Tax forms that employers, banks, and businesses send to you are normally filed with the IRS, too. The IRS may keep these records up to ten years. You can find out what is in your records by completing and sending Form 4506-T Request for Transcript of Tax Return.

To get this form online,

- Go to www.irs.gov
- Select the “Forms and Pubs” tab
- Click “Current Forms” and enter 4506-T
- Then select “4506-T.”

To order the form by phone, call 800-908-9946

When you fill out Form 4506-T, be sure to check the box to the right of item 8 to include Form W-2 and Form 1099. Mail or fax the completed form to the address or phone number the form lists for your state.

Completing your state tax forms is a little more difficult with the transcripts from the IRS

because they don’t show the state tax withholdings. Once you have the wage and income transcripts, you can try to contact old employers for copies of the actual W-2s so you will have a record of the state withholdings.

Make a “GO” folder. Keep your crucial documents in this folder.

- Include a copy of your last year’s tax returns.
- Create a current year envelope each January for your W-2s, 1099’s and receipts you may need for tax purposes.
- If you work lots of small jobs, keep at least one paystub from each job. This will help make sure you have all your W-2s when you get your taxes prepared.
- Keep this folder in a secure place. Always have it where you can place your hands on it quickly when needed.

How far back can I claim refunds?

The IRS gives you *three years* to request a refund from the original due date of the return. If you didn’t file a 2010 tax return, you must file it by the tax filing deadline in 2014. This is normally April 15th.

What if I owe?

The IRS offers several possible options for repayment. If you can’t work something out, you might be able to get help negotiating with the IRS from Iowa Legal Aid’s *Low-Income Taxpayer Clinic (LITC)*. To find out if you can get free legal help from Iowa Legal Aid, call 1-800-532-1275.

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An Iowa Legal Aid Website Resource



Who Makes Medical Decisions for Me When I Can't? Continued from Outside Cover

You should know about three legal documents on medical care issues. Two are documents you sign. In addition, you can ask your doctor for an *Out-of-Hospital Do-Not-Resuscitate Order*.

- **Durable Power of Attorney for Health Care Decisions**
The *Durable Power of Attorney for Health Care* is sometimes called a *Medical Power of Attorney*. This names who you want to make all your health care decisions if you can't. The document is signed by you in front of two witnesses or a notary public.
- **Living Will – Declaration Relating to Use of Life-Sustaining Procedures**
The living will makes clear to doctors and health care staff that you do not want life sustaining medical procedures if you are terminally ill. This takes effect only when you are terminally ill and can no longer make decisions on your own. This document is signed by you in front of two witnesses or a notary public.
- **Out-of-Hospital Do-Not-Resuscitate Orders (DNR)**
The *Out-of-Hospital Do-Not-Resuscitate Order* is signed by your doctor. The order says you do not want to be revived if your heart or breathing stops. This order applies even if you are not in a hospital. You must be terminally ill (like with a living will) before your doctor will sign this kind of order.



Durable Power of Attorney for Health Care

A *Durable Power of Attorney for Health Care* is a legal document. It authorizes a person to make decisions about your health care if you are not able to make decisions for yourself. "Health care" includes treatment, service or procedures to maintain, diagnose or treat your physical or mental condition. This person is called your health care agent or your health care power of attorney. Your power of attorney can consent to, refuse to consent to or withdraw consent for health care.

Your *Durable Power of Attorney for Health Care* follows your wishes. You can specify those wishes in the document itself. If you haven't made your wishes clear, your power of attorney must act in your best interest. The person you name has priority over all others in deciding about your health care. It is important for your health care providers to have a copy of the power of attorney document so they know who has the authority to make health care decisions for you. Make a power of attorney appointment even if you have a spouse. You should also appoint an alternate power of attorney, in case your first choice is unable or unwilling to serve.

To ensure your wishes are met and the document is properly executed, you may want to talk to a lawyer. You can get health care power of attorney forms from the Iowa State Bar Association or the Legal Hotline for Older Iowans. Review the form thoroughly to make sure you understand what you are signing. Add any specific directions regarding your health care to the document. It must be witnessed by two people or signed in front of a notary public. There are rules for who can be a witness and who can be named to make health care decisions for you.

Give copies of the signed power of attorney to your health care agent, family members, and

all the doctors who treat you. You can revoke a power of attorney at any time by communicating your intent to revoke the power of attorney. This can be in writing or spoken. You should tell your health care agent. If a health care provider is currently providing services, you can also revoke the power of attorney by informing the health care provider.

A *Durable Power of Attorney for Health Care* is different than a living will. A living will is more limited. It only applies to your wishes for the use of life-sustaining procedures if you are terminally ill.

LIVING WILL - Declaration Relating to Use of Life-Sustaining Procedures

A living will is a written document authorizing health care providers to withhold or withdraw life sustaining procedures in certain cases. A life-sustaining procedure is any medical procedure, treatment or intervention which utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function, and which serves only to prolong the dying process.

A living will takes effect when you are diagnosed as being terminally ill and are not able to take part in the medical decision-making process. Two requirements must be met for someone to be considered in a "terminal condition." First, there must be no way to cure or reverse the condition. Second, it must be expected to result in either death within a relatively short period of time, or a state of permanent unconsciousness. An example would be a person in the final stages of cancer. If your attending doctor says you have a terminal condition, another doctor must agree with that decision before life sustaining procedures can be withheld. A living will does not authorize your physician to withhold water, drugs or medical procedures that would control pain.

Without a living will, others will decide if life-sustaining procedures will be used for you. If you have a health care power of attorney, this person will make the decision. If you do not have a health care power of attorney, the law states the first person available from the following list will make the decision for you:

- a guardian,
- your spouse,
- an adult child (or a majority of your adult children who are available),
- a parent or parents, or
- an adult sibling.

If you are competent and over 18 years old, you can make a living will. You must sign and date the document. This must be done in front of a notary public or two witnesses. There are rules as to who can be a witness. After you have signed your living will, deliver copies to all of your health care providers. It is important to tell family members and your health care power of attorney about your living will and where you keep the original copy.

You may revoke a living will at any time, and in any manner. Revocation of your living will is effective as soon as your doctor is told.

Out-of-Hospital Do-Not-Resuscitate Orders

The *Out-of-Hospital Do-Not-Resuscitate (DNR) Order* says should you become terminally ill, you do not want to be revived if your heart or breathing stops. Your doctor prepares and signs this order to carry out your wishes. Like the living will, the *Out-of-Hospital Do-Not-Resuscitate (DNR) Order* makes clear to health care personnel your wishes if you are terminally ill.

The order does not mean you would not receive proper medical care. You would still be kept as comfortable and free from pain as possible.

You can ask your doctor to make a DNR order. If you can't ask because of your illness, the person you appoint in a *Durable Power of Attorney for Health Care* can ask for you. If you have not made a power of attorney appointment, close family members may be able to ask for a DNR order.

Iowa Physician Orders for Scope of Treatment (IPOST)

Iowa has a new health care form for patients making decisions about end-of-life health care treatment. This is called Iowa Physician Orders for Scope of Treatment (IPOST). It is based on a 2010 Iowa law. The form is not yet used statewide. It is used in some counties near Dubuque and some counties near Webster City. It may be coming to your area in the near future.

The form makes the full range of a patient's end-of-life health care wishes more clear. It is to be available to all of a patient's health care providers in all medical settings. This is to make sure the patient's wishes are carried out no matter where you are getting care or treatment.

- IPOST is for use by persons who are frail and elderly or have a chronic, critical medical condition or a terminal illness.
- It does not replace a Durable Power of Attorney for Health Care, living will or Out-of-Hospital Do-Not-Resuscitate Order which you may already have.
- The form is prepared by your physician, nurse practitioner, or physician's assistant WITH YOUR HELP.
- The completed form contains medical orders to carry out your wishes for end-of-life health medical care.

More information about IPOST can be found through the Iowa Department of Public Health.

Your doctor will give you a copy of the order. If paramedics or other emergency personnel know about this order, they will not revive you. The best way to be sure emergency personnel will know is to buy and wear a special DNR bracelet or necklace. In this way, the DNR information will be with you at all times. If you do not have a necklace or bracelet, emergency health care may not know that you do not want to be revived. The order should also be in your home or wherever you are staying so it can be plainly seen at all times.

If you change your mind, you can cancel your DNR order. One way to cancel is to tell your health care provider. This includes your doctor, paramedics or anyone else who can provide health care services. You can also authorize someone else to cancel the order. If you are wearing a special bracelet or necklace, take it off.

A DNR order is sometimes confused with a living will. Many of the words used to describe them are the same. Their purposes, however, are different. A living will is prepared by you. It tells health care providers that you don't want to be kept alive artificially if you become terminally ill. An *Out-of-Hospital Do-Not-Resuscitate (DNR) Order* is prepared by your doctor. It tells health care providers not to try to revive you if you are terminally ill and your heart or breathing stops.

When you understand and use these three legal documents, you take care of the decisions someone will need to make about medical care if you can no longer make them.

*Fred Nelson and Bill Nassif are staff attorneys at Iowa Legal Aid's Legal Hotline for Older Iowans.

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Assignments for Parents ***Continued from page 1***

Keeping a child's private life private requires all family members to take part. Children should have a clear idea what kind of information is not to be shared, such as:

- The child's address, phone number, passwords and schedules;
- The child's school, favorite things, likes and activities;
- Where the child was located when he/she last posted a comment online;
- Photos of the child, the child's family and friends;
- Access to the sites of the child's friends, including access to a parent's Facebook page.

Be sure children know not to give out sensitive information to strangers or friends.

Resources to Help Cope with School Problems

A child in crisis over bullying, harassment or violation of privacy will need help. This may mean talking to a parent, school counselor or school administrator. Sometimes it means going to a private counselor. If the child is not coping well with the situation, here are some resources the child and parents can use to talk about the problem and look for solutions:

- **National Runaway Switchboard at 1-800-786-2929**
 - ▷ For a child thinking about running away or in crisis.
 - ▷ Counselors who answer the hotline phones know how to work with children, adults, and working out the problem over the phone.
- **National Suicide Hotline at 1-800-784-2499**
 - ▷ For a child harming his/herself or thinking about suicide.
- **United Action for Youth at 319-358-9406 ext. 1**
 - ▷ For a child running away, this is a safe place to go.
 - ▷ Their website is www.unitedactionforyouth.org.
- **Mayo Clinic - <http://www.mayoclinic.com/health/childrens-health>**

▷ For information on helping a child cope with problems at school, including bullying.

- **DHS Child Abuse Hotline: 1-800-362-2178**

▷ For a child or adult to report child abuse by the person's caretaker.

- **State Domestic Violence Hotline: 1-800-942-0333; National Domestic Violence Hotline: 1-800-799-7233**

▷ For a child to talk with an advocate about being emotionally, verbally or physically abused and get help planning for personal safety.

- **United Way Resource Hotline: 211**

▷ For a child or parent to find local resources to assist the family.

- **Youth Law Hotline at 1-800-728-1172; Iowa Legal Aid at 1-800-532-1275**

▷ For a child with legal questions about their situation.

**Brooke Chesney is a staff attorney in Iowa Legal Aid's Intake Unit.*

LOW-INCOME READERS OF THE EQUAL JUSTICE JOURNAL...



If you have a question about something you read in this newsletter, call **THE EJJ HOTLINE** at 1-800-992-8161. When your call is answered, tell the receptionist you want **The EJJ Hotline**. Your call will be transferred to a staff member who will be able to respond to inquiries from persons who are eligible for free legal help from Iowa Legal Aid.