

Tort Defense: Information from Iowa Attorney Bruce Walker

By Bruce Walker, Liz Araguas, and Brooke Chesney

If someone is injured by an auto collision you cause, what happens if you are sued? If you are sued, what can you do to defend yourself in court? Tort defense attorney Bruce Walker of Phelan, Tucker, Mullen, Walker, Tucker & Gelman in Iowa City, has experience in dealing with these cases. Here is some information from Mr. Walker on torts and defending against a lawsuit.

What is a tort?

- A tort is when one person violates his/her duty to another.
- The easiest way to understand torts is by looking at examples of torts:
 - Auto collisions,
 - Injuries due to poorly maintained property, and
 - Assault.

How do I know if I am being sued?

- You would be served.
- Service is usually in person, by a process server, or a sheriff's deputy.
- Check your email. It is possible you could receive notice by email if you are already signed up for electronic filing.
 - Before you are sued, you may receive a letter from an attorney or an insurance claims office.

What should I do after I receive notice that I'm being sued?

- The key is to act.
- As soon as you are served with notice of the lawsuit, the clock begins to run on important deadlines.
 - Even the most skilled lawyer in town cannot fix missing the deadlines.
- If your case involves a car accident or an incident on your property, you should contact your insurance company right away.
 - Your insurance company should then send someone to investigate the case for you.
 - They might provide an attorney to defend you.
 - If you do not have an insurance policy covering the cause of the injury, consider hiring an attorney to help prepare your case.

What are some deadlines I need to watch out for if I'm being sued?

- Read all papers that come to you about the case so you know your deadlines.
- The most important deadline initially is the limited time you have to file an answer, or your response to what the other party says you did or did not do.
 - From the time you are served, you have twenty (20) days to file an answer in state court.



- There is no cost to file an answer at the clerk's office.
- The next deadlines to watch for are discovery deadlines, or when information from one party has to be produced to the other party.
- The trial date is the final deadline. Be sure you are ready to present your case on the date of the trial.

What can I do to prepare for trial?

- Whether you have an attorney or not, your most important job in preparing for trial is to gather all relevant evidence.
- If you have an attorney, you should give him or her everything you think may be helpful in your defense.
 - Don't try to edit for your attorney, since your attorney is the right person to decide what is useful evidence and what is not.
- Prepare a short summary of the situation that gave rise to the case.
 - It can take years before the time of the collision and trial, so it is important to record what happened while your memory is still fresh.

What are some tips for succeeding without an attorney?

- If you find yourself unrepresented, there are some steps you may take to protect yourself.
 - First, take note of any important deadlines. Check with the clerk of court if you have questions about any deadlines.

Continued on next page

Avoiding Fake Check Scams

By Brooke Chesney

Scams involving fake checks are common. There are also scams involving fake money orders. We all need to double-check the source of unfamiliar checks or money orders before putting them into our personal bank accounts. Otherwise, we end up paying the bank ourselves.

Types of Fake Check Scams:

The Secret Shopper

In this scam, a person gets an offer to be employed as a "secret shopper" to evaluate a money transfer service or various local businesses. The consumer is sent a check. The scammer tells the person to deposit the check into his/her bank account and withdraw the amount of the check in cash. The scammer gives the consumer a deadline to take all or part of the cash to a money transfer service and wire it to an address. Sometimes the consumer is told to use some amount of the money to make purchases from certain businesses and submit a "secret shopper" report. In some scams, the consumer is told to keep some of the money as pay for the work performed. The consumer later discovers that the check or money order is fake and is required to pay back the bank for the full amount of the check.

The Lottery or Sweepstakes Scam

A scammer sends a letter stating that the person has won a foreign lottery or sweepstakes. The letter includes a check to pay the fees and taxes for the prize. The scammer tells the person to deposit the check, then wire the money to pay the fees and taxes in order to claim the prize. The prize never arrives. The consumer later discovers that the check is fake and he/she owes the bank the amount deposited.

The Overpayment Scam

This scam targets a person selling cars or other valuable items through local classified ads, Craigslist ads, or online auction sites. The scammer replies to the ad or auction posting and offers to pay for the item with a check in an amount larger than the purchase price. The scammer usually has a story as to why the check is for more than the purchase price. The seller is asked to wire the excess money after depositing the check. The seller does this and later is responsible for the full amount of the deposit when the bank discovers the check is fake.

If the Bank Lets Me Withdraw the Money the Check Is Good, Right? Wrong

The fact the bank allows you to withdraw money doesn't mean the check is good.

Under federal law, banks must make funds available to you at certain times:

- From U.S. Treasury checks, cashier's check, certified checks and teller's checks, and checks paid by government agencies, banks must make the money available at the opening of the business day after you deposit the check.

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New Law Protects Elderly Iowans From Abuse

By Fred Nelson

A law protecting elderly Iowans against abuse went into effect July 1, 2014. The law expands protections in Iowa against abuse to a vulnerable elder. The new law adds to protections already in place for dependent adults against caretakers. Other protections already in place are under Iowa's domestic abuse law, as well as under criminal law.

Who is a vulnerable elder?

Vulnerable elder is defined as "a person 60 years of age or older who is unable to protect himself or herself from elder abuse as a result of age or a mental or physical condition."

What is included in the definition of elder abuse?

Elder abuse under the new law includes:

- Physical injury, unreasonable confinement, punishment or assault,
- Sexual offense,
- Neglect that is deprivation of necessary care by a caretaker, and
- Financial exploitation

Though these are actions that may have protections elsewhere under the legal system, they sometimes fall through the cracks.

What can someone do who is concerned about elder abuse?

The new law provides for the vulnerable elder or a substitute to petition the court to stop the abuse. This process is similar to Iowa's civil domestic abuse petition.

A substitute petitioner means a family or household member, guardian, conservator, attorney in fact, or guardian ad litem for a vulnerable elder, or other interested person. Including other interested person as a substitute petitioner greatly expands who may petition the court to stop the abuse.



What kind of relief can you get if you file a petition?

The petition can result in an emergency or temporary order. After a hearing the court can issue a protective order or approve a consent agreement. The protective order or consent agreement cannot exceed one year. The order can be extended after another hearing.

Protections and remedies under the order are somewhat similar to protections available under Iowa's Domestic Abuse Law. This includes protections for personal safety, safe housing, and also protections and remedies concerning financial exploitation. Examples are:

- Restricting defendant's contact with the vulnerable elder to stop abuse, harassment, intimidation, etc.
- Moving the defendant from the elder person's home or requiring the defendant to find housing for the vulnerable elder, and
- Requiring the defendant to return property or funds as well as prohibiting transfer of funds and property.

Does the law address financial exploitation?

In particular, the law provides greater protection from financial exploitation for

elders as their health declines. This is a major area of abuse that often is discovered after assets are exhausted. Financial exploitation is when a person in a position of trust or confidence with the vulnerable elder takes advantage of the elder's financial situation. This means the trusted person knowingly and by undue influence, deception, coercion, fraud, or extortion, obtains control over or otherwise uses or diverts the benefits, property, resources, belongings, or assets of the vulnerable elder.

The definition for a person who "stands in trust or confidence" is broad. In addition to family members, and caretaker, it includes "a person who is in a confidential relationship with the vulnerable elder."

What if the vulnerable elder can't handle his or her own affairs?

The court order cannot allow anyone other than the vulnerable elder to take responsibility for the elder's finances and affairs. A guardianship or conservatorship may need to be set up if the vulnerable elder cannot make decisions for herself or himself.

What are the penalties if the order is not followed?

The protective order is to state whether a person is to be taken into custody by a peace officer for violation of the terms. Penalties include contempt actions. The court may also order that the defendant pay attorney fees and court costs.

Will there be forms available for self represented litigants to use?

The Iowa Judicial Branch is charged with developing forms by July 1, 2015. Until these forms are completed, county clerks of court should have a temporary form. This is called a Petition for Relief from Elder Abuse. Elders or a substitute petitioner may use this form to ask the court for protection against abuse. Persons may also contact Iowa Legal Aid or a private attorney for assistance with filing a petition.

- Iowa Legal Aid provides help to low-income Iowans.
- To apply for help from Iowa Legal Aid:
 - call 800-532-1275
 - Iowans age 60 and over, call 800-992-8161
 - OR
 - apply online at iowalegalaid.org
- If Iowa Legal Aid cannot help, you can look for an attorney on "Find A Lawyer" on the Iowa State Bar Association website: iowabar.org. A private attorney there can talk with you for a fee of \$25 for 30 minutes of legal advice.

Fred Nelson is a staff attorney with Iowa Legal Aid's Legal Hotline for Older Iowans.

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- Second, write letters to the opposing counsel or party (if unrepresented) before filing motions to find out if there is agreement or not and to try for settlement.
- Third, practice telling what happened in a way that is organized and easily understandable by a stranger.
- Fourth, organize the documents you want to submit as evidence in court.
 - Be sure that you make two copies and the original of any paperwork you intend to submit. The judge and opposing parties will both need to have the materials, and you should keep a copy for yourself.
 - Mark the exhibit with stickers or mark by hand with "Defendant's Exhibit" and a letter.
 - Then in your testimony, refer to that document as "Defendant's Exhibit" (A, B, C, and so forth) so the judge and opposing party know which document you mean.
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 - OR
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Bruce Walker and Liz Araguás are private attorneys in Iowa City who participate in Iowa Legal Aid's Volunteer Lawyers' Project. Brooke Chesney is a senior staff attorney with Iowa Legal Aid.

How do I find an attorney to help me?

- You can call Iowa Legal Aid for some advice on your deadlines and situation.

Iowa Legal Aid publishes the Equal Justice Journal four times a year. The Equal Justice Journal is free to low-income people in all counties of Iowa. All others must pay a \$10 annual subscription fee. The EJJ is available in a larger print edition upon request.

All correspondence should be sent to:

**The Equal Justice Journal
Iowa Legal Aid** 
**1111 9th Street, Suite 230
Des Moines, Iowa 50314-2527**

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Note: Photographs in this newsletter are produced independently of text and bear no relationship to cases or incidents discussed herein (except where noted below a picture).

Staff Recognized at Iowa Legal Aid Spring Work Group Day

Iowa Legal Aid has a long tradition of recognizing staff that reach milestone anniversaries working with the organization. In June, 15 staff were recognized for service ranging from five to 40 years.

From left to right: Janelle Swanberg, HELP Legal Assistance in Davenport (35 years); Liz Norris, Iowa City Regional Office (15 years); Kelly Calhoun, North Central Iowa Regional Office in Mason City (10 years); Josh Gaul, Central Iowa Regional Office in Des Moines (5 years); Andrea Buckley, Northwest Iowa Regional Office in Sioux City (5 years); Joe Ferrentino, Northeast Iowa Regional Office in Dubuque (5 years); Bob Griffin, Central Iowa Regional Office in Des Moines (5 years); Joni Phillips, Waterloo Regional Office (15 years); Cindy Rybolt, Central Iowa Regional office in Des Moines (20 years); Carrie O'Connor, Northeast Iowa Regional Office in Dubuque (15 years); Pat McClintock, Central Administrative Office in Des Moines (40 years). Not pictured: Mary Jane Clauer, Northeast Iowa Regional Office in Dubuque (35 years); Shellie Mackel, Central Iowa Regional Office in Des Moines (10 years); Julie Walker, Iowa City Regional Office (10 years).

Milestone Anniversary for Pat McClintock

Pat McClintock, deputy director and program administrator, reached his 40th anniversary with Iowa Legal Aid on May 28. Prior to his work with Iowa Legal Aid, Pat had worked with two other programs that merged to form what is now known as Iowa Legal Aid. Pat began his work with Iowa Legal Aid



Pat McClintock

as the deputy director for paralegal advocacy. He became the program administrator in 1993, a position he continues to fill.

Fake Checks Continued from Front Cover

- For other checks, banks must make the first \$100 available for withdrawal the day after you deposit the check.
 - Any remaining funds must be made available:
 - By a local bank on the second day after the deposit, or
 - By a distant bank within five days of the deposit.
- In the name of good customer service, some banks will allow the full amount of a deposited check to be available for withdrawal before it has cleared.

Just because funds from a check you've deposited are available for withdrawal doesn't mean the check has cleared. It is best not to rely on money from any checks given to you by strangers. The best policy is not to withdraw the money deposited until the bank advises you that the check has cleared. Fake checks can take weeks to be discovered and untangled.

You are responsible for any checks you deposit into your bank account. Until the bank confirms that the check has cleared and the funds have been deposited into your account, you are liable to repay any funds withdrawn against that check.

Tips for Avoiding Check Scams

- Ignore and throw away any offers that require you to pay for a prize or a gift.
 - It's not free, not a prize and not a gift if you're required to pay money to get it.

- Resist the urge to enter foreign lotteries or sweepstakes.
 - Most foreign lottery solicitations are illegal. It is illegal to play foreign lotteries through the mail or by telephone.
- If a stranger wants to pay you by check, writes it for more than the purchase price and wants you to wire some or all of the money back to them, be careful! It's a scam that could cost you money you don't have.
 - There is no legitimate reason for someone who is paying you money to ask you to wire money back.
 - To learn more, visit ftc.gov/opa/2004/12/checkoverpayment.shtm
- If you're selling something, you can insist on cash or some alternate way to pay, such as an online payment service or escrow service.
 - Some escrow services charge fees for processing the payment.
 - If a buyer insists on using a particular online payment or escrow service you have never heard of, check it out.
 - To learn more about escrow services and online payment systems, visit ftc.gov/onlineshopping
- If you have to take a check, make sure it's a cashier's check for the exact amount from a local bank or a bank that has a branch in your area.

- You can then check with the bank to make sure both the account and check are valid.
- Locate it yourself – don't trust a stranger's information.
- Resist the pressure to take the money out of your account right after depositing the check.
 - If the person's offer of money is good now, it will still be good once the check clears.
 - Don't withdraw any money from a deposited check until the bank verifies that the check is valid and it has cleared.

Reporting Fake Check Scams

If you think you've been targeted by a fake check or money order scam, report it to the following agencies:

- The Federal Trade Commission: ftc.gov or call 877-FTC-HELP
- The US Postal Inspection Service: usps.gov/websites/inspect or call the telephone number listed in the Blue Pages (government listings) of your telephone directory.
- The Iowa Attorney General's office: state.ia.us/government/ag/index.html or call 888-777-4590.

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



Legal Services Corporation Meets in Des Moines

The national Legal Services Corporation (LSC) Board of Directors met in Des Moines for its quarterly meeting on July 20–22, 2014. The LSC Board is appointed by the President and confirmed by the United States Senate. This is the first time the LSC Board had met in Des Moines for one of its meetings in more than 20 years.

Highlights of the meeting included panel presentations on collaborative partnerships between legal aid programs and other providers of services.

Pictured above are Eric Tabor, Chief Deputy Attorney General for the state of Iowa, Dennis Groenenboom, Iowa Legal Aid's Executive Director, and Jim Sandman, President of the Legal Services Corporation. Eric and Dennis highlighted the Iowa Mortgage Help program under which Iowa Legal Aid receives referrals of individuals facing foreclosure of their homes. Other partners include the Attorney General's office, Iowa Finance Authority, Iowa Mediation Service and housing counseling agencies around the state. Also participating in the panel presentation were Neal S. Dudovitz, Executive Director of Neighborhood Legal Services of Los Angeles County, and Barbara Kamenir Siegel, Lecturer in Law at the University of Southern California Gould School of Law, who talked about medical-legal partnerships. Joan Boles, Deputy Director of Bay Area Legal Services, Inc., and Mindy Murphy, President and CEO of The Spring of Tampa Bay, spoke about domestic violence partnerships.

Another highlight of the Board meeting was the presentation of pro bono awards to four Iowa lawyers, Steve Jackson, Sr. (Cedar Rapids), Tommy Miller (Davenport), Brian Peters (Dubuque) and Tim Tripp (Pella), and the Davis Brown Law Firm. Gloria Valencia-Weber, Fr. Joseph Pius Pietrzyk, and Julie Reiskin presented the awards at a reception held at the Davis Brown Law Firm offices in downtown Des Moines.



Jim Sandman, Fr. Joseph Pius Pietrzyk, Steve Jackson, Sr., John Levi

Steve Jackson, Sr. has been a member of Iowa Legal Aid's Volunteer Lawyers Project since 1994. In 1999 he began volunteering one Wednesday afternoon a month in the

Cedar Rapids Regional Office of Iowa Legal Aid, meeting with new clients who had a variety of family law problems. In 2005, in his capacity as the Chair of the Linn County Bar Association's Family Law Committee, Steve initiated an expansion of the project in order to achieve a weekly Family Law Intake Project whereby a different volunteer attorney would provide this service every Wednesday of every month. Steve has recruited numerous volunteer lawyers to assist with the Family Law Intake Project and he continues to participate and recruit others to do so to this day, so far donating nearly 500 hours of pro bono service.



Jim Sandman, Fr. Joseph Pius Pietrzyk, Brian Peters, John Levi

Brian Peters is a lawyer in Dubuque, Iowa who has been an active participant of the Iowa Legal Aid Volunteer Lawyers Project since 1986. Since 1999, Brian has handled 350 cases and devoted almost 2,450 hours to providing legal assistance to low-income Iowans. The assistance that Brian provides to low-income Iowans is exclusively in the area of bankruptcy. Brian accepts pro bono bankruptcy cases not just from Dubuque County, but from other parts of northeast Iowa as well.



Jim Sandman, Julie Reiskin, Tim Tripp, John Levi

Tim Tripp initially signed up for the Iowa Legal Aid Volunteer Lawyers Project in April of 1998, and since then has taken primarily social security cases. Tim's contributions to Iowa Legal Aid go well beyond his work as a volunteer attorney. Tim has made presentations on Iowa Legal Aid's behalf

about the ethical obligations attorneys in Iowa have to take pro bono cases, encouraging private attorneys to sign up for the Volunteer Lawyers Project. Tim has also served as a member of Iowa Legal Aid's Board of Directors and the Board of the Iowa Legal Aid Foundation.



Jim Sandman, Gloria Valencia-Weber, Scott Brennan, John Levi

Community service is a cornerstone of the Davis Brown firm. From 2001 to the present, attorneys with Davis Brown have donated pro bono legal services to almost 250 clients through the Polk County Bar Association Volunteer Lawyers Project, and have donated roughly 1,250 hours each year. Davis Brown primarily helps with family law, tax, nonprofits, wills, and some immigration matters, but are willing to accept cases involving a variety of issues.

Tommy Miller began volunteering at the HELP Legal Assistance office in Davenport in 1979, and became a staff attorney soon after. When funding threatened forced layoffs at HELP, Tommy voluntarily "retired," going off the payroll at the start of 2005. She has volunteered at HELP on an in-house basis ever since, taking screening rotations and representing clients in administrative and court proceedings. Since 2004, Tommy has donated over 10,000 hours and assisted over 2,000 clients. Tommy was unable to attend the awards presentation.

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.

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 Saturday, November 8 at 1111 9th Street in Des Moines. The Board of Directors meets at least four times each year. For details on the next meeting of the Board, call toll-free: 800-532-1275.

11 Tips to Help You Avoid Potential Risks When Paying Online

By Ben Hamel

It wasn't that long ago when most of us would sit down at our desks or kitchen tables, gather all of the bills that accumulated over the course of the month, retrieve our checkbooks and rolls of stamps, and pay our various bills. Technology now allows us to pay our monthly bills online. Automated bill-paying doesn't even require you to lift a finger, let alone lick a stamp.

In general, these are the three most common ways to pay bills online: (1) you can give each biller consent to electronically take money from your bank account one time; (2) you can agree with to have the biller take money from your account at the same time each month (recurring debit); or (3) you can use the online bill system at your bank to send payments out automatically each month.

There certainly are real risks to paying your bills online. We are all familiar with the term identity theft, and most of us have heard horror stories about people having their entire bank account wiped clean. Also, sometimes billers will use automatic billing in ways that can cause real problems for consumers. If you are uncomfortable with technology and remain uneasy about giving billers free access to your personal finance information by paying your bills online, please consider the following tips for reducing some of the potential risks of online bill-paying:

1. Per federal law, you always have the right to cancel a recurring payment set-up. To cancel this you can send a letter to the biller, to your bank, or both. Also, a biller must always have your written consent to take money from your bank account.

2. Never open or click on a link sent to you in an email by someone you don't know.



By clicking the link you may be taken to a website that may look like your bank or credit card company, but isn't. If you do receive any suspicious emails that appear to be from your bank or credit-card company, call them by using the number listed on your credit card or bank account statements.

3. Bookmark your financial institution and credit card company's websites as favorites in your browser so that one click brings you to their website safely every time.

4. Never trust an email that asks for your personal or account information. No bank or reputable company is going to send an email asking you to correct your information, validate your identity, reenter your password, etc.

5. Choose passwords for your online banking and credit card accounts that do not include things like your mailing address, telephone number, social security number or date of birth.

6. Change or rotate your personal finance account passwords every few months.

7. Avoid paying bills online with a debit card; use a credit card if possible. Your liability for unauthorized use and your rights for dealing with errors are generally different for a debit card and a credit card.

8. Do not pay your bills online or disclose personal finance information when using a public computer (e.g. at a public library or hotel).

9. When paying bills online, the web page should always start with "https," as this shows that it is a secure connection. Also, look for the padlock icon on the company or bank's website. Clicking on the padlock icon will allow you to review the website's security certificate.

10. Make sure you log out or sign out of your account when you are finished using it.

11. Read your monthly bank and credit card statements promptly and carefully. If you find unauthorized transactions or errors, contact your bank or credit card company immediately.

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 - Iowans age 60 and over, call 800-992-8161
- OR
- apply online at iowalegalaid.org
- If Iowa Legal Aid cannot help, you can look for an attorney on "Find A Lawyer" on the Iowa State Bar Association website: iowabar.org. A private attorney there can talk with you for a fee of \$25 for 30 minutes of legal advice.

Ben Hamel is a staff attorney in Iowa Legal Aid's Northeast Iowa Regional Office in Dubuque.

Open Enrollment for 2015 Health Insurance

By John Graupmann

November 15 is the first day you may enroll for health-care coverage through the Affordable Coverage Act (also known as Obamacare). After you are approved, your health care bills can be paid by the insurance as soon as January 1, 2015.

If you do not have 2015 health care coverage and you can afford it, you may have to pay a fee. The fee increases every year. You would make the payment when you file taxes.

- There are exemptions from payment:
 - If the least costly plan would cost more than 8.05% of your household income, or
 - If you are uninsured for less than 3 months of the year.
- There are also hardship exemptions:
 - If you were homeless, evicted in the last 6 months, or facing foreclosure
 - If you received a shut-off notice from a utility company, or

- If you recently experienced domestic violence.

The enrollment period ends on February 15, 2015.

- You may qualify for a special enrollment period after this time if there is a certain event:
 - Move to a new state,
 - Certain changes in your income,
 - Changes in your family size (marry, divorce resulting in loss of coverage, have a baby, or add to your family through adoption or foster care).

See HealthCare.gov for more information. You can enroll at healthcare.gov/how-do-i-apply-for-marketplace-coverage/

John Graupmann is a legal assistant with the HELP Legal Assistance office in Davenport.



FREE
Legal Help

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

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

An Iowa Legal Aid Project

Should You Take Your Pension in a Lump Sum

By Bill Nassif



Some companies, such as General Motors (GM) and Ford, are offering to cash out the pensions of certain retirees and instead give them one lump-sum payment. Here is some information on lump sum payments and how they could negatively affect your retirement finances.

While having a large sum of money is tempting, this is a decision that you will have to live with for the rest of your life. If you take the lump sum, you will not have a lifetime income. You will have to take care of your own investments and make sure the money lasts throughout your retirement.

Usually, a guaranteed stream of income for life is a better option than a lump sum. The only situations in which a lump sum should be considered are:

- If you are in poor health -
 - You don't expect to live long,
 - You do not have a surviving spouse who will need lifetime income; or
- If you already have money -
 - You have a substantial nest egg,
 - You have another source of income, such as a spouse's pension.

Here are some questions you should think about before accepting a lump sum:

- Could I or my spouse live longer than expected?
 - A lump sum is decided on average life expectancies. If you or your spouse lives longer than expected, your lump sum won't be enough.
- Can I afford to lose some or all of the money?
 - If you take a lump sum, no one is responsible for taking care of you except you.
 - If you are wealthy enough that you don't need your monthly pension or if your spouse has a large pension, you have greater flexibility to consider taking the lump sum.
- How good are my investing skills? How good are my spouse's investing skills?
 - If you already own stocks and bonds, look at your past investing history. You will have to earn enough through investments to make the lump sum grow and last throughout your retirement years.
 - Most retirees invest much more conservatively than younger workers, so they usually have lower investment returns.
 - If you take a lump sum and then die, it will be up to your spouse to make the money last through his or her lifetime.

- What are the tax implications of the lump sum?
 - If you take the lump sum and don't roll it over directly into an IRA, the lump sum will be counted as income for the year. Depending on how much money it is, that might push you into a higher tax bracket, making you pay more in taxes.
- How large is my current pension benefit? How do I know it is secure?
 - If your former employer pays your pension and that employer goes bankrupt, the Pension Benefit Guaranty Corporation (PBGC), the federal pension insurance agency, might take over your pension.
 - The PBGC has limits on the benefits that it can pay, so your monthly benefit might be reduced. However, the vast majority of retirees who get their benefits from the PBGC receive the same amount that they were getting before the PBGC took over their plan.
 - If your annuity comes from a private insurance company, in the unlikely event that the insurance company goes under, your benefits will be guaranteed up to certain limits by insurance industry state guaranty associations.
- What if I change my mind?
 - If you take a lump sum and decide later that you want to use the money to purchase an annuity from an insurance company, individual annuities typically are expensive.
 - Keep in mind that annuities are expensive—particularly for women—because they are charged even more for annuities on the assumption that, as a group, women have a longer life expectancy.
 - Women do not have this issue when getting a traditional pension or an annuity that was purchased by the pension plan.
 - You will likely get a lower monthly payment than if you had stayed with the annuity purchased by the plan.
 - To see how much of an annuity you could purchase with your lump sum, check out an annuity calculator, such as ImmediateAnnuities.com.

GM and Ford are not offering lump sums to active workers. However, workers should know that the value of their lump sums would depend on what the interest rates are when they retire. Be aware that if you have earned the right to receive special early retirement benefits or subsidized survivor benefits, you

could lose those if you take a lump sum.

Other points:

1. Make sure that your employer has your correct information including your age, salary, dates of employment, and any spousal or other benefits you have chosen.

2. Unless you have other sources of income, don't take a lump sum for non-retirement purposes, like paying off debt, paying for everyday expenses, or helping out family or friends.

3. Check into bias of anyone advising the lump-sum option. For example, a financial adviser might encourage you to take a lump sum because the adviser will get fees or commissions for handling your money. These fees and commissions could lower your return.

If you have questions about lump sum or other pension issues, you should call Iowa Legal Aid's Pension Rights Project at 800-992-8161. The Pension Rights Project provides free legal counseling for Iowa residents as well as former Iowa residents with Iowa related pensions or retirement plans.

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Bill Nassif is a staff attorney with Iowa Legal Aid's Pension Rights Project and Legal Hotline for Older Iowans.

FREE HELP WITH TAX QUESTIONS AND PROBLEMS:

- Find out about tax credits like the Earned Income Credit
- Get Help with Problems with the IRS

Call Iowa Legal Aid for details about the Low-Income Taxpayer Clinic.

800-532-1275

The LITC does not generally provide tax preparation.

Too Good to Be True?

Settle your Tax Debt for Cents on the Dollar!

By Tamara Borland

This is a common phrase you hear on television ads. There are a number of tax-settlement firms that advertize on TV. Some firms might also send letters or postcards that look similar to official IRS documents, but they aren't from the government. These companies often get information about tax liens from county offices where tax liens are filed and send correspondence that warns about the consequences of ignoring a tax lien. Firms that use these types of deceptive tactics probably will not put your interests first. They often promise results, taking thousands of dollars up front in fees, but deliver nothing. Several of these companies have been shut down by the IRS or have gone out of business.

How will I know if I have a tax lien?

When the IRS files a lien or levy against you, it will send you a letter via certified mail—not a postcard or a letter sent by regular mail. The IRS will not e-mail you. With the first notice, the IRS should give you a deadline to ask for a collection alternative. If you have a question about whether or not a notice or letter is legitimate, call the IRS at 800-829-1040.

What is the real story about the Offer in Compromise program?

The Offer in Compromise program is a real program. Generally, to settle a debt with the IRS for less than you owe, you have to prove that you don't have enough income or assets available to pay the debt in full. There is a form that you have to fill out, Offer in Compromise Booklet Form 656-B. You have to offer a minimum of what the IRS calls your

“reasonable collection potential.” An offer in compromise can be a good solution for some taxpayers. The IRS has a pre-qualifier calculator. It is found at irs.treasury.gov/oic_pre_qualifier. You should have information about your bank accounts, retirement accounts, loan balances and pay information to use it properly. The calculator should at least give you some idea of whether your offer has a chance.

Where can I go for help?

Because the IRS can consider some special circumstances, it is wise to check with someone who is familiar with the rules to see if you should still consider trying this option. There are tax practitioners who are very well informed and can help you through the process. A tax practitioner should attend regular continuing education and they should be able to explain the process in a straightforward manner. If they try to charge large fees up front, be skeptical.

- Iowa Legal Aid's Low-Income Taxpayer Clinic provides help to low-income Iowans with tax controversies. Income and asset limits apply.
- To apply for help from Iowa Legal Aid:
 - call 800-532-1275
 - OR
 - apply online at iowalegalaid.org
- If Iowa Legal Aid cannot help, you can look for an attorney on “Find A Lawyer” on the Iowa State Bar Association website: iowabar.org. A private attorney there can talk with you for a fee of \$25 for 30 minutes of legal advice.

Tamara Borland is the managing attorney of Iowa Legal Aid's Low-Income Taxpayer Clinic



LOW-INCOME PATIENTS BENEFIT FROM LEGAL ASSISTANCE

Iowa Legal Aid recently received a \$15,000 grant from the Mid-Iowa Health Foundation for its Health and Law Project in Des Moines. Iowa Legal Aid will use these funds to improve the health and well being of low-income people in the greater Des Moines area through the provision of free civil legal assistance.

There are more than 50,000 Polk County residents living below the federal poverty level. Many of them will seek treatment for a health problem without realizing there is an associated legal problem or they simply may not have the resources to address the problem. Low-income families often face substandard housing, domestic violence, lack of utility service, inadequate nutrition, and inappropriately denied public services and benefits. If their legal problems are not addressed, chances are their health situation cannot improve. The Health and Law Project can help mitigate the personal and environmental conditions preventing low-income patients from achieving health outcomes.

Domestic Abuse from Outside Front Cover

fee. The Clerks of Court can provide the forms. The petition must state the victim's relationship to the abuser, whether they have children together, and details of the abuse. Under the new law, the petition can also name or describe any pet or companion animal that is:

- Owned or held by the victim, the abuser, or minor children of the parties who may be affected by the protective order.
- The new law doesn't just cover traditional pets like cats and dogs! All pets and companion animals are covered, as long as they aren't livestock.

Once the petition is filed, it is reviewed by a judge who decides whether to issue a temporary protective order right away. The temporary protective order protects the victim from abuse by ordering the abuser to stay away from him or her. It also prohibits the abuser from talking to the victim directly or through others. The temporary order can also include temporary orders for child custody, visitation, and possession of property. Under the new law, possession and care of a qualifying animal can also be awarded. The temporary order also sets a hearing to decide if a final protective order should be entered. The final order can also include orders for child custody, visitation, child support, spousal support, and possession of property, including possession and care of a pet.

What can the court do to protect pets and companion animals?

- The court can give the pet to the victim in the temporary protective order, the final protective order, or both.
- These orders can stop the abuser from

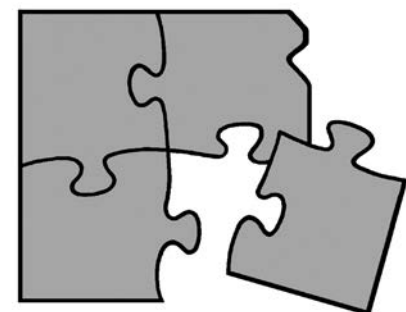
keeping or hurting the pet.

- The court can also prohibit the abuser from taking, hiding, or coming near the animal, and prohibit the abuser from threatening, harming, attacking the animal, or getting rid of the animal.

If an abuser intentionally violates the pet protections in a civil protective order, the abuser could be charged with contempt of court, a civil violation. The abuser could also be charged with the crime of violating a protective order. If the police do not bring charges, the victim can bring his or her own charge of contempt of court. A hearing would be held in court, and the abuser would face jail time if convicted. The abuser may have an attorney appointed to provide representation. A victim wanting to bring his or her own contempt charge against an abuser should consult an attorney first.

- Iowa Legal Aid provides help to low-income Iowans.
- To apply for help from Iowa Legal Aid:
 - call 800-532-1275
 - Iowans age 60 and over, call 800-992-8161
 - OR
 - apply online at iowalegalaid.org
- If Iowa Legal Aid cannot help, you can look for an attorney on “Find A Lawyer” on the Iowa State Bar Association website: iowabar.org. A private attorney there can talk with you for a fee of \$25 for 30 minutes of legal advice.

Alisa Diehl is a staff attorney in Iowa Legal Aid's Cedar Rapids Regional Office.



W.C.R.F.
WASHINGTON COUNTY
RIVERBOAT FOUNDATION

LOW-INCOME RESIDENTS BENEFIT FROM NEW TECHNOLOGY

Iowa Legal Aid is pleased to announce it has received a \$2,000 grant from the Washington County Riverboat Foundation. These funds will be used to help purchase a new network server and desktop computers for the Iowa City Regional Office. The new desktop computers will replace old Windows XP computers since Microsoft will no longer support Windows XP.

By upgrading to new equipment, Iowa Legal Aid staff will continue to provide high-quality legal assistance to low-income residents of the Iowa City Regional Office service area, including Washington County, in an efficient, reliable and secure manner.

Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314-2527

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EQUAL JUSTICE JOURNAL

Visit us on the Web at iowalegalaid.org

Domestic Abuse Now Includes Pets

Civil Domestic Abuse Protective Orders Can Now Include Pets

By *Alisa Diehl*

Domestic violence affects all aspects of a victim's life and threats of harm often keep victims trapped. One way that an abuser may try to control a victim is by abusing or threatening to abuse the family pet, companion, or service animal. Victims might not be able to take Fido or Fluffy with them when they leave. In this situation, leaving an abuser can become even more difficult, and may prevent a victim from leaving at all.

A new Iowa law that took effect on July 1 of this year has helped change this situation. The new law expands the protection for victims of domestic abuse in civil protective orders. The Domestic Abuse chapter of the Iowa Code has long allowed victims to file for a civil protective order against an abuser. Iowa courts may order that an abuser stop the domestic abuse, award temporary custody and visitation of the children, order the abuser to pay child support, and award temporary possession of property including a home and vehicle, among other things.

Beginning on July 1, the law was changed to allow a court to give a victim care and possession of pets or companion animals. This law does not apply to livestock such as cows, pigs, and chickens that are held for business reasons.

How does it work?

A civil domestic abuse case is started by filing a petition with the Clerk of Court, asking for a protective order. There is no filing

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Iowa Legal Aid is a not-for-profit organization providing free legal help to low-income lowans, receiving financial support 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.



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 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 assist you in getting your questions answered.

Iowa Legal Aid helps low-income lowans

Did you know... after calling what looked like a local number for "legal aid" in the phone book, some lowans got return calls from somewhere in Kentucky?

Don't be misled...

• Iowa Legal Aid provides **FREE** legal assistance to those who qualify.

• Iowa Legal Aid helps low-income lowans with civil legal problems including:

- Domestic violence
- Housing
- Public benefit Programs

The intake number for Iowa Legal Aid is

800-532-1275 (se habla español)

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

800-992-8161

Visit us online at iowalegalaid.org