

2024
**Senior Citizens
Handbook**

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For the 21st Edition

Welcome to the twenty-first edition of the Senior Citizens Handbook. Legal Services of Eastern Missouri (Legal Services) is so grateful to all the contributors for this edition and those who contributed over the years to many prior editions.

The first edition of this book was published in 1977. The originator of the concept for the book, as well as general project supervisor and original researcher, was Barbara J. Gilchrist, J.D., Ph.D., then a VISTA attorney in the Elderly Unit of LAS and a member of the Committee on Aging of the Bar Association of Metropolitan St. Louis Young Lawyers Section. Ms. Gilchrist subsequently joined LSEM as a staff attorney and later taught at Saint Louis University Law School. Most chapters in this book were topics in a lecture series presented for the elderly in the St. Louis area by Ms. Gilchrist under the sponsorship of the Mid-East Area Agency on Aging. Dan K. Joyce, who was then a law student at the Saint Louis University School of Law, completed the adaptation of the original lecture material, performed additional writing, research, and editing, as well as organized and supervised production. We thank attorneys John Ammann and Mike Ferry for their prior contributions to this book. We also wish to thank Kathy Case Tahan for her many years of service on this project. We offer a special thank you to Stan Platke, the late Colleen Landefeld and Karen Shelley, whose extraordinary dedication to this handbook and hard work kept it a viable publication for decades.

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Many individuals contributed to various editions of this handbook. The list is too lengthy to enumerate, but we are grateful to all of them, as their contributions have formed the foundation for this current twenty-first edition. We appreciate the past support of numerous organizations.

Legal Services also wants to thank expressly the contributors to this newest 21st edition, who built upon the work of many prior editors. Current contributors include: Michael Ferry (Social Security); Kate Holley (Food Stamps & Social Security Survivor’s Benefits); Harry Charles (Taxes); Daniel J. Schwartz (Retirement Benefits); Chris Bent (Age Discrimination in Employment); Jamie Rodriguez (Medicare); Lakitsa (Pinky) Hunter (Medicare & Social Security Survivor’s Benefits); Latasha Barnes (Medicare, Consumer, Expungements & Unemployment Benefits); Nyree Bradley (Expungements & Unemployment Benefits); Heidi Bremson/KC Elder Law (Medicaid, Protective Services, Advanced Directives); Michael Weeks (Nursing Homes); Cheryl Wilson (Nursing Homes); Susan Alverson (Housing & Rental Assistance); Rob Swearingen (Consumer and Predatory Loans); Geoff Oliver (Health & Life Insurance); Samuel Zachry (Estate Planning, Powers of Attorney, Guardianship); Brigid Fernandez (Veterans Benefits); Robert Boedeker (Adult Abuse); Buz Zeman (Reverse Mortgages); Will Jordan (Housing Discrimination); Kennedy Moehrs-Gardner (Housing Discrimination).

Jeanne Philips-Roth and Victoria St. Jean
Legal Services of Eastern Missouri
General Editors

Chapter 1

The basics of Social Security and Supplemental Security Income (SSI)

Chapter topics:

- What is Social Security?
- How do I qualify for Social Security benefits?
- What age should I start to get retirement benefits?
- How much will my Social Security payments be?
- How will working affect my Social Security payments?
- What is Supplemental Security Income (SSI)?
- Who qualifies for SSI?
- What might lower my SSI benefits?
- What if someone can't manage their own Social Security or SSI payments?
- What can I do if I'm denied Social Security or SSI?
- Where can I learn more about Social Security?

Author: Michael Ferry, Attorney at Law. Michael Ferry is now retired from active practice. He was a staff and managing attorney at LSEM, and also served as executive director of Gateway Legal Services. He continues to serve as board president of the National Consumer Law Center and as a Uniform Law Commissioner for the State of Missouri.

All figures used to determine eligibility for benefits are current as of April 2022, and may change at any time. For more information about Social Security and SSI, call or visit the Social Security Administration Office nearest you, or visit www.ssa.gov.

Chapter 1: SSI

What is Social Security?

Social Security is a government program that pays a monthly income to qualified workers and their families when the worker retires, becomes severely disabled, or dies.

How Social Security works

Workers pay into Social Security:

1. People who work pay part of their earnings as a tax (called **FICA**).
2. This tax goes to the Social Security program.
3. The Social Security Administration (SSA) uses the tax money to pay monthly retirement or disability benefits to workers who have qualified for Social Security.
4. If a qualified worker dies, SSA will pay survivors benefits to their family.



What is FICA?

You may notice the initials “FICA” on your paychecks. **This is the tax that goes to the Social Security program.**

FICA stands for Federal Insurance Contributions Act, the federal law that set up the Social Security Program of 1935.

Chapter 1: SSI

How do I qualify for Social Security benefits?

You must earn at least **40 credits** to qualify for Social Security benefits. You can earn up to 4 credits for each year you work, so you usually need to work for 10 years to earn 40 credits.

What are credits?

When you work and pay taxes, you earn “credits” toward qualifying for Social Security benefits. Credits are based on your total earnings for the year:

- Gross wages paid, which is your income before taxes and other expenses are deducted from your paycheck, and
- Self-employment net income, which are your gross earnings from your self-employed trade or business, minus all of your allowable business deductions and depreciation

So, you might work all year to earn 4 credits, or you might earn enough for all 4 in much less time. For example, a highly paid worker can earn all 4 credits at the beginning of the year.

Just more than 10 years (40 credits) will generally fully insure a worker and family for life. But it takes some people less time if they have earned a certain amount of work credit.

How much money makes a credit?

The amount of earnings it takes to earn a credit can change each year.

For example, in 2023:

\$1,640 of earnings = 1 credit

So, if you earn \$6,560 or more, you get 4 credits (the most you can get in a year)

The rules are different for how many credits qualify you for retirement, disability, and survivors benefits. To find out how many credits you have or need to qualify, contact your local Social Security Administration office.

Chapter 1: SSI

Qualifying for disability benefits

Social Security Disability Insurance (SSDI) pays benefits to people who are disabled and have a qualifying work history, either through their own employment or an eligible family member (spouse/parent). This means that you worked long enough – and recently enough - and paid Social Security taxes on your earnings.

To qualify for disability payments, you must be able to say “Yes” to these 3 statements (to qualify for disability because of blindness, you must be able to say “Yes” to the first 2, not the 3rd):

- You were recently employed (This depends on when your disability began, it can be **as short as 3 years or as long as 10 years**), AND
- You have the same amount of work credit that would be required if you reached retirement age in the year you were disabled, AND
- You have **at least 20 credits** (5 years) of coverage in the 10-year period right before your disability began (Note: The required coverage is lower if you became disabled before the age of 31. It is important to apply for disability benefits soon after you become disabled, because a lengthy delay may mean you won't qualify).

Chapter 1: SSI

What age should I start to get retirement benefits?

The age you start to get monthly retirement benefits will affect the amount of the benefit.

The full retirement age is explained below:

| | |
|------------------------|---|
| 1937 or earlier | Age 65 |
| 1938 - 1942 | For each year after 1937, retirement age goes up 2 months from age 65 |
| 1943 - 1954 | Age 66 |
| 1955 - 1960 | For each year after 1954, retirement age goes up 2 months from age 66 |
| 1960 or later | Age 67 |

Here's an example: Mark was born in 1956 (2 years after 1954, which adds 4 months), so his full retirement age will be 66 plus 4 months.

You can also visit www.ssa.gov/benefits/retirement/planner/ageincrease.html to find out your full retirement age.

Chapter 1: SSI

How much will my Social Security payments be?

The amount you receive each month depends on your **average yearly earnings** while working.

If you are retired or near retirement and you want to figure out your Social Security benefits, you can use Social Security's online services:

1. Visit www.ssa.gov/prepare/plan-retirement
2. Follow the links to sign in or create an account to get an estimate of your benefits

These benefits are increased every January to adjust to the rising cost of living, if the cost of living increased the previous year. (For example, there was no adjustment for 2016 because the cost of living didn't go up in 2015.)

Maximum amount of retirement benefits

There is a maximum amount you can receive each month. This is because there is a limit on how much FICA tax you pay in a year.

In 2022, the normal maximum amount for an individual is \$3,345 a month (for those that reached full retirement age).

When a worker files for retirement benefits, their spouse may be eligible for a spousal benefit. Sometimes a retired person's dependents (spouse or minor children) will also get monthly payments up to a total of 50% of the worker's monthly benefits.

To learn more about Social Security benefits for your family visit: www.ssa.gov/benefits/retirement/planner/applying7.html

Chapter 1: SSI

Early retirement

Your benefits

Your monthly benefit can be affected if you take “early retirement.”

You can choose to retire as early as age 62. However, for each month you take your benefits early (before your full retirement age), your monthly benefits will be permanently lowered by a certain percent:

- For the first 36 months, your monthly benefits are lowered by 5/9 of 1% (or 0.55%)
- After 36 months, your monthly benefits are lowered by 5/12 of 1% (or 0.42%)

For example: Maria decides to retire at 62, but since she was born after 1960, her full retirement age is 67. This means she will retire 60 months early, so her monthly benefits will be lowered by 30%. Here's how this is calculated:

- 36 months x 0.55%
- +
- 24 months x 0.42%

Visit www.ssa.gov/oact/quickcalc/earlyretire.html for a table that shows the benefit reductions if you retire at 62.

Spouse benefits

Spouse benefits can also be affected if the spouse takes the benefit early.

If the spouse takes the benefit early, their spousal benefit will be permanently lowered by a certain percent:

- For the first 36 months, their monthly benefits are lowered by 25/36 of 1% (or 0.69%)
- After 36 months, their monthly benefits are lowered by 5/12 of 1% (or 0.42%)

For example: Maria's husband John can receive spousal benefits from Maria's retirement plan. John decides to retire 2 years before his full retirement age. This means his monthly spousal benefits will be reduced by 17%. Here's how this is calculated:

- 24 months (2 years) x 0.69%

Chapter 1: SSI

How will working affect my Social Security payments?

After retirement, you might go back to work full-time or part-time. Before you decide to work, learn how your earnings might lower your Social Security benefits.

If you are younger than your full retirement age, and you retire early but decide to keep working:

- You can earn up to \$21,240 a year (or \$1,770 per month) without it changing your retirement checks.
- If you earn over \$21,240 a year, for every \$2 over that limit, your retirement checks will be lowered by \$1

*However, this only counts your earnings before the month you reach retirement age, not the entire year. Starting after the month you reach full retirement age, earnings no longer lower your retirement check.

If you reach full retirement age and decide to keep working:

- You can earn up to \$56,520 in the year you reach full retirement age without it changing your retirement checks.
- If you earn over \$56,520 in the year you reach full retirement age, for every \$3 over that limit, your checks will be lowered by \$1

For example, Shirley reached full retirement age in July of 2023 but continued working for the rest of the year. Her income was \$60,000 (\$5,000 a month), but only January through June of 2023 count towards the limit. During those months, Shirley only made \$30,000, so her checks are not lowered.

For more information about Social Security rules relating to work activity, ask for a copy of the free publication, *How Work Affects Your Benefits*, at your local Social Security Administration office.

Chapter 1: SSI

What is Supplemental Security Income (SSI)?

Supplemental Security Income (SSI) is a program that gives a monthly income to people who are blind, disabled, or age 65 or older who urgently need financial help. The Social Security Administration runs the SSI program.

You can receive SSI checks even if you have never worked, or if you don't qualify for Social Security for another reason.

Who qualifies for SSI?

To qualify for SSI, you must:

- Be blind, disabled, or age 65 or older
 - A person is considered “blind” if they have central visual acuity of 20/200 or less in the better eye while using a corrective lens, or if they have visual field restriction to 20 degrees or less
 - A person is considered “disabled” if they are unable to work due to a physical or mental impairment that has lasted or is expected to last for at least 12 months, or is expected to cause death
- Meet certain income requirements
 - If single, a person's “countable” income must be less than \$841 a month
 - If a married, their combined “countable” income cannot be more than \$1,261 a month

“Countable” income does not include:

- The first \$20 of most income
- The first \$65 of earnings
- Half of wages above \$65
- Food stamps
- Home energy and housing assistance
- Other exemptions

Chapter 1: SSI

Who qualifies for SSI?

The Social Security Administration counts your gross wages, not your net income or “take home” pay.

A person may still get SSI benefits, even if they:

- Have available assets (things that are easily converted into cash)
- If single, up to \$2,000
- If married, up to \$3,000
- Own 1 vehicle if used for transportation
- Own a home and the land it's on
- Household goods and personal effects
- A life insurance policy with a face value of \$1,500 or less
- Up to \$100,000 in an “ABLE” account
- All assets held in a special needs trust

There are some exceptions to these limits. The limits to available assets don't automatically increase and have not changed in many years.

Call or visit your local Social Security Administration office for more information.

What might lower my SSI benefits?

There are certain situations that will lower your SSI check, including:

- **Unearned income:** more than \$20 per month. This includes Social Security payments, pensions, gifts, and other unearned money.
- **Earned income** (from working): more than \$65 per month. Anything over \$65 is counted and will lower your monthly benefit. Talk with your SSA caseworker to see how earnings may change your monthly check.
- Certain living situations:
 - Living in a friend's or relative's home (called “in-kind support and maintenance”)
 - Unmarried couples who are living together may be listed as “holding out as husband and wife.” This means that if you both qualify for SSI, both of your checks will be lowered, so that the 2 checks added together will equal the amount that a married couple would get.

If you feel that one of these rules was mistakenly applied to you, you can challenge it through an appeal process. (See “What can I do if I'm denied Social Security or SSI?”)

Chapter 1: SSI

What if someone can't manage their own Social Security or SSI payments?

If someone is not able to manage their own payments, a representative payee is put in charge of the payments for this person (called the beneficiary). The representative payee is usually a spouse or other relative, friend, legal guardian, or even a nursing home. Their main role is to use the Social Security or SSI money for the basic or personal needs of the beneficiary.

The representative payee process

1. The process starts when a friend or relative notifies the SSA office that a beneficiary is not able to manage their payments. They must also file a doctor's note in agreement.
2. The SSA will then decide if the beneficiary is mentally able to keep getting their own checks.
3. If the SSA finds that the beneficiary is not able to, it will select a representative payee.
4. The beneficiary can appeal the selection of a certain person or organization. To learn more on how to appeal visit www.ssa.gov/payee/bene.htm?tl=9
5. If at some point a beneficiary feels able to manage their own checks, they can ask the SSA to start sending the checks to them, instead of the representative payee

To learn more about how to stop representative payments or change the representative payee, call or visit your local Social Security office.



Chapter 1: SSI

What can I do if I'm denied Social Security or SSI?

If your application for Social Security or SSI benefits is denied, or if any of your benefits are lowered or stopped, you can appeal it. Appealing the decision means you are asking the SSA to look at your case again.

The appeal process

1. First you must make a written request for reconsideration or for a hearing in front of an administrative law judge (**The type of appeal depends on the issue you are appealing**).*
2. If you win an appeal, you will get all benefits you would have been paid from the beginning of the process
3. If an administrative law judge denies your appeal, you have a right to appeal to the Social Security Appeals Council within 60 days of the decision (But this council can refuse to review your case)
4. If the Council refuses to review your case, or denies your appeal, you have a right to appeal to the U.S. District Court and can continue to appeal to the U.S. Supreme Court

*Levels of appeals:

- Request for reconsideration
 - Request Administrative Hearing with Law Judge
 - Request review with Appeals Council
 - File lawsuit in federal court
- The type of appeal someone may file depends on where they are in the decision process.

When to appeal

If your benefits were denied or changed, and you disagree:

You have **60 days** to make a written request for either "reconsideration" or for a hearing in front of an administrative law judge

If you were previously getting benefits, and they are being stopped because you have medically improved and are now able to work, and you disagree:

If you file your request for reconsideration or hearing within **10 days** of the denial, your benefits will continue until the reconsideration decision is made

You can find the forms needed to file an appeal at www.ssa.gov or at your local Social Security Administration office.

Chapter 1: SSI

Can someone help me with the appeal process?

Yes, you can have others help in any appeal, including:

- A friend or relative
- A lawyer or non-attorney representative, such as an EDP-NA (an eligible for direct pay non-attorney). An EDPNA is a registered and approved representative who helps people in the SSI appeal process.

A lawyer or non-attorney representative can help with an appeal, but also anything related to Social Security and SSI programs.

In new claims for benefits, most lawyers only charge a fee if your appeal is accepted, which is a percent of the retroactive benefits award (the benefits you would have been paid from the beginning of the process).

Note: It is illegal for lawyers or anyone else to charge a fee for helping you with any Social Security issues without getting permission from the Social Security Administration.

To learn more about legal help, see the listing at the end of this booklet.

Where can I learn more about Social Security?

Social Security's website, www.ssa.gov, has many useful features, including:

- Frequently asked questions
- Lists of the rules and regulations covering Social Security's programs

On this site, you can:

- Apply for retirement or disability insurance benefits online
- File a change of address
- Get a benefit verification letter
- Estimate your retirement benefits

For some functions, you must make a "my Social Security" account.

Representatives also have special access to their clients' appeals files, and certain actions they may take require online access.

Chapter 2

Supplemental Nutrition Assistance Program (SNAP)

Chapter topics:

- What is SNAP?
- How do I apply for SNAP?
- How do I know if I'm eligible?
- Is there a time limit for receiving benefits?
- What happens if I get denied for SNAP?
- What if my benefits are ended or lowered?
- How do I learn more about SNAP?

This year's section updated by Katherine A. Holley, senior staff attorney in the Public Benefits program at LSEM.

These numbers are current as of 2023, but may change. To learn more, visit <https://mydss.mo.gov/> or contact your nearest Family Support Division (FSD) Resource Center.

Chapter 2: SNAP

What is SNAP?

The Supplemental Nutrition Assistance Program (SNAP) **helps eligible people buy food.**

SNAP benefits are given to you on an electronic benefits transfer (EBT) card. Your EBT card looks like a credit/debit card, but it can only be used to buy food. **Until recently, SNAP was called “food stamps” in Missouri.**

In Missouri, SNAP is administered by the Family Support Division (FSD) of the Department of Social Services.

How do I apply for SNAP?

To apply for SNAP, you can:

- **Call FSD** at 1-855-373-4636 (1-855-FSD-INFO) and ask to have an application mailed to you
- **Print an application** from their website, and mail it in: <https://mydss.mo.gov/food-assistance/apply-for-snap>
- **Apply online:** <https://mydss.mo.gov/food-assistance/apply-for-snap>
- **Visit your nearest FSD Resource Center** to apply in-person

You may need to provide proof of your:

- Income
- Rent or mortgage payment
- Utility expenses
- Childcare expenses
- Medical expenses, for any people in your household who are disabled or 65+ (this includes out-of-pocket costs for health insurance premiums, doctor bills, prescription bills, required medical equipment or supplies, and transportation costs to get medical services)

After you apply, FSD will tell you if they need proof of any of the above.

You will have 10 days to provide it.

Chapter 2: SNAP

Expedited SNAP

Expedited SNAP means that FSD must give you SNAP within 7 days of your application.

The only information you need to be approved for SNAP is **verification of your identity and an eligibility interview.**

To be eligible, you must:

Have less than \$150 in monthly gross income and \$100 or less in resources (cash or bank account)

OR

Your rent and utilities exceed your income and resources

OR

Your household includes a migrant or seasonal farmworker whose income has stopped, and whose available cash and bank accounts are less than \$100

Know your rights

If you request an application by mail, FSD is required to mail it on the same day that you request it

If you apply in-person, FSD is required to take your application on the same day you apply

FSD has 30 days to approve or reject your application

Did you know?

Many people incorrectly believe that SNAP is only for very poor or non-working people.

However, older adults and disabled households are often eligible for a \$23 minimum monthly benefit.

Chapter 2: SNAP

How do I know if I'm eligible?

To be eligible, you must be a Missouri resident and meet income requirements.

Income requirements for SNAP

FSD decides if you qualify for SNAP based on your net household income. This is your gross income, minus any applicable deductions (things like your housing costs, child support payments, etc.).

Net income limits are listed on the FSD website: <https://mydss.mo.gov/media/pdf/benefit-program-limit-chart>

Defining “household”

A household is a person living alone or people living together who meet 2 rules:

1. They buy food together, AND
2. They prepare food together

Some people are mandatory SNAP household members, no matter how they buy and prepare food:

- Spouses who live together
- Parents and children under 22 years old living in the same household
- Children under age 18 who are under the parental control of a person other than their parents – for example, grandparents may apply for grandchildren in their care, even if they do not have legal custody (this does not include foster children)

If you share a residence with others, but buy and prepare your food separately from them, you will not be considered part of the household for SNAP purposes. (FSD uses the term “eligibility unit,” or EU, when referring to a household.)

If you are age 60 or older, and unable to buy and prepare food because of a permanent disability, you and your spouse can be your own household even if you live with other people. If you want to be considered for SNAP apart from other household members, you must tell FSD during your eligibility interview that you want to be considered your own SNAP household.

Note: Foster children may be included in the SNAP household, but their income must also be included in deciding the household income. You get to decide whether or not to include foster children.

Chapter 2: SNAP

Resource limits for SNAP

There are limits to the amount of resources you can have, in order to be eligible for SNAP:

- Households with at least 1 person age 60 or older, OR at least 1 disabled person may have resources up to \$4,250
- All other households may have resources up to \$2,750

These assets **do count** as resources in deciding if you're eligible for SNAP:

- Cash
- Checking or savings you have in the bank
- Anything that can easily be converted to cash

These assets **do not count** as resources in deciding if you're eligible for SNAP:

- Your home and surrounding property
- Income-producing property
- Personal belongings and household goods
- Burial plots – every household member can buy 1 burial plot. If they buy more plots, those are counted as resources
- The cash surrender value of life insurance policies and pension plans
- Rental property if rented at fair market value
- Property and equipment used for self-employment
- Trust funds or security deposits not readily available as cash
- The value of all vehicles



Chapter 2: SNAP

Is there a time limit for receiving benefits?

Starting July 1, 2023 there is a 3-month time limit for able-bodied adults without dependents (ABAWDS). ABAWDS are people who:

- Are between ages 18-49
- Are not disabled
- Do not have dependents under age 18

ABAWDS can only get benefits for **3 months within a 36-month period**, unless they meet specific work requirements or certain exemptions (such as pregnancy, unfitness for work including due to homelessness, caring for an incapacitated family member, etc.).

FSD will begin counting months toward the three-month limit July 1, 2023. This means that if you are an ABAWD and you do not meet the work requirements or fall into any exemptions, you will lose benefits October 1, 2023.

You will not be eligible again until July 1, 2026 (unless you meet work requirements or an exception, or are no longer an ABAWD due to changes in your age, disability status, or dependents in your home).

If your household includes an ABAWD, once they become ineligible, your household size will be reduced by one person. You will no longer receive benefits on their behalf, but all other non-ABAWD household members can still continue receiving SNAP.

To learn more, visit: <https://www.fns.usda.gov/snap/work-requirements>

In order to keep their benefits, ABAWDS must:

Meet an exemption criteria

OR

Work 80 or more hours per calendar month

OR

Participate and comply with the requirements of a qualified training program for 80 hours or more per calendar month

OR

Participate in a workfare program

To learn more, visit: <https://www.fns.usda.gov/snap/work-requirements>

Chapter 2: SNAP

What happens if I get denied for SNAP?

If your application for SNAP is denied, you may **appeal the denial through the fair hearing process**. To request a hearing, you may:

- Visit an FSD Resource Center
- Contact FSD by phone
- Or send a written request

A few tips:

- You must request a fair hearing within 90 days of the date of denial
- You may want the help of an attorney
- FSD can share information about free legal assistance in your area

What if my benefits are ended or lowered?

If FSD sends a notice to end or lower your SNAP benefits, you may request a fair hearing.

If you make the request within 10 days of the date of the notice, you may request to continue to get benefits at the current amount, until you get a decision from the fair hearing:

If the hearing decision is not in your favor, you may be required to pay back the benefits that you received during that period

If you make the request after 10 days, you will not get benefits while you wait for the hearing.

If you are not satisfied with the decision from the fair hearing, you may appeal to the circuit court in your county. But you must make this appeal within 90 days of the date of the fair hearing decision. If you do not make an appeal within 90 days, you cannot appeal FSD's decision.

How do I learn more about SNAP?

You can learn more about SNAP by going to the website: <https://mydss.mo.gov/food-assistance/apply-for-snap> or [myDSS.mo.gov](https://mydss.mo.gov)

If you need translation services, call 1-855-373-4636 and ask for a translator.

Call TTY/TDD 1-800-735-2966/1-800-735-2466 for American Sign Language.

Missouri Department of Social Services, My SNAP Benefit: <https://mydss.mo.gov/food-assistance/food-stamp-program>

Chapter 3

Income tax and tax relief for older adults

Chapter topics:

- What do I need to know about federal income taxes?
 - » Do I need to file a tax return?
 - » What are my standard deductions?
 - » How much of my Social Security benefits will be taxed?
 - » Who qualifies as a dependent?
 - » What if I sold my home this year?
 - » What if my home was foreclosed this year?
- What tax credits are available for older adults?
- How do I learn more about tax returns and tax credits?

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Chapter 3

Income tax and tax relief for older adults

What do I need to know about federal income taxes?

There are different factors that determine if you need to file a tax return and how much of your income will be taxed. If you are age 65 or older, these are different than younger taxpayers.

Do I need to file a tax return?

You will need to file a tax return if at the end of 2021:

- You were single and age 65 or older, with a gross income of \$14,250 or more
- You were head of household and age 65 or older, with a gross income of \$20,500 or more
- You were married filing jointly, and one spouse is age 65 or older, with a gross income of \$26,450 or more
- You were married filing jointly, and both spouses are age 65 or older, with a gross income of \$27,800 or more
- You were married filing separately at any age, with a gross income of \$5 or more
- You were a widow or widower with dependents and age 65 or older, with a gross income of \$26,450 or more

What are my standard deductions?

Taxpayers are allowed to deduct from their adjusted gross income, whichever is more:

- The standard deduction, OR
- Itemized deductions



Chapter 3: Income tax and tax relief for older adults

Your standard deduction depends on your tax filing status:

- Single or married filing separately – your deduction is \$12,550
- Married filing jointly – your deduction is \$25,100
- Qualifying widow or widower with dependents – your deduction is \$25,100
- Head of household – your deduction is \$18,800

Higher standard deductions

There are also higher standard deductions for taxpayers or their spouses who were born before January 2, 1957 and/or are blind. Each condition (age and blindness) increases the deduction. For 2021, these extra deductions apply on top of the standard deduction:

- Single or head of household and age 65 or older

- » An extra \$1,650 deduction
- Married and you or your spouse are age 65 or older
 - » An extra \$1,350 deduction
- Blind and single or head of household
 - » An extra \$1,650 deduction
- Blind and married
 - » An extra \$1,350 deduction
- Blind, single or head of household and age 65 or older
 - » An extra \$3,300 deduction
- Blind, married and you or your spouse are age 65 or older
 - » An extra \$2,700 deduction

Visit <https://www.irs.gov/help/ita/how-much-is-my-standard-deduction> or talk with your tax preparer for help calculating your standard deduction.

How much of my Social Security benefits will be taxed?

Usually, no more than 50% of your Social Security benefits are taxable.

However, up to 85% can be taxed if:

- You are single, and your income plus half of your Social Security benefits is more than \$34,000
- If you are married filing jointly, and your income plus half of your Social Security benefits is more than \$44,000
- If you are married filing separately, and you lived with your spouse at any time during 2021

For more about taxable Social Security benefits, see IRS publication 915, “Social Security and Equivalent Railroad Retirement Benefits” at <https://www.irs.gov/pub/irs-pdf/p915.pdf>

Chapter 3: Income tax and tax relief for older adults

Who qualifies as a dependent?

Figuring out who is a dependent can be complex.

A dependent can be a qualifying child, or a qualifying adult relative.

To claim a **child** as your dependent, they must:

- Be your son, daughter, stepchild, foster child, brother, sister, half-brother, half-sister, stepbrother, stepsister, or a descendant of any of them, AND
- Live with you for more than half of the year, AND
- Not provide more than half of their own financial support, AND
- Be younger than age 19 at the end of the year, OR
- Be younger than age 24 at the end of the year and a full-time student, OR
- Be any age if permanently and totally disabled

To claim a **relative** as your dependent, they must:

- Live with you all year as a member of your household, OR
- Be one of these:
 - » Your child, stepchild, foster child, or a descendant of any of them
 - » Your brother, sister, half-brother, half-sister, stepbrother, or stepsister
 - » Your father, mother, stepfather, stepmother, grandparent, or other direct ancestor (but not your foster parent)
 - » A son or daughter of your brother or sister
 - » A son or daughter of your half-brother or half-sister
 - » A brother or sister of your father or mother
 - » Your son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law

In general, you cannot claim a married person as a dependent if they filed jointly with their spouse.

To learn more about who you can claim as a dependent, see IRS publication 501, “Dependents, Standard Deduction, and Filing Information” at <https://www.irs.gov/pub/irs-pdf/p501.pdf>

Chapter 3: Income tax and tax relief for older adults

What if I sold my home this year?

If you sold your home for more than you paid for it, including improvements to your house, you have a gain on the sale. This gain is added to your income and may be taxable.

If you sold your main home in 2021, you may be able to exclude this amount of your gain from your income and avoid paying taxes on it:

- \$250,000 if single or married filing separately
- \$500,000 if married and filing jointly

To help you calculate the loss or gain of the sale of your home, and see if you qualify for the exclusion, see IRS publication 523, “Selling Your Home” at <https://www.irs.gov/pub/irs-pdf/p523.pdf>

What if my home was foreclosed this year?

There are special rules for foreclosures or repossessions of a main home.

If a lender has canceled your duty to pay back the mortgage on your home, you may receive Form 1099-C, “Cancellation of Debt”. This is a type of income and is reported to the IRS.

If your debt was canceled after 2006, you can exclude this type of income from your taxable income. You then must lower the value of your home by the same amount.

For more instructions, see IRS Form 982 at <https://www.irs.gov/pub/irs-pdf/f982.pdf>

If you receive IRS Form 1099-C (“Cancellation of Debt”) or Form 1099-A (Acquisition or Abandonment of Secured Property”), see IRS Publication 4681 to learn about how foreclosures and cancelled debts are handled for taxes, “Canceled Debts, Foreclosures, Repossessions, and Abandonments” at <https://www.irs.gov/pub/irs-pdf/p4681.pdf>

Chapter 3: Income tax and tax relief for older adults

What tax credits are available for older adults?

As an older adult, there are several tax credits that can lower the amount of taxes you pay. There are tax credits for both federal taxes and for Missouri state taxes.

Federal tax credit for the elderly or disabled

You may be able to claim this credit if:

- You were age 65 or older at the end of 2021, OR
- You were under age 65 at the end of 2021, AND
 - » Permanently and totally disability, AND
 - » Received taxable disability income in 2021, AND
 - » As of January 1, 2021, had not reached the mandatory retirement age

There are also income limits to claiming this tax credit. You can view these limits, and figure out your credit amount, in the IRS Publication 524, “Credit for the Elderly or the Disabled” at <https://www.irs.gov/publications/p524>

Federal earned income tax credit (EITC)

The federal Earned Income Tax Credit (EITC) helps low and moderate income workers and working families reduce their taxes. If you qualify:

- You can earn a credit up to \$6,728
- Your income must be \$57,414 or lower

The amount of credit depends on things such as family size and filing status. To see if you qualify for EITC, see IRS publication 5334, “Earned Income Tax Credit (EITC)” at <https://www.irs.gov/pub/irs-pdf/p5334.pdf>

Chapter 3: Income tax and tax relief for older adults

Federal health care tax credits

If you have health insurance through the Health Insurance Marketplace, you may qualify for a Premium Tax Credit (PTC). You can:

- Request to get your tax credit in advance to help pay your monthly insurance premiums throughout the year, OR
- Use your tax credit to lower the amount of taxes you owe

You can use Form 1095-A to fill out Form 8962 to calculate and claim a credit, and to check (reconcile) that you used the credits appropriately.

Missouri property tax credit

Missouri offers a property tax credit to qualifying older adults for part of the real estate taxes or rent they paid for the year. The credit amount is based on:

- The amount of real estate tax or rent paid during the year, AND
- Household income

You qualify for this tax credit if you the meet these requirements:

First:

- You are a renter or part year homeowner, AND:
 - » Single, with a total household income of \$27,200 or less, OR
 - » Married filing jointly, with a total household income of \$29,200 or less

OR

- You owned and lived in your home for the whole year, AND you are:
 - » Single, with a total household income of \$30,000 or less, OR
 - » Married filing jointly, with a total household income of \$34,000 or less

You must be able to prove that you have paid real estate tax or rent on the house you live in.

Second:

- You and your spouse can truthfully state that you did not employ undocumented immigrants (illegal or unauthorized aliens)

Third:

- You or your spouse were age 65 or older as of December 31, 2021, AND
- You or your spouse were a Missouri resident for all of 2021

Note: If you are a 100% service-connected disabled veteran, do not include VA payments in your total household income.

Chapter 3: Income tax and tax relief for older adults

If you and your spouse do not meet the third requirement above (for age and residence), you can still qualify if:

- You or your spouse were 100% disabled due to military service
- You or your spouse were 100% disabled in 2021
- You were age 60 or older as of December 31, 2021, and received surviving spouse Social Security benefits

To learn about Missouri's property tax credit, visit <https://dor.mo.gov/taxation/individual/tax-types/property-tax-credit/>

I qualify for the Missouri property tax credit, which tax form do I have to fill out?

- If you do not have to file a federal tax return, use Form MO-PTC
- If you do have to file a federal tax return, but do not claim an income modification or pension exemption, use Form MO-1040P
- If you do have to file a federal tax return, and claim an income modification or other tax credits, use Forms MO-1040 and MO-PTS

Missouri residential dwelling accessibility tax credit (DAT)

Missouri offers a tax credit if you have spent money making your home accessible for people with disabilities.

To qualify for this tax credit, the person with disabilities must live permanently in the home.

Here are the tax credit amounts and limits:

- If you are single, or married filing jointly, with a federal adjusted gross income of \$30,000 or less, your tax credit may be equal to the lowest of these 2 options:
 - » \$ 100% of the money you spent making your home accessible, OR
 - » \$ \$2,500 per taxpayer, per year
- If you are single, or married filing jointly, with a federal adjusted gross income over \$30,000 but less than or equal to \$60,000, your tax credit may be equal to the lowest of these 2 options:

- » \$ 50% of the money you spent making your home accessible, OR
- » \$ \$2,500 per taxpayer, per year

The total amount of DAT tax credits given in a year is \$100,000. Claims are approved on a first-come, first-served basis, so you should file your taxes as early as possible if you qualify. Once the \$100,000 limit is reached, no more claims will be approved.

To claim the DAT tax credit:

- You must fill out Forms MO-DAT and MO-TC with your tax return by April 15
- If you claim this tax credit one year, you cannot claim it the next year
- If you spent money making changes to your home in more than one calendar year, you can combine the costs into one claim and file it the year the changes are completed.

Chapter 3: Income tax and tax relief for older adults

How do I learn more about tax returns and tax credits?

The Department of Revenue no longer offers free tax return preparation of the Missouri individual income tax return or property tax credit. For help, the Department encourages older adults and low income taxpayers to:

- Contact them at PropertyTaxCredit@dor.mo.gov for tax assistance information
- Visit <https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers>



Chapter 4

Private retirement plans

The purpose of this chapter is to provide a basic guide to private retirement plans and to assist the reader in understanding the rules applicable to his or her plan.

Chapter topics:

- What are private retirement plans?
- Who is eligible for private retirement plans?
- What is vesting?
- How to get your benefits when you leave your job
- Disability benefits
- Benefits if you die before retirement
- Benefits if you die after retirement
- How your benefits are taxed
- Common problems that can happen
- When your benefits can be paid to others
- Important communication from your employer
- What to do when your claim for benefits gets denied
- Retirement plans for individuals

The author of this chapter is Daniel J. Schwartz, who is an Officer with Greensfelder, Hemker & Gale, P.C. During his 40+ years at Greensfelder, Dan has advised clients on all facets of employee benefits. He has significant experience drafting and implementing defined benefit plans, defined contribution plans, deferred compensation plans, ESOPs, health and welfare programs and executive compensation programs. He has also served as primary counsel in a number of ERISA lawsuits.

This chapter on Private Retirement Plans has evolved from a previous chapter on pension plans written by Pam Coffin, formerly of Mercer, Inc., a human resource-consulting firm. Ms. Coffin, who retired from Mercer in September 2015, specializes in pension work. She is also a long-term participant in the Legal Services of Eastern Missouri, Inc., Volunteer Lawyers Program.

Chapter 4: Private retirement plans

What are private retirement plans?

Private retirement plans are special accounts set up to prepare you for retirement. These plans are set up by private companies or organizations, not the government.

There are 2 main types of retirement plans:

- Pension plans (defined benefit plans)
 - » This type of plan promises a set dollar amount when you retire based on things like years of service and compensation
- Defined contribution plans, such as 401(k) plans, profit-sharing plans, or employee stock ownership plans (ESOPs)
 - » The amount of money you get from these types of plans when you retire depends on:
 - How much money was put into the account. Money can be put in by you (the employee), your employer, or both.
 - How much that money grew over time

How are private retirement plans regulated?

The private retirement plans included in this chapter are regulated by a federal law called the Employee Retirement Income Security Act (ERISA). ERISA governs how these plans operate.

Plans that are not subject to ERISA have different rules, such as plans for government employees and church-related organizations.

Who is responsible for managing private retirement plans?

The party responsible for managing your plan is called a fiduciary, which is a person or company that has a duty to act in your best interest. They must be responsible and honest, putting your needs before their own. Ultimately, they must manage the plan for the exclusive benefit of you and all the other participants in the plan.

Chapter 4: Private retirement plans

Who is eligible for private retirement plans?

Employers are not required to provide retirement plans. But if they do, they must follow certain rules set by ERISA.

If your employer offers retirement plans, they may have rules for who can join, such as:

- **Type of employee**
For example: Some plans may only be available to employees in a union
- **Length of employment**
For example: Some employers may require an employee to work at least 6 months before they can join
- **Amount of hours worked**
For example: Employees who work at least 500 hours a year for at least 3 years in a row are considered long-term, part-time employees, and they must be allowed to join
- **Age**
For example: Some plans require employees to be at least age 21 to join

By law, an employer may not require an eligible employee to complete more than 1 year of service to join or 2 years if the plan offers 100% vesting.

What is vesting?

Vesting means you have a right to keep money in your retirement plan, even if you leave your job. This is also known as “ownership of the benefit” or a “nonforfeitable” right to your benefit. Once you are vested in your plan’s benefit, the benefit cannot be taken away.

Vesting is based on years of service with your employer and can vary depending on the plan. Years of service is usually

defined as:

- A calendar year (January 1 to December 31)
- A 12-month period when you worked at least 1,000 hours
- 12 months of work, regardless of hours

Your own contributions to a plan, such as a 401(k), are always 100% vested and can never be taken away (forfeited).

Chapter 4: Private retirement plans

Different types of vesting

Employer contributions under a defined contribution plan, like a 401(k), may be subject to a vesting schedule. Different types of vesting schedules include:

- **Cliff vesting:** After working for a certain amount of time, you get to keep 100% of your employer's contributions. This amount of time is set by your employer and listed in the summary plan description.
- **Graded vesting:** Every year you work, you earn a bit more of your employer's contributions. For example, you might earn 20% each year. So, after 5 years, you get to keep all of it (100%). But if you leave employment after 3 years of service, you would get to keep only 60% of your account balance. You would give up (forfeit) the other 40%.
- **Immediate vesting:** You get the benefit right away, as soon as it's given to you

Benefits in a defined benefit plan may also be subject to a vesting schedule. In other words, you may be required to work for a certain period before becoming entitled to a benefit under the plan.

Vesting schedules are complicated. Be sure to check your summary plan description and ask for an explanation if you are not sure of your rights.



Chapter 4: Private retirement plans

How to get your benefits when you leave your job

Getting benefits from a defined contribution plan

Unless you elect to delay receiving your benefit, benefits must begin within 60 days after the close of the latest plan year in which you:

- Turn 65 (or your plan's retirement age if it's earlier),
- Complete 10 years of plan participation, or
- Leave your job

Even if you choose to delay getting your benefits, your retirement plan is required to pay you your benefit once you turn 73 and are no longer employed by your employer.

Benefits **may** begin after certain events sometimes called “distributable events.” Different types of plans have different rules defining a “distributable event,” so it is important that you check your plan's summary plan description. In general the rules are:

A defined contribution plan, including a 401(k) plan, may distribute **employer contributions** when you:

- Terminate employment by death, disability, retirement or any other employment termination,
- Reach the age listed in the plan, or
- Suffer a hardship

A defined contribution plan may pay benefits:

- In full, meaning you get them all at once
- As a life annuity, which provides regular payments over time, for the rest of your life
- In installments, which means you get periodic payments of a set amount until the total benefit amount is paid out

Chapter 4: Private retirement plans

Getting benefits from a defined benefit plan

How to know when benefits start

Defined benefit plans set a retirement date (usually age 65) for when you can receive your full benefit. Many plans also have an early retirement date. This means you may receive a benefit when you are no longer working for your employer even if that occurs before age 65. An early retirement benefit is often lower because you have fewer years of service and because the payment period will be longer.

Many plans require you to satisfy certain service and or age rules before receiving an early retirement benefit. For instance, the plan may require that you are at least age 55 with 5 years of service before receiving an early retirement benefit. Be sure to check the rules in your plan's summary plan description.

How benefits are paid out

Benefits are paid out to the employee or the employees' beneficiary, which is a person named to receive an asset (could be property or money). Beneficiaries are usually a spouse or child, but can also

include a former spouse or anyone else chosen by the plan participant.

There are different ways a defined benefit plan can be paid out. The most common ways are:

For single plan participants

- A life annuity, which is a monthly benefit paid to you for the rest of your life

For married participants

- A qualified joint and survivor annuity, which usually pays a lower monthly benefit during an employee's life to make periodic payments (usually 50% of the employee's payment) to the surviving spouse after the employee dies. Payments to the surviving spouse are called the survivor benefit. Under this payment:
 - » The spouse of the employee at retirement is entitled to the survivor benefit, even if they are later divorced
 - » If this spouse dies after payment begins and the employee remarries, the new spouse is not entitled to the survivor benefit

- A qualified optional survivor annuity, which pays a lower benefit during the employee's life and a different percentage (usually 75%) of the employee's payment to the spouse after the employee's death

A married employee can choose a type of payment other than a qualified joint and survivor annuity or a qualified optional survivor annuity with their spouse as beneficiary, but only if the spouse consents both to the type of payment and to any non-spouse beneficiary. A non-spouse beneficiary is a person such as a child, relative or friend.

Some plans may offer other options, and the plan administrator must explain the financial implications of each option. For both married and single participants the plan may automatically pay the entire benefit in a lump sum. This usually happens when your vested benefit is worth \$7,000 or less.

Chapter 4: Private retirement plans

Disability benefits

Some defined benefit plans pay disability payments from the plan if you must stop working for the company because you become disabled, usually after you complete a minimum period of service – such as 10 or 15 years. Once you reach the plan's normal retirement age (usually age 65) the plan will begin to pay you the promised retirement benefit.

To prove that you are disabled some plans require you to qualify for Social Security disability, while others have different standards.

How benefits are paid to spouses

Many defined benefit plans automatically pay a lump sum to a surviving spouse if the benefit is worth \$7,000 or less.

If a survivor benefit is too large to cash out, it is usually paid as a life annuity to the survivor

- Beginning at the employee's death, OR
- If later, when the employee could have elected to begin benefits if they had survived

Most pension plans do not pay pre-retirement death benefits to non-spouse beneficiaries such as children, relatives or friends.

Benefits if you die before retirement

A surviving spouse will be entitled to a surviving spouse benefit (survivor benefit) under a defined benefit plan if:

- The employee dies after becoming vested, but **before** they got any benefits under the plan, AND
- They were married at death (and in some plans, had been married for at least 1 year at death)

However, some plans allow the employee to waive the coverage (with the spouse's consent).

If you have a defined contribution plan such as a 401(k) plan:

- Your surviving spouse is entitled to get your vested account balance unless you chose a non-spouse beneficiary (with spousal consent)
- If you're unmarried, you can name a non-spouse beneficiary for the account
- Death benefits are usually paid in a lump sum after your death

If the surviving spouse's benefit is valued at more than \$7,000, payment cannot be made before the date the employee would have reached the plan's normal retirement age unless the spouse consents to the payment.

Chapter 4: Private retirement plans

Benefits if you die after retirement

After you retire and payment begins under your plan, a death benefit will be payable only if it is provided under the form of payment in effect at retirement.

- **If you were married** and payment was made as a qualified joint and survivor annuity or a qualified optional survivor annuity, your surviving spouse will get payments for life (usually 50, 75, or 100% of your payment, depending on how much you chose)
- If payment was being made for the life of the employee only, no death benefit will be paid

How your benefits are taxed

Regardless of whether you receive benefits from a defined benefit plan or a defined contribution plan, the taxation will be the same.

If you receive, monthly benefit payments, or installment payments they are:

- Generally taxable to the person who gets them, AND
- Subject to federal income tax withholding no matter who gets them (just like wages). However, unlike wages, the person who gets the pension benefits may choose not to have tax withheld
- Pension benefits are **not** subject to Social Security (FICA) tax

If you receive a lump sum cash benefit the payment is:

- Generally taxable to the person who gets them, AND
- Subject to federal income tax withholding no matter who gets them (just like wages). However, unlike wages, the person who gets the pension benefits may choose not to

have tax withheld

- Pension benefits are **not** subject to Social Security (FICA) tax

But, in most cases, the cash distribution can be rolled over to an Individual Retirement Account “IRA” (or another retirement plan). If you rollover the distribution you will not be taxed on the amount received from your retirement plan until you receive a distribution from the IRA (or other retirement plan).

Taxable amounts that are rolled over to a Roth IRA are included in the recipient’s income for the current year. However, if certain rules are met, distributions from the Roth IRA (including any investment earnings) will be tax-free. See Retirement plans for individuals section below.

A non-spouse beneficiary may be entitled to directly roll over a lump sum distribution into an IRA or a Roth IRA.

Chapter 4: Private retirement plans

Common problems that can happen

You may not get benefits if:

- You (the employee) or a surviving spouse fail to notify your employer of address changes after you leave employment or die
- You or a surviving spouse fails to apply for benefits when eligible
- Your records or your plan's records are incomplete or incorrect regarding your eligibility for plan benefits
- You do not work for an employer long enough to become "vested"
- You do not work in an eligible classification long enough to earn a benefit

Being in a union does not guarantee coverage under a pension plan – you must also work for an employer who contributes to a negotiated plan.

In some cases, the plan or the employer's inability to pay (insolvency) will affect benefits. Not all plans are guaranteed to pay out if this happens. For example:

- A federal insurance agency called the Pension Benefit Guaranty Corporation (PBGC) guarantees some, but not all, benefits under most types of defined benefit plans
- Benefits from defined contribution plans, such as 401(k) plans, are not guaranteed or insured
- However, the employer and others who operate plans are required by law to use plan assets only to pay benefits and expenses

If you are entitled to a benefit from your employer's plan but the plan is unable to contact you, the PBGC or the Social Security Administration may notify you of your entitlement to a benefit.

Chapter 4: Private retirement plans

When your benefits can be paid to others

In general, an employee's retirement plan benefits (either from a defined contribution plan or a defined benefit plan) cannot be assigned to another person or reached by creditors before they are paid to the employee.

The most common reason why benefits are paid to another person is to satisfy:

- Child support obligations
- A division of assets in a divorce. This is when assets get divided between spouses during a divorce.

A qualified domestic relations court order is needed to require a plan to pay benefits to a spouse, former spouse, or child.

Most of the time, payment cannot be made under the order until the employee is eligible to get benefits from the plan.

How benefits are taxed when paid to others

Amounts paid directly to a spouse, former spouse, or child under a qualified domestic relations order:

- Are taxed to the spouse, former spouse, or child--not the employee
- Can be directly rolled over to an IRA or other eligible retirement plan, if paid in a lump sum (and is subject to 20% federal income tax withholding if it is not directly rolled over)

Important communication from your employer

Federal law requires employers and plan administrators to provide plan participants and beneficiaries with:

- A summary plan description with the important provisions of the plan
- A copy of the plan document **upon request**
- Benefit statement once a year that shows the benefits earned to date and if it is vested **upon request**

Chapter 4: Private retirement plans

What to do when your claim for benefits gets denied

When a benefit is denied

If you or a beneficiary applies in writing for a benefit, and it is denied (or you get less than you think you are entitled to), the plan administrator or employer must explain in writing:

- The reasons for the denial
- Any information needed if you want the claim reviewed
- A copy of the plan's claim review process

Sometimes a claim is denied because an employer or a plan has incomplete or incorrect information. To support the claim, you may use:

- Your own records
- Social Security records
- The employer's records

The claim denial review process

If you want a reconsideration of a denied claim, you must:

- Request it in writing
- Follow the rules in the plan's claim process, including the plan's time limit for filing the claim review request

The plan must then give its decision on the reconsideration in writing.

If the claim is denied again after the review, you may need a lawyer to represent you in court:

- If you lose, you may need to pay your employer's lawyer fees
- If you win, a court can award you the benefits due and lawyer fees. In some cases, the court may also order your employer to pay you a penalty for not providing plan information on a timely basis. There are no damages under ERISA, such as damages for pain and suffering.

Have questions about your ERISA rights? Contact:

- The Employee Benefits Security Administration, U.S. Department of Labor: 314-539-2691, OR
- Division of Technical Assistance and Inquiries
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington D.C. 20210

For more information about your rights and responsibilities under ERISA:

- Call the publication hotline of the Employee Benefits Security Administration at 1-866-444-372
- Visit www.dol.gov/ebsa

Chapter 4: Private retirement plans

Retirement plans for individuals

If you are self-employed, not employed, or in certain situations employed, you may be entitled to establish an individual retirement account.

An IRA retirement plan

The most common is the Individual Retirement Account or “IRA.” There are 2 types of IRAs:

- Traditional IRA
- Roth IRA

Most people who are working can contribute the maximum amount each year to a traditional IRA on a tax-deductible basis, even if they are covered under a retirement plan at work. However, the amount of the deduction may be limited if income exceeds certain levels. Spouses can also set aside the maximum amount each year, even if they are not working.

The yearly contribution limit for 2023 and later is \$6,500. People who are age 50 or older by the end of the calendar year can also make a “catch-up” contribution for the calendar year. The maximum yearly “catch-up” contribution is \$1,000 per person.

Traditional IRA

- Tax deductible contributions
- Distributions are generally fully taxable
- Distributions must begin after you reach age 70 ½

Roth IRA

- Non-deductible contributions
- Distributions are tax free if certain requirements are met
- Distributions are not required to begin after you reach age 70 ½
- You can still contribute if you work past age 70 ½
- If your income is above a certain level, you cannot contribute to a Roth IRA

Chapter 5

Employment discrimination

Many Americans are retiring later than they'd like to because of the COVID-19 pandemic. So, more people are working past the normal retirement age. This means that age discrimination in the workforce will likely increase, even though there are state and federal laws protecting older workers.

Chapter topics:

- What is age discrimination?
- What laws protect me against age discrimination in employment?
- How do I file a charge of age discrimination?
- How do I learn more about age discrimination in the workplace?

Author: Christopher Bent is the managing member of the Law Offices of Christopher Bent. Mr. Bent earned a B.A. in political science and economics from Central State University and a law degree from St. Louis University.

Chapter 5: Employment discrimination

What is age discrimination?

Age discrimination is when an employer treats a person applying for a job or an employee less favorably because of their age. It protects workers who are aged 40 and older.

What can age discrimination look like?

Age discrimination can take many forms and can be hard to recognize.

Age discrimination may look like:

- An employer passing over older workers to promote less qualified workers under age 40, OR
- An employer terminating older workers while hiring younger workers to perform the same job, OR
- An employment policy or practice that applies to everyone regardless of age, if it has a negative impact on people aged 40 or older, unless it is based on a reasonable factor other than age, OR
- A job ad that says it is looking for applicants under age 40 (such as “young faces sought”), unless the job clearly requires a much younger person, such as modeling children’s clothing

Contact the U.S. Equal Employment Opportunity Commission (EEOC) or the Missouri Commission on Human Rights (MCHR) if you think you are the victim of age or other discrimination.

Important words to know:

EEOC: Equal Employment Opportunity Commission. An agency of the federal government. The purpose of the EEOC is to interpret and enforce federal laws regarding discrimination.

MCHR: Missouri Commission on Human Rights. The MCHR develops, recommends, and implements ways to prevent and end discrimination and to provide fair and timely resolutions of discrimination claims in Missouri.

Charge of discrimination: a signed statement declaring that an employer, union or labor organization engaged in employment discrimination. It requests EEOC to take remedial action.

Litigation: the process of taking legal action.

Chapter 5: Employment discrimination

What laws protect me against age discrimination in employment?

Your legal rights come from:

- Age Discrimination in Employment Act of 1967 and the Federal Older Workers Benefit Protection Act
- Missouri Humans Rights Act
- Illinois Human Rights Act

Age Discrimination in Employment Act of 1967 (ADEA)

The federal Age Discrimination in Employment Act of 1967 (ADEA) prohibits age-based discrimination against employees who are age 40 and older in:

- Hiring
- Firing
- Lay-offs
- Promotions
- Compensation (pay)

It applies to:

- Private employers
- Employment agencies
- Labor organizations
- State employers
- Federal employers

Employers must have at least 20 employees for ADEA to apply.



Chapter 5: Employment discrimination

Federal Older Workers Benefit Protection Act (OWBPA)

The ADEA has a provision for protecting older workers getting severance packages.

Severance pay is compensation given to an employee:

- Who is laid off
- Whose job has been eliminated
- Who has otherwise parted ways with a company

Under the OWBPA, employers must:

- Tell the age-protected employee (age 40 and older) in writing to talk with a lawyer
- Give an age-protected employee at least 21 days to consider a severance package that will waive their rights to sue their employer

Employees involved in large-scale terminations in the workforce have even more protection. Employers who are doing a mass termination (called Reduction-In-Force, or RIF), must:

- Give age-protected employees a minimum of 45 days to consider the severance package offer
- Give age-protected employees written notice of the group or class of employees who are affected, along with:
 - » Notice of the eligibility factors
 - » Job titles
 - » Ages of all employees eligible for the severance package
 - » Ages of those employees in the same job or organizational unit not offered the severance

With this information, employees are better able to figure out if older employees were disproportionately impacted by the RIF.

If you decide to waive your rights under the ADEA, you have up to 7 days to change your mind. Talk with an employment lawyer before signing a waiver and accepting a severance package.

Contact the EEOC (U.S. Equal Employment Opportunity Commission) if you still have worries or questions after signing.

Call:
1-800-669-4000

For deaf and hard of hearing callers:

1-800-669-6820
(TTY)

1-844-234-5122
(ASL Video Phone)

Email: info@eeoc.gov

Chapter 5: Employment discrimination

Missouri Human Rights Act (MHRA)

The State of Missouri passed laws preventing age discrimination similar to the federal ADEA.

The Missouri Human Rights Act (MHRA):

- Forbids age discrimination in the workforce for people between ages 40 and 70
- Applies to private and state employers with at least 6 employees
- Does not apply to federal employers

Employees must first file a charge of discrimination with either the U.S. Equal Employment Opportunity Commission (EEOC) or the Missouri Commission on Human Rights (MCHR) before pursuing a claim in federal or state court as discussed in more detail below.

Illinois Human Rights Act

This chapter does not cover your rights under Illinois anti-discrimination law. You can learn more at www.state.il.us/dhr or by calling 312-814-6200 (Chicago), 217-785-5100 (Springfield), or 618-993-7463 (Marion).

Generally, you may file charges against employers in southern Illinois with the EEOC's St. Louis office. You can file a charge:

In-person:

Robert A. Young Federal Building
1222 Spruce St.
Rm 8.100
St. Louis, MO 63103

Phone: 314-798-1960 or 1-800-669-6820 (TTY)

ASL video call: 844-234-5122

Fax: (314)-539-7894

Chapter 5: Employment discrimination

How do I file a charge of age discrimination?

If you think you have been discriminated against because of your age, you can file a charge of discrimination and if the investigation allows, file a lawsuit.

Filing a charge of discrimination

All the laws enforced by EEOC, except for the Equal Pay Act, require you to file a **Charge of Discrimination** before you can file a job discrimination lawsuit against your employer.

To file a charge:

1. You can start the intake process in 2 ways:

- Submit an online inquiry using the public portal, using the “EEOC Assessment System” questionnaire, at <https://publicportal.eeoc.gov/Portal/Login.aspx>
- Or call the EEOC by phone at 1-800-669-4000

2. You will then do an intake interview with an EEOC investigator. The intake interview can take 30 minutes – 1.5 hours.

They will discuss:

- The information you gave in the intake
- Your rights and responsibilities under the EEOC
- What happens during the investigation process
- What happens after you file a charge

3. After the interview, you will have enough information to decide if you want to move forward with filing a charge of discrimination. If you decide to file a charge of discrimination, the EEOC staff member will draft a charge of discrimination for your review and signature.

4. The charge will be “docketed” and sent to the employer (or prospective employer), where they will have an opportunity to respond.

Chapter 5: Employment discrimination

Could my charge of discrimination be dismissed?

Yes. A charge may be summarily dismissed, which means it's effective immediately and doesn't require consultation or more review. A charge may be summarily dismissed if it:

- Does not state a federal or state law violation of age discrimination
- Is not filed on time. Typically, employees have 180 days from the day of discrimination, but have 300 days if there is a state law (not local law) that bans age discrimination. Note: Federal employees only have 45 days.

After submitting your charge, you can contact the EEOC investigator to:

- Check on the status of your charge of discrimination
- Give them more information

Important deadlines for filing a charge of discrimination

If you believe you've been discriminated against because of your age, you are required to take immediate action to preserve the right to pursue a lawsuit in either state or federal court.

You should file a charge of discrimination right when you learn of the alleged discrimination because timing is very important. You have:

- 300 days from the time of alleged discrimination to file a charge with the EEOC, to preserve your federal rights under the ADEA
- 180 days from the time of alleged discrimination to file a charge with the MHRA, to preserve your state rights under the MHRA

Holidays and weekends are included in the calculation. Filing deadlines are not extended if you try to resolve the issue informally.

Retaliation

Retaliation can happen after an employee complains about discrimination.

Federal and Missouri laws do not allow employers retaliating because an employee:

- Reports discrimination
- Opposes discrimination
- Participated in the EEOC/MCHR investigation process

You should file a charge of discrimination if your employer retaliates against you. You can update an existing charge of discrimination to add retaliation or file a second charge, if needed.

Chapter 5: Employment discrimination

What might happen after a charge is filed?

There are 4 things that could happen after a charge is filed.

- Mediation
- Settlement
- Probable cause determination (Conciliation)
- Notice of right to sue

It may take several months or even longer before an investigation is completed.

Mediation

The EEOC may offer mediation as an alternative to investigation.

Mediation is when a third person (mediator) is involved in a dispute to help the parties (you and the employer) find an acceptable resolution.

It is free to you (charging party) and the employer. However, both parties must agree to participate before mediation takes place.

Mediation will not happen if either party says no.

Settlement

The EEOC investigator may ask the parties to consider settlement. A settlement is a formal agreement that ends a dispute.

If the charge is not settled during the investigation, then the EEOC may issue a “probable cause” determination.

Probable cause determination and conciliation

What is a probable cause determination?

Probable cause determination means that the investigator found enough evidence to support a conclusion that unlawful discrimination may have happened.

Probable cause determinations are rare. They are issued about 4% of the time (4 times out of 100). If the EEOC finds there is no probable cause, this does not mean that discrimination didn’t happen. Instead, it could mean that there was not enough information found during the investigation to support the claim of discrimination.

After issuing a probable cause determination, the EEOC will try to resolve the matter through conciliation.

Chapter 5: Employment discrimination

What might happen after a charge is filed?

Probable cause determination and conciliation

What is conciliation?

Conciliation is a way to resolve disputes in which a third party (the “conciliator”) offers input and advice about the best way to try to resolve the dispute. Conciliation differs from mediation in this way—third party mediators do not offer input and advice during a mediation as a conciliator will provide.

Conciliation is an option that aims to resolve the dispute without going to court and incurring the expenses and time involved with filing a lawsuit.

EEOC Notice of right-to-sue (“right to sue letter”)

What is a notice of right-to-sue?

If conciliation does not work, the EEOC will issue a notice of right to sue (“right to sue letter”). EEOC can only file a lawsuit when conciliation is unsuccessful. Filing a lawsuit in court may be the only way to prove your case.

A notice of right-to-sue (also called a right to sue letter) is a letter from the EEOC that allows you file suit in federal court for the discrimination that occurred.

If more than 180 days have passed since you filed your Charge of Discrimination, the EEOC is required to give you this notice if you ask for it.

Can I file a lawsuit on my own?

Yes. You can also file a lawsuit on your own by asking for a notice of right-to-sue before the investigation is finished. If such a request is considered too early, then the investigator will explain why there may be a delay in issuing you the notice of right-to-sue. If you request a notice of right to sue, EEOC will stop investigating your charge.

However, you do not need a notice of right to sue from EEOC to file your own lawsuit. You may file a lawsuit in federal court 60 days after your charge was filed with EEOC.

When do I have to file a lawsuit after I get the right-to-sue notice?

You must file a lawsuit within 90 days of getting the notice of right to sue. Your rights to pursue a claim under the ADEA is forever lost if for any reason you don’t follow this strict time limit.

Chapter 5: Employment discrimination

MCHR Notice of right-to-sue (“right to sue letter”)

MCHR’s procedures for issuing a notice of right-to-sue are more restrictive. For example:

- MCHR may administratively close a charge file without issuing a state notice of right-to-sue. Administratively closing a charge file means the charge is closed for administrative reasons without a decision based on discrimination claims. This can happen from procedural or administrative issues, such as:
 - » Lack of jurisdiction (Will be referred to another agency)
 - » Untimeliness if more than 180 days has passed from the time of discrimination
 - » Not enough employees (MCHR requires the employer to have at least 6 employees and the EEOC requires at least 20 employees)
 - » Lack of employment relationship such as an independent contractor relationship or an employment agreement was never made
- MCHR typically will not issue a state notice of right-to-sue until at least 180 days after the charge was filed, although sometimes they may send it earlier

If MCHR closes the file without issuing a right to sue notice, then an employee’s right-to-sue under state law may be lost. MCHR will let you know if they close your file, and they will give you information about your right to appeal the decision.

If MCHR does issue a state notice of right-to-sue, then a lawsuit alleging age discrimination under Missouri law must be filed:

- Within 90 days of the date MCHR mailed the notice (not 90 days from the date you received it)
- Within 2 years of the last alleged discriminatory act due to Missouri law

Reminder

EEOC and MCHR’s procedures and laws are complex. This chapter mostly talks about age discrimination under federal law. You should get advice from a lawyer for your own situation.

Chapter 5: Employment discrimination

Should I file a lawsuit?

Consider that filing a lawsuit is not an easy path. Lawsuits:

- Are time consuming
- Are expensive
- Are uncertain, as lawsuits often end in a verdict for the employer (defendant) or they are dismissed
- Often have limited monetary damages (compensation) for people who file claims under the ADEA. For example, if a court or jury decides that an employee was fired because of age, then that employee may receive any of the following:
 - » Back pay (the amount of wages and benefits the employee would have earned from the time of discrimination until the date of judgement),
 - » Front pay (the pay that you will continue to lose from the time of trial until a decision is made,
 - » Monetary damages (compensation) for emotional distress,
 - » Lawyer fees (the amount an employee must pay their lawyer),
 - » A pro-rated amount for the period since their firing, minus any money earned at another job since the firing

For a willful ADEA violation (a violation done on purpose), the employee may get double back pay (also called liquidated damages). However, it can be very hard to prove that an

employee was fired on purpose.

Damages under Missouri law can be more than the ADEA. In addition to back pay, a winning employee may be able to receive:

- Damages for emotional distress
- Punitive damages, which are meant to punish the employer if there's a finding of extreme discrimination



Chapter 5: Employment discrimination

A word of caution

Missouri is an “at will” state. This means that you can be hired, fired, or denied a promotion for any reason or no reason, as long as it is not a discriminatory reason. This means that people age 40 or older may suffer a negative employment action for reasons other than age.

It may be hard to prove age discrimination even when the negative employment action is based on age. The outcome of ADEA lawsuits depend on:

- Jurisdiction
- The judge
- The jury
- Witnesses

How do I learn more about age discrimination in the workplace?

These federal and state laws, and their deadlines:

- Are complex and confusing
- Often change (legislative amendment)
- Are sometimes inconsistent with each other

To learn more about employees’ rights under the ADEA and other laws enforced by the EEOC:

Be sure to think hard and consider all factors when deciding if litigation is the right course of action.

Always talk with a lawyer

Talk about your claim with a lawyer before filing a charge or lawsuit. Most lawyers will charge a fee for consultation, but it is well worth the cost.

For private lawyer referral information, please contact:

- The EEOC at 314-539-7800
- The Bar Association of Metropolitan St. Louis at (314) 621-6681 OR
- National Employment Lawyers Association/NELA-St. Louis at (314) 773-3566.

- Visit the EEOC’s web site, <http://www.eeoc.gov>
- Call the EEOC at 314-539-7800
- Go in person to the St. Louis office at 1222 Spruce Street, 8th Floor, St. Louis, MO 63101.

For information on Missouri law, visit www.labor.mo.gov/mohumanrights or call the state agency at 877-781-4236.

Chapter 6

Medicare

Chapter topics:

- What is Medicare?
- When can I enroll in Medicare?
- Original Medicare (Parts A and B)
- Medicare Part D
- Medicare Part C
- When can I change my plan?
- Help paying for Medicare
- You have the right to appeal
- How can I learn more about Medicare?

This year's edition was updated by the following Legal Services staff: Latasha Barnes, elder law attorney; Jamie Rodriguez, managing attorney of Health and Welfare programs; Lakitsa (Pinky) Hunter, Senior Public Benefits Specialist; and Elizabeth Larsen, program director of Connecting Kids to Coverage. Past editions were by Barbara J. Gilchrist, J.D., Ph.D., a professor at Saint Louis University School of Law, and a founder of this publication.

Chapter 6: Medicare

What is Medicare?

Medicare is a health insurance program run by the government, specifically the Centers for Medicare and Medicaid (CMS). It covers hospital and other medical costs for:

- Older adults (ages 65 and older)
- Some people under age 65 who are disabled, after 24 months of Social Security Disability

Types of Medicare

There are 4 different types of Medicare:

- Part A - Hospital insurance
- Part B - Outpatient medical insurance
- Part C - Medicare Advantage Plans (a plan managed by a private insurance company, which provides hospital and outpatient medical insurance)
- Part D - Prescription drug coverage

When can I enroll in Medicare?

You can sign up during the initial enrollment period (3 months before your 65th birthday, the month of your 65th birthday, and for 3 months after). This is a total of 7 months available for enrollment. You may choose to sign up for “original Medicare” (Parts A and B) or a Medicare Advantage Plan (Part C). See next page to learn more about the differences between these two options. If you miss the initial 7 month period, you may also enroll during the annual general enrollment (Jan. 1 - March 31). Earlier enrollment may be possible for those with disabilities.

Important terms to know:

Deductible: The amount you must pay out of your own pocket for your covered health care services each year.

Co-insurance: Your share of the cost for health care services after you have paid your deductible each year.

Premium: The cost you pay for your health insurance, usually monthly.

Co-payment: A fixed amount you may pay at the time you receive a health care service.

Work quarters: For premium-free Medicare, a person must have worked 40 quarters. A quarter is a three-month calendar period in which a person worked in a job and paid Medicare taxes. For a quarter to “count” toward your 40 required quarters, you must meet the minimum earnings number for that year (for example, in 2024 the minimum for the three-month quarter is \$1730).

Chapter 6: Medicare

Original Medicare (Parts A and B)

Medicare Part A

Part A is hospital insurance. This means it covers some of the costs of:

- A hospital stay
- Care in a skilled nursing facility (SNF)
 - » SNF care is only covered after a three-day hospital stay
- Care in one's home after leaving the hospital
- Hospice care

Part A does not cover outpatient doctors' visits.

What does Medicare Part A cover?

Part A covers these hospital services, if a doctor decides that the services are medically necessary (meet accepted medical standards and are necessary for the diagnosis and treatment of a medical condition):

- Bed and board
- Nursing and related services
- Use of hospital facilities
- Natural and synthetic drugs, supplies, appliances, and equipment normally furnished by the hospital
- Operating and recovery room costs
- Other diagnostic or therapeutic items or services normally furnished by the hospital, including rehabilitative services

Skilled Nursing Facility (SNF) services covered by Part A on a limited basis (see SNF section below to learn more about the limits of this coverage):

- Nursing care
- Bed and board
- Physical, occupational, respiratory, and speech therapy
- Medical social services
- Drugs and other health services generally provided by a skilled nursing facility

Medicare does not pay for:

- Custodial care, which includes activities like bathing, dressing, using the bathroom, and eating
- Personal needs that could be done safely and reasonably without professional skills or training



Chapter 6: Medicare

Medicare Part A

What does Medicare Part A cover?

Hospice services are covered if the Medicare recipient has been diagnosed as terminally ill, and has signed an “election statement” choosing hospice care instead of routine medical care. Hospice participants must be evaluated every 180 days to be sure they still require hospice services. Hospice care includes comprehensive care for people who are terminally ill, such as:

- Pain management
- Counseling
- Respite care
- Prescription drugs
- Inpatient care
- Outpatient care
- Services for the terminally ill person’s family

Who is eligible for Part A?

To be eligible for Part A, you must:

1. Be age 65 or older and qualify for Social Security retirement benefits or Railroad Retirement Board benefits, OR
2. Be disabled and have had Social Security disability benefits for 2 years, OR
3. Have end stage renal (kidney) disease (ESRD), OR
4. Have Amyotrophic Lateral Sclerosis (ALS or Lou Gehrig’s disease)

What is the cost for Part A?

The Part A monthly premium is:

- For people with 40 or more work quarters, there is no monthly premium
- For people with 0-29 work quarters, they may pay a premium of \$505
- For people who are not entitled to Social Security or railroad retirement benefits, but who have at least 30–39 work quarters, they may pay a premium of \$278

Chapter 6: Medicare

Medicare Part A

Hospital Care

If you are in the hospital for 90 days or less, Part A covers 90 days of hospital care for each benefit period. These costs are:

- A deductible charged at the beginning of the hospital stay, which is \$1632 for each benefit period
- Co-insurance after 60 days – if you are in the hospital for 61-90 days, the co-insurance amount is \$408 per day

If you are in the hospital for more than 90 days, you can:

- Use “reserve days”, which are additional days that Part A will cover over the 90 days. People with Medicare Parts A and B have 60 lifetime “reserve days” but they do not have to be applied toward the same hospital stay. If you use reserve days:
 - » The co-insurance amount is \$816 per day and Medicare pays the remainder of all covered expenses
 - » Medicare will deduct the number of reserve days used from your lifetime limit
- Or, choose not to use your lifetime reserve days. If you choose not to, you will have to put your decision in writing and give it to the hospital within 90 days of leaving the hospital

Medicare Part A: Skilled Nursing Facility (SNF) care

Part A also covers up to 100 days of care in a Skilled Nursing Facility (SNF) per benefit period, if these things are true:

- You were admitted within 30 days after leaving the hospital, AND
- You have been in the hospital for 3 days in a row before entering the SNF, AND
- The care in the SNF was for the same condition you received care for in the hospital or for a condition that started while you received SNF care, AND
- The condition requires daily skilled nursing or skilled rehabilitation services that cannot practically be provided anywhere, except a SNF

Medicare pays:

- All covered expenses for the first 20 days
- For days 21-100, you pay a daily co-insurance of \$204 per day
- For days 101 and beyond, you pay all costs

Medicare also pays for home health care visits if skilled nursing care or rehabilitation that can be provided in the home is required.

Chapter 6: Medicare

Medicare Part B

Part B is outpatient medical insurance that covers:

- Some doctor and outpatient services
- Medical supplies
- Some preventive services (for a list visit here: <https://www.medicare.gov/coverage/preventive-screening-services>)

What does Medicare Part B cover?

Medicare Part B helps pay for medically necessary doctor and related medical services no matter where you receive them—at home, in the doctor's office or clinic, or in a nursing home or hospital:

- Doctor services, including Federally Qualified Health Centers (FQHCs)
- Hospital outpatient services and supplies incidental to doctor services, such as diagnostic x-ray tests or lab tests
- Mental health services
- Chemotherapy
- Dialysis
- Physical and occupational therapy
- Other medical and health services, including surgical dressings, splints, and casts, ambulance services, and prosthetic device

Part B also covers some prevention and screening services:

- Yearly wellness visit
- Flu and pneumonia shots
- Mammograms
- Certain cancer screenings
- Glaucoma screening
- Foot exams
- Diabetic supplies
- Sexually transmitted infection screenings
- Tobacco use cessation counseling
- Obesity and nutrition therapy for people with diabetes

Medicare Part B may also cover medically necessary occupational therapy, speech therapy, and physical therapy if prescribed by a treating physician and approved by Medicare.

Chapter 6: Medicare

Medicare Part B

Medical equipment coverage

Medicare Part B covers the rental or purchase of durable medical equipment (DME) used in a person's home. A doctor must prescribe the equipment.

DME includes:

- Hospital beds
- Wheelchairs
- Hemodialysis equipment
- Oxygen tents
- Crutches
- Canes
- Many other supplies

Before buying or renting, always be sure you are using a Medicare-approved supplier. You can search for an approved provider near you: <https://www.medicare.gov/medical-equipment-suppliers/>

If a person enters a nursing home, any DME provided by Medicare will not be covered, so they will need to return the items or pay for them out-of-pocket.

Who is eligible for Part B?

Eligibility for Part B is the same as for Part A. You must:

1. Be age 65 or older and qualify for Social Security retirement benefits or Railroad Retirement Board benefits, OR
2. Be disabled and have had Social Security disability benefits for 2 years, OR
3. Have end stage renal (kidney) disease (ESRD), OR
4. Have Amyotrophic Lateral Sclerosis (ALS or Lou Gehrig's disease)

Important note: If you delay in signing up after you become eligible to enroll, there will be a penalty added to the monthly premium for each year of the delay. This can be prohibitively expensive, so it is essential to sign up as soon as you are eligible.

What is the cost for Part B?

The Part B monthly premium depends on your income, but most people will pay the standard premium of \$174.70.

The Part B premium will automatically be taken out of your monthly Social Security check unless you ask not to participate in Part B.

Part B has an annual deductible of \$240 for the year 2024.

Some people will automatically get Medicare Parts A and B, while others may have to wait to get Parts A and B during a specific period called an enrollment period.

Chapter 6: Medicare

Medicare Part B

Medical insurance

Part B has a basic payment rule for all charges for covered medical expenses:

- There is a \$240 deductible for all approved charges in each calendar year
- Then, coinsurance kicks in:
 - » Medicare pays 80% of all additional approved charges for covered medical expenses
 - » You pay the remaining 20% of the costs of all covered medical expenses

If there are charges that are not approved by Medicare, you will have to pay for them, unless that doctor agrees to only charge the amount approved by Medicare.

Medicare Parts A and B

Is home health covered by Medicare Parts A and B?

Medicare Parts A and B pay for a limited amount of home health care provided by a public or private home health care agency. Covered home health services include:

- Part-time skilled nursing care
- Physical therapy
- Speech therapy
- Other possible services:
 - » Occupational therapy
 - » Part-time services of home health aides
 - » Medical social services
 - » Medical supplies and equipment provided by the agency if skilled nursing care, speech or physical therapy is necessary

What is not covered under Medicare Parts A and B?

Medicare does not pay for certain services and supplies, including but not limited to:

- Custodial care in a nursing home, residential care facility, or in your own home
- Services not reasonable or necessary, as defined by Medicare
- Routine dental and eye care
- Dentures
- Cosmetic surgery
- Acupuncture
- Hearing aids and exams for fitting them
- Routine foot care

For questions about coverage of a specific service, visit www.Medicare.gov

Chapter 6: Medicare

Medicare Part D

Part D helps pay for prescription drugs. Covered medicines will vary among plans.

People with Medicare may enroll in 2 ways:

- Buy a stand-alone prescription drug plan (PDP) if they have Parts A or B, or
- Get it through a Medicare Part C Medicare Advantage plan that offers prescription drug benefits

Who is eligible for Part D?

Anyone with Medicare.

What is the cost for Part D?

Monthly premiums depend on the plan you choose. You may also have:

- An annual deductible
- Co-payments
- Co-insurance

Monthly premiums depend on the plan you choose. You may also have:

- An annual deductible
- Co-payments
- Co-insurance

You do not have comprehensive Medicare coverage unless you have a Part D plan (in addition to A + B, or Medicare Advantage). Comprehensive coverage should include hospital, medical, and prescription drug coverage. Some people may have prescription drug coverage through another non-Medicare plan, like a private insurance plan or through the Veterans Administration.

Help paying for Part D: Extra Help

A program called Extra Help can help people with certain income and resource limits pay all or part of their Part D premium (this is called a Low-Income Subsidy, or LIS). The LIS program helps by paying the monthly Part D premium, up to the Missouri benchmark of \$32.74. If you choose a plan with a premium that is more than the benchmark, you are responsible for paying the difference.

You may qualify if you are:

- A single person with yearly income up to \$22,590 and resources up to \$17,220
- A married couple with yearly income up to \$30,660 and resources up to \$34,360

If you do not qualify for Extra Help, you can reapply at any time if your income and resources change. To learn more about Extra Help, visit www.Medicare.gov.

Chapter 6: Medicare

Medicare Part D

Help paying for Part D: MO Rx

Missouri has a program called MO Rx that can help some people pay prescription drug costs.

Individuals receiving Medicare and MO HealthNet (Missouri Medicaid) are eligible for MO Rx coverage and automatically enrolled in the program.

MO Rx works with all Part D plans. It pays for 50% of the member's out-of-pocket costs for medications covered by the member's Part D plan.

To learn more about MO Rx, visit here: https://dss.mo.gov/mhd/faq/pages/faqmo_rx.htm



Chapter 6: Medicare

Medicare Part C

Part C refers to Medicare Advantage plans. These are private, managed care health plans offered by private, for-profit insurance companies for people with Medicare. Medicare Advantage plans offer equal benefits to Parts A and B:

- Hospital care
- Medical care
- Doctor visits
- And often a Medicare Part D plan for prescription drug coverage. For plans that do not offer Part D coverage, you would choose a stand-alone Part D plan for complete Medicare coverage.

Some Medicare Advantage plans also offer:

- Routine eye exams
- Routine dental coverage
- Annual physicals
- Hearing exams
- Eyeglasses
- Hearing aids
- Flex cards (preloaded debit cards that provide money for food, over-

the-counter medical expenses, etc.)

Medicare Advantage Plans:

- Limit your choice of doctor, because you must choose someone in-network
- Limit your choice of hospital, because you must choose an in-network facility
- Set a limit on what you'll have to pay out-of-pocket each year for covered services
- May offer a range of supplemental benefits to cover out-of-pocket costs, such as deductibles and co-insurance

Medicare Advantage plans may be:

- HMOs
- PPOs
- SNPs (special needs plans)
- MSAs (Medicare Savings Accounts)
- Fee-For-Service

Who is eligible for Part C?

Eligibility for Part C is the same as for Part A and B. You must:

1. Be age 65 or older and qualify for Social Security retirement benefits or Railroad Retirement Board benefits, OR
2. Be disabled and have had Social Security disability benefits for 2 years, OR
3. Have end stage renal (kidney) disease (ESRD), OR
4. Have Amyotrophic Lateral Sclerosis (ALS or Lou Gehrig's disease)

What is the cost for Part C?

Most people enrolled in a Medicare Advantage plan must still pay their Part B premium. Members may also pay an additional monthly premium to the plan. Each plan sets its own premium.

Chapter 6: Medicare

When can I change my plan?

You can switch from original Medicare (Parts A and B) to a Medicare Advantage plan, or vice versa, or from one Medicare Advantage plan to another during the Annual General Enrollment Period from October 15 – December 7.

Your new plan changes start January 1 of the next calendar year.

Help paying for Medicare

Qualified Medicare Beneficiary (QMB)

QMB is a Medicare Savings Program that helps pay for Medicare premiums and makes payments to medical providers for the coinsurance and deductibles for Medicare services. You may qualify if you are:

- Single with an income less than \$1,215 per month and assets that do not exceed \$9,430
- A married couple with a combined income less than \$1,644 per month and assets that do not exceed \$14,130

Specified Low-Income Medicare Beneficiary (SLMB)

SLMB another Medicare Savings Program that helps pay for Medicare Part B premiums. There are two tiers, SLMB1 and SLMB2, with different income limits. You may qualify for SLMB1 if you are:

- Single with an income of \$1,458 or less per month and assets that do not exceed \$9,430
- A married couple with a combined income of \$1,972 or less per month and assets that do not exceed \$14,130

You may qualify for SLMB 2 if you are:

- Single with an income of \$1,641 or less and assets that do not exceed \$9,090
- A married couple with an income of \$2,219 or less and assets that do not exceed \$13,630

The income and asset limits for these programs may change each year in April. These numbers are accurate as of February 1, 2024.

The Missouri Family Support Division (FSD) runs the QMB and SLMB programs and each of these programs have additional eligibility criteria, beyond income and

resources. To learn more, visit: <https://dssmanuals.mo.gov/wp-content/uploads/2020/09/im-4msp.pdf>

Medigap Insurance

This is a supplemental insurance plan that pays for services not covered by Medicare Parts A and B (including deductibles, co-pays, co-insurances). It is sold by a private insurance company.

Contact the Missouri Department of Insurance or CLAIM (Missouri's free state health insurance assistance program) to learn more about Medigap policies.

Chapter 6: Medicare

You have the right to appeal

If you disagree with a Medicare decision about coverage, by law you are entitled to ask for a review. Generally, a Medicare appeal is only possible after you receive care and your coverage was denied.

How to appeal

To see a general overview of the appeals process, visit www.medicare.gov and click on the Claims and Appeals tab.

All coverage denial notices and Medicare appeal decisions will include instructions on how to request the next stage of appeal and the time limits. You can appeal in these ways:

- Use preprinted Medicare appeal forms for each stage in the process, which you can find:
 - » By calling 1-800-MEDICARE
 - » By visiting www.medicare.gov and clicking on the “Forms, Help & Resources” tab
- Use your MSN (Medicare Summary Notice) as an appeal form by:
 - » Circling the item that you wish to appeal
 - » Writing in why you disagree
 - » Signing the formAnd sending it to the address on the MSN

Other rights may also be available, including appeal to the federal courts.

If you decide to appeal, it may be a good idea to talk with a friend, relative, or lawyer about the appeal process. Check the listing at the end of this book for legal assistance information.

Chapter 6: Medicare

How do I learn more about Medicare?

You can learn more in these ways:

- Call Missouri's free state health insurance assistance program, called Missouri SHIP, at 1-800-390-3330.
- Contact the Social Security Administration at 1-800-772-1213.
- Contact CMS (Centers for Medicare and Medicaid Services) by visiting <https://www.cms.gov/Medicare/Medicare>
- Read the Medicare Handbook, which you can get from your local Social Security Administration office.
- Read the CMS handbook Medicare and You 2024, which you can get here: <https://www.medicare.gov/publications/10050-LE-medicare-and-you.pdf>



Chapter 7

Medicaid (MO HealthNet)

Medicare is complex. This chapter covers general information about Medicare. If you have questions or need more information about your specific situation, contact an elder law attorney.

Chapter topics:

- What is MO HealthNet?
- Who can use MO HealthNet?
- What expenses does MO HealthNet cover?
- Financial eligibility requirements for the Medical Assistance program
- Financial eligibility requirements for the Vendor program
- What can I do if I'm denied MO HealthNet eligibility or coverage?
- How can I learn more about MO HealthNet?

The prior edition was by Julie Berkowitz, Esq. Ms. Berkowitz is a Certified Elder Law Attorney (CELA). The update for this 21st edition was updated by KC Elder Law, website: kcelderlaw.com, Phone: 816-220-4119*

**Certified as an Elder Law Attorney by the National Elder Law Foundation. Neither the Supreme Court of Missouri nor The Missouri Bar reviews or approves certifying organizations or specialist designations.*

Learn about MO HealthNet benefits and eligibility requirements. This information is current as of December 2022, but may change at any time.

Chapter 7: Medicaid (MO HealthNet)

What is MO HealthNet?

The Medicaid program in Missouri is called MO HealthNet. MO HealthNet is a joint federal-state program designed to help cover some healthcare costs for people in financial need. There are different MO HealthNet programs. This chapter outlines the 2 main programs for older adults and people with disabilities:

- MO HealthNet for basic medical care (Medical Assistance program)
- MO HealthNet for nursing home care (Vendor program)

The Family Support Division (FSD) of the Missouri Department of Social Services (DSS) runs the MO HealthNet program. FSD decides who is eligible for the program based on federal and state requirements.

MO HealthNet is different than Medicare

Medicare is run by the Social Security Administration. There are no financial need requirements to be eligible for Medicare. There are financial need requirements to be eligible for MO HealthNet.

The MO HealthNet eligibility requirements are complex. If you want to apply for MO HealthNet benefits, it may be helpful to talk with a lawyer who knows about MO HealthNet eligibility issues.

Who can use MO HealthNet?

Who can use MO HealthNet?

- To qualify for any MO HealthNet program, you must meet these requirements:
- Be a U.S. citizen or qualified alien (a person lawfully admitted for permanent residence), AND
- Be a Missouri resident, AND
- Be age 65 or older, blind, or permanently and totally disabled, AND
- Meet the financial eligibility requirements of the MO HealthNet program you're applying for

To qualify for the Vendor program (nursing home care), you must meet these requirements plus reside in a Medicaid-certified bed in a nursing home.

Chapter 7: Medicaid (MO HealthNet)

What expenses does MO HealthNet cover?

In general, MO HealthNet will cover these services:

- Physician's services
- Ambulance
- Hospice
- Hospital stays (in-patient and out-patient)
- Lab tests and X-rays
- Some home health care, such as help with housekeeping, bathing, and getting dressed
- Periodic diagnosis and screening
- And some prescription drugs

The Vendor program (nursing home care) may cover skilled nursing home care, too. In general, you must use your own income to pay for the nursing home care and MO HealthNet covers the remaining cost.

Medical exception

For medical expenses that are not explicitly covered, you can request a medical exception to get coverage. A medical expense includes things such as medical:

- Services
- Procedures
- Equipment

Learn how to request a medical exception under “What can I do if MO HealthNet denies coverage for a medical expense I need?” below.

Prior authorization

Some drugs and services need prior authorization before MO HealthNet will cover them. Prior authorization is when your doctor needs to get approval from your insurance company before they can provide certain treatments, tests, or medicines to make sure they are necessary and covered by your plan.

Here is how it works:

1. Health care providers (such as doctors) will submit the prior authorization request for the medicine or service. Sometimes both you and your doctor must submit the request.

2. In most cases, the MO HealthNet office will notify your doctor of its decision.

3. If your doctor tells you that your request was denied, you may appeal the decision.

To appeal, follow the same steps if you were denied MO HealthNet eligibility (see “How can I appeal if I’m denied MO HealthNet eligibility?” section below).

Chapter 7: Medicaid (MO HealthNet)

Financial eligibility requirements for the MO HealthNet

Income limit requirements

To apply for the MO HealthNet, your monthly income must be:

- If unmarried, \$963 or less after allowable deductions
- If married, a combined income of \$1,297 or less after allowable deductions

The income limit requirements change every year. These numbers are current as of 2022.

Spend-down

If you meet all the eligibility requirements except the income limit requirement, you may still qualify for some benefits. But you would need to pay a certain amount of healthcare costs each month before MO HealthNet will cover other healthcare costs. The amount you're responsible for is called your "spend-down amount", which is like a monthly deductible.

To calculate your spend-down amount:

1. Add up your total **monthly earned income** (wages and self-employment

income)

Example: (monthly wages + monthly self-employment income = monthly earned income

2. Subtract \$65 from your **monthly earned income**

3. Divide this amount by half to get your **adjusted earned income**

4. Add your **adjusted earned income and all unearned income, such as:**

- Social Security
- Social Security Disability Insurance (SSDI)
- Private pensions
- Veterans Affairs benefits

5. Subtract any health insurance monthly premium payments (including Medicare and private insurance)

6. Subtract \$20 (personal income exemption) to get your resulting net income

7. Subtract your resulting net income from the income limit requirement that applies to you:

- \$963 or less if you're unmarried
- \$1,297 or less if you're married

After all allowable deductions, this is your monthly spend-down amount.

There are 2 ways you can pay your spend-down amount. You can:

- Submit your out-of-pocket medical bills to your FSD caseworker each month. MO HealthNet will not pay these bills. Your coverage will start each month on the day you meet or exceed your spend-down amount.
- Pay a monthly premium to the State, so you have no gaps in coverage. MO HealthNet will send you a bill each month that you can pay in advance for coverage for the next month. Or you can also pay your premium retroactively for certain months.

It's okay if you don't meet your spend-down amount every month – you will stay eligible. If you don't meet your spend-down amount for 6 months in a row, MO HealthNet will stop sending you premiums, but you will still be eligible.

Chapter 7: Medicaid (MO HealthNet)

Asset limit requirements

MO HealthNet asset limits are not tied to the federal poverty level and have never been raised. They do not change every year like the income limits. These asset limits only apply to non-exempt assets:

- If unmarried, you must have no more than \$5,301.85 in non-exempt assets
- If married, you and your spouse must have no more than \$10,603.70 in combined non-exempt assets

Certain assets are considered exempt, and their value is not counted towards the asset limit total. Exempt assets include:

- Your home (up to an equity limit of \$636,000) and furnishings
- 1 motor vehicle
- Personal effects
- Burial lot
- Certain income producing property
- Either a pre-paid irrevocable funeral plan or up to \$1,500 in cash surrender value in life insurance (Cash surrender value is the amount of money you get if you choose to end a permanent life insurance policy before its maturity date or before you die)

Financial eligibility requirements for the Vendor program

Income limit requirements

There are no actual income limit requirements for the Vendor program. However, your income must be less than the monthly cost of your nursing home care. Otherwise, MO HealthNet benefits are usually not needed.

In general, once you are eligible for the Vendor program, you are required to use your income (minus allowable exemptions) to pay for your nursing home costs. The Vendor program covers the remaining nursing home and uninsured medical costs. And there are special rules for the income of certain people who are married and whose spouse does not also live in a nursing home.

Income limit requirements

These Vendor program asset limits only apply to non-exempt assets:

- If unmarried, you must have no more than \$5,301.85 in non-exempt assets
- If married, and you and your spouse both live in a nursing home, you must have no more than \$10,603.70 in combined non-exempt assets
- If married and your spouse does not live in a nursing home, you must have no more than \$5,301.85 in non-exempt assets. However, the spouse who does not live in the nursing home (called a community spouse) is entitled to keep a Community Spouse Resource Allowance (CSRA).

Chapter 7: Medicaid (MO HealthNet)

Community Spouse Resource Allowance (CSRA)

A CSRA is an allowance of resources, including money and other assets, that a Medicaid applicant's spouse can keep while still allowing for their spouse to qualify for Medicaid benefits. The spouse's CSRA amount is considered an exempt asset, so it is not counted towards the \$5,301.85 asset limit listed above.

The FSD will calculate a spouse's CSRA during a Division of Assets Assessment:

1. An FSD caseworker decides which non-exempt assets belong to the person individually, together with their spouse, or with someone else, based on the date the MO HealthNet applicant first became "institutionalized"
2. The caseworker then adds the value of all the non-exempt assets together to get the total value
3. The caseworker then takes the total value, divides it by 2, and compares it to the minimum and maximum standard amount. The minimum and maximum standard amounts usually increase each year. As of 2022:
 - The minimum standard amount is \$27,480
 - The maximum standard amount is \$137,400
4. The CSRA will be:
 - If the one-half total value is between the minimum and maximum standard amount, then the CSRA will be the total value found in step #3 above

- If the one-half total value is less than the minimum standard amount, then the CSRA will be the minimum standard amount (\$27,480)
- If the one-half total value is more than the maximum standard amount, then the CSRA will be the maximum standard amount (\$137,400)

5. Once the married couple's total non-exempt assets are equal to or are less than the CSRA, the spouse in the nursing home will be eligible for benefits.

In some cases, when a community spouse has low income (according to State standards) or has high living expenses or extraordinary costs, they may be entitled to:

- Income from their spouse in the nursing home
- A higher CSRA amount

An administrative appeal is required to increase the community spouse's portion of assets. Talk with an elder law lawyer to ensure the community spouse gets the maximum amount they are entitled to.

Other than the CSRA, a community spouse is also allowed to keep:

- The couple's exempt assets
- Their own income, which is not a factor in their spouse's eligibility

Chapter 7: Medicaid (MO HealthNet)

Transfer of asset rules apply for the Vendor program

Under Missouri law, if you give away or transfer property for less than fair market value within 5 years (60 months) of applying for Vendor program benefits, you will be ineligible for MO HealthNet benefits for a certain period of time (penalty period). The length of the penalty period will be based on the amount or value involved in the transfer of property.

The penalty period starts when you:

- Have no more than \$5,301.85 in non-exempt assets, AND
- Are otherwise eligible for benefits, AND
- Have applied for MO HealthNet benefits

Estate recovery

You can own certain exempt assets, such as a home, while getting Vendor program benefits. However, the DSS has a right of recovery against your estate upon death. This means the DSS can take your home after you die. Also, the State is entitled to place a lien against your home. A lien is a legal claim against property that can be used to repay a debt.

The penalty period starts on the date you submit your application, not the date of transfer (as long as you meet all the other eligibility requirements when you submit your application).

The date a person files a MO HealthNet application has legal significance. Also, some transfers are exempt under the law, and are not subject to penalty.

Talk with an elder law lawyer before making such a transfer, and before applying for MO HealthNet.

However, there are some exceptions when the State does not have a legal right to such a claim or lien.

If you're a beneficiary of a deceased Vendor program recipient and have been contacted by the State about a recovery claim, talk with an elder law lawyer to learn your rights.

What can I do if I'm denied MO HealthNet eligibility or coverage for a medical expense?

There are also things you can do if MO HealthNet denies coverage for a medical expense you need.

Chapter 7: Medicaid (MO HealthNet)

How can I appeal if I'm denied MO HealthNet eligibility?

If you are denied MO HealthNet eligibility, you have a right to an appeal. To submit an appeal:

- Make a request to your caseworker or another FSD staff member for a hearing.
- You must make this request within 90 days of the denial of your MO HealthNet application.
- It may be helpful to talk to an elder law lawyer if you are requesting an appeal.

If you get MO HealthNet benefits and FSD tries to end or lower those benefits, you may also appeal that decision:

- If you appeal within 10 days of the notice, you have a right to keep getting full benefits until the outcome of the hearing.
- If you continue to get full benefits during the appeal process and lose, the State can seek repayment from you for those expenses.

What can I do if MO HealthNet denies coverage for a medical expense?

If you have a medical expense that is not clearly covered by MO HealthNet, you can make a medical exception request to get coverage. A medical expense includes things such as medical:

- Services
- Procedures
- Equipment

If the MO HealthNet Division (formerly the Division of Medical Services (DMS)) denies coverage for a medical expense, you may:

- Call the Recipient Services' number

on the back of the MO HealthNet card to ask about a medical exception.

- Your doctor must then send documented proof that the medical expense is needed.

Healthcare providers may also deny you services. Providers do not need to accept payments from MO HealthNet. If a healthcare provider does not accept MO HealthNet, you have 2 options:

- Find a different healthcare provider
- Pay with your own money

How can I learn more about MO HealthNet?

To learn more about MO HealthNet benefits, visit the DSS website: <https://dss.mo.gov/mhd/>

To apply for MO HealthNet benefits, visit: mydss.mo.gov/healthcare/apply

Chapter 8

Nursing homes

Chapter topics:

- What are the types of nursing homes?
- How can I choose the right nursing home?
- What are resident rights and what if I feel my rights have been violated?
- How long can residents stay in a nursing home?
- How can I pay for nursing home care?
- How are nursing homes regulated?

Authors: Michael C. Weeks, Certified Elder Law Attorney at The Weeks Group LLC, edited this edition and Published his first book, “I Am the Resident – Becoming the Advocate for Your Loved One’s Needs” in April of 2021. This book explains residents’ rights in terms families can understand and gives 64 examples where he used federal resident rights to get care for residents when families were having problems with facilities.

Weeks is working to complete his 2nd book, “How to Place a Loved One in a Long-Term Care Facility in the State of Missouri.” He hopes to have it published by fall 2023.

Cheryl Wilson, Elder Care Coordinator at The Weeks Group LLC, edited this edition and the 19th edition.

Susan Jotte, JD, edited the 19th edition.

Kerry Kaufmann, administrator of Normandy Nursing Center, edited this chapter for many years before the 19th edition.

Chapter 8: Nursing homes

What are the types of nursing homes?

There are 4 levels of long-term care licensed and regulated by the State of Missouri. These levels are based on services offered and staff available. The 4 levels of care are:

1. Skilled Nursing Facilities (SNF) offer a higher level of nursing care and treatment for people who need 24-hour care by licensed nurses (often called nursing homes). SNF residents have access to:

- Treatments prescribed by a doctor
- Medicines given by staff
- IV (intravenous) treatment - a way to give fluids, medicine, nutrition, or blood directly into the blood stream through a vein
 - » Note: Not all SNF offer IV treatment. Be sure to ask if this type of treatment is needed.
- Physical, speech, and occupational therapy
- Specialized health care to treat specific health conditions

SNFs are the next level of care below staying at a hospital. Yet some hospitals have SNFs within the hospital itself. A patient can stay at the hospital's SNF or choose an outside facility.

SNFs are licensed by the State of Missouri. Many SNFs accept Medicare and Medicaid as payment, and are certified and regulated by the Medicare and Medicaid programs as well. But each facility decides to take part in either program, and may choose the number of beds offered through either program.

Note: Even though a facility has Medicare or Medicaid certified beds doesn't not mean there is always one available.

Chapter 8: Nursing homes

What are the types of nursing homes?

1. Intermediate Care Facilities (ICF) are the next level of care below SNFs and focus more on custodial care (non-medical care that helps people with daily activities, such as eating and bathing). The main difference between a SNF and ICF is that an ICF doesn't always have a registered nurse (RN) on site at all times. ICFs provide:

- Protective oversight (24-hour supervision of residents to ensure their health and safety)
- Nursing care
- Medicines given by staff

Medicare does not pay for custodial care. However, Medicaid will pay for custodial care if financial requirements are met and the resident is in a Medicaid-certified bed.

3. Residential Care Facility II (RCF II) provides more of a boarding home environment. And RCF II provides:

- Protective oversight
- Medicines given by staff
- Meals
- Help bathing, dressing, and grooming
- Temporary medical care for residents returning from the hospital and needing minimal care

Residential Care Facility I (RCF I) is the least restrictive option (an environment that allows an adult to function with as much choice and self-direction as safely appropriate) for a resident in licensed long-term care. It provides:

- Protective oversight
- Medicines given by staff
- Meals
- Some grooming

Chapter 8: Nursing homes

What are the types of nursing homes?

4. Assisted Living Facility (ALF) is an independent living center licensed or regulated by the Department of Health and Senior Services. There are 2 ALF levels:

- **Assisted Living Facility I (ALF I)** residents must be able to exit the building during an emergency in 5 minutes or less with minimal help (Called ‘Pathway to Safety’)
- **Assisted Living Facility II (ALF II)** has the option of caring for someone who is unable to exit the building during an emergency in 5 minutes or less with minimal help (‘Pathway to Safety’). Yet, residents must still have an Individual Evacuation Plan (IEP), which usually raises the monthly cost for the resident. Residents in an ALF II may have greater options to age in place, which is the ability to live in the facility independently and comfortably, no matter their age, income, or ability level, until they need more care or until their death.

Residents in ALFs will usually live in an apartment where they get:

- One or more meals per day
- Light housekeeping
- Laundry services

ALFs do not offer medical care, but some may:

- Offer personal aide services to help with daily tasks such as cooking and cleaning for an extra fee depending on the type of service
- Allow families to hire a home health agency to provide personal aide services

ALFs tend to offer limited financial aid options, such as offering a sliding-scale rate. Medicaid may pay for some personal aide services, but that’s it—it does not cover the monthly rate. Some ALFs allow a “cash grant” through a Medicaid program called Supplemental Nursing Care, but this option is very limited and doesn’t pay for personal aide services. To learn more about Supplemental Nursing Care, see the Qualifying for Medicaid section of this chapter.

Chapter 8: Nursing homes

State requirements for long-term care facilities in Missouri

| State requirements | SNF | ICF | RCF I | RCF II | ALF I | ALF II |
|---|-----|-----|-------|--------|-------|--------------|
| Residents must have a pathway to safety | | | * | * | * | Case by case |
| Residents must be able to do daily living activities on their own, such as bathing and going to the bath-room | | | * | | | |
| Personal aid services | * | * | | * | * | * |
| Access to registered dietitians and special diet needs | * | * | | * | * | * |
| Medicines given by staff | * | * | * | * | * | * |
| 24-hour protective oversight | * | * | * | * | * | * |
| Licensed nursing home administrator oversight | * | * | | * | * | * |
| Licensed physician supervision | * | * | | * | * | * |
| Licensed practical nurse (LPN) supervision | | * | | | | |
| RN supervision | * | | | | | |
| Incontinent care (incontinence pads, bladder training, special diets, etc.) | * | * | | | | |
| Custodial care | * | * | | | | |
| Social model of care (model of care focused on individual emotions, behaviors, and circumstances) | * | * | | | * | * |
| Accepts Medicare | * | | | | | |
| Accepts Medicaid | * | * | | | | |

Chapter 8: Nursing homes

How can I choose the right nursing home?

Assess the resident's needs

Choosing a nursing home for yourself or a loved one can be a hard and frustrating task. To make things a bit easier, consider these questions about the resident's needs:

- Is this a long-term or short-term stay?
- Can the facility meet special needs? For example, some residents may need a type of therapy such as physical therapy or speech therapy.
- Are there other residents who share the same needs the resident can relate to?
- Is the facility easy for family members and friends to visit?
- Is the facility clean
- Does the facility match the personality of the resident?

Note: Not every nursing home is right for every person. The resident's needs and their family's expectations should help decide which nursing home you choose. For example, if the resident has wandered away from home, the facility would need to offer protective oversight, which not all facilities can provide.

Search for a facility

- **Licensure:** Is the nursing home licensed? Is the license in good standing with the State of Missouri? Can I see the most recent inspection report and make sure that anything that was cited has been corrected?
- **Nursing service:** Does the level of nursing services match the resident's needs?
- **Doctors:** Will the resident's doctor provide care at the nursing home? If they can't, you may need to find a ride to and from the doctor's office.

Each facility has a few doctors they collaborate with. Residents can choose to use their own private doctor or one of the facility doctors.

Each facility has a medical director. The medical director is the doctor who oversees all resident care and makes sure the other doctors are giving proper care.

Chapter 8: Nursing homes

Search for a facility

- **Finances:** The facility should be able to give you a list of all charges, including items not paid for by Medicare or Medicaid. If the resident is eligible for Medicare or Medicaid, the facility should be able to give information on both programs and help the resident access coverage if needed.
- **Food services:** Visit the facility during mealtimes to see if the food looks appetizing. Are residents enjoying their food and eating together?

Ask for a copy of the meal schedule. Are there other food options, such as a la carte or a buffet?



The dietary manager should work with each resident on their own unique menu, including foods they prefer. Can the facility meet any special dietary needs of the resident?

- **Therapy:** If the resident is going to need physical therapy, occupational therapy, or speech therapy, check out the therapy department. When are therapists available and what special equipment do they have to meet the resident's needs? Is there an active restorative therapy program that will continue after the resident is discharged from the actual therapy program? (Restorative therapy involves help walking, repositioning, standing up, sitting down, and transferring from one place to the next once a resident is done with skilled physical therapy. Physical therapy is done by licensed physical therapists, while restorative therapy is done by nurses.)
- **Medicine:** Most nursing homes have a contract with a pharmacy for medicines. Residents can choose to use the facility pharmacy or another pharmacy. If the resident chooses another pharmacy, it must meet the guidelines of the nursing home for packaging and delivery. The facility must also create a plan for supplying emergency medicine when required.

Chapter 8: Nursing homes

Search for a facility

- **Activities:** Talk with the activity director and other residents about the facility's activity program. Activities keep the residents alert and engaged, so facilities should offer a wide range of activities for all residents regardless of physical and mental abilities. Ask to see a calendar of future activities if you don't see one posted when touring the facility. If there is an activity calendar posted, is it at eye level for residents in wheelchairs? Make sure that each resident's interests and preferences are considered, including access to phones, newspapers, magazines, and others—not just BINGO.
- **Safety:** Ask to see the latest state inspection report on any safety issues. As you walk through the facility, check for basic safety measures, such as:
 - » Secure handrails on the walls
 - » Wet floor signs
 - » Evacuation plans are posted
- **Cleanliness:** Does the facility have a housekeeping department that keeps the resident areas neat and clean, including bedrooms and bathrooms?
- **Policies:** Talk to the admissions coordinator or social worker about any policies that could affect the resident's stay, including level of care and financial issues. For example, what is the restraint policy and what is the *bed-hold* policy?
 - * A *bed-hold* policy is how much a facility charges to hold or reserve a resident's bed while they are absent. For example, they can charge a resident when they go to the hospital or when they go on vacation. Typically, the cost of the bed-hold is the daily room rate Medicaid is allowed to return. Families can choose whether they want to pay for a bed-hold or not. If they don't pay for bed-hold, the Medicaid resident is allowed to return to the first available bed.
- **Access to administration:** Are residents and family members able to speak with the nursing home staff, including the administrator, social workers, bookkeeper, director of nursing and other department heads? What are their hours and availability in off-hours?

Chapter 8: Nursing homes

Search for a facility

- **Care plan:** A care plan is formed in a meeting when different staff map out a plan to meet the resident's needs. Ask about care plans and when the resident's care plan meeting will take place. This plan should be discussed with the resident and family (with the resident's permission) so everyone understands the goals and what to expect. The first care plan meeting happens 21 days after the resident moves into the facility (staff has 21 days to do the first assessment). Then, every 3 months or whenever there is a major change in a resident's condition, staff will schedule a new care plan meeting.
- **Comfort and care:** Nursing homes are supposed to provide a homelike environment. It might help to talk with other residents. And as you tour the facility, think about:
 - » Does it have a respectful, caring environment?
 - » Do staff show a friendly attitude to residents and visitors? Do they smile and speak to the residents when they walk by? Do they make the residents feel good about themselves? Do they find ways for the residents to meet their highest possible goals?
 - » Do residents look happy, clean, and neat?
 - » How do residents react to the staff and others?
 - » Are the residents' rooms personalized and homey, or do they feel bare or empty?



Chapter 8: Nursing homes

How can I find possible nursing homes?

You can find lists of nursing homes through these resources:

- The Department of Health and Senior Services
P.O. Box 570
Jefferson City, MO 65102
573-526-8524 www.health.mo.gov/seniors/nursinghomes
- Missouri Family Support Division (your local office)
- Area Agency on Aging (your local office)
- Ombudsman Program (your local office)
- Hospital, if the resident is currently in one
- Resident's doctor
- Disease-related organizations, such as:
 - » Alzheimer's Association (alz.org)
 - » American Cancer Society (cancer.org)
 - » American Parkinson Disease Association (apdaparkinson.org)

To see the latest facility inspection reports, visit: www.health.mo.gov/safety/showmelongtermcare To see Medicare ratings based on certain criteria, visit: <https://www.medicare.gov/care-compare/?providerType=NursingHome&redirect=true> (These ratings may help compare facilities, but aren't definitive rankings of the quality of care in each facility.)

Chapter 8: Nursing homes

Resident rights

While a resident is living in a nursing home, the resident is entitled to:

- A dignified existence (help that is respectful and sensitive to a person's culture and beliefs) AND
- Voice their grievances without fear of retaliation, and exercise their rights without fear of:
 - » Interference (wrongful conduct that prevents or disturbs someone in their usual activities)
 - » Coercion (the use of bribes, threats of force, or intimidation to gain cooperation or compliance) OR
 - » Reprisal (an act of retaliation or revenge)

Resident rights

Federal and state laws guarantee that, as a nursing home resident, you have the right to:

- Be free from:
 - a. Physical, verbal, mental, or sexual abuse, or mistreatment or neglect of any type
 - b. Any chemical or physical restraints without a doctor's order that shows the restraint is treating a medical symptom and is only approved for a specific time period
 - Participate in your care, including:
 - a. Choosing a doctor, being informed of your care and treatment and any changes in your health or treatments, attending your care plan meeting, and refusing treatment
 - b. Making choices about your life that are important to you, such as what clothes you wear or when you bathe
 - Receive services based on your individual needs and preferences, and receive notice before a room change
 - Manage your own finances, including giving the facility written permission to hold any money for you, spending your money as you choose, and receiving a quarterly financial report upon request
 - Be fully informed of:
 - a. Your rights during your stay and any rules that are set by the facility
 - b. The facility's bed-hold policy in writing when you are hospitalized and return to the first available bed if you choose not to pay for bed-hold
 - Review all of your medical records upon request
 - Have access to the latest facility inspections without asking for them
 - Privacy for all treatments, phone calls, visits, mail, resident meetings, and all your records
 - Receive or refuse visits from friends or family 24 hours a day
 - Remain in the facility (To learn more, see section: How long can residents stay in a nursing home?)
- These rights are guaranteed under both state and federal laws.

Chapter 8: Nursing homes

What can I do if I feel my rights have been violated?

Each facility should:

- Have a written process in place to handle resident complaints that considers residents' physical, medical, and emotional condition
- Tell residents which designated staff member to speak to if they have a complaint, such as a social worker

If you feel that your rights have been violated:

- First, try to talk to the designated staff member or person in charge about the issue. Start with the charge nurse or supervisor of the department you are having an issue with. If it's a nursing issue, don't speak to the certified nursing assistant (CNA). They don't have the power to make changes. Speak with the charge nurse or director of nursing—they can make changes to resolve the issue.
- If you cannot speak with the person in charge, you can submit a complaint in writing. The facility has 3 days to respond to you to confirm they got your complaint and are looking into the issue.
- If you are not satisfied with the response, you can contact your local Missouri Long-Term Care Ombudsman Program, a statewide network that helps ensure that resident rights are preserved and respected. You can call them at 800-309-3282, or send an email to LTCOmbudsman@health.mo.gov. Ombudsman programs are usually found in conjunction with the local Area Agency on Aging. An ombudsman is a federally mandated advocate for residents who can help mediate between the resident and the facility. This is often the best solution because ombudsmen are mediators trained in state and federal laws that govern long-term care facilities. There is no cost to have an ombudsman help resolve a situation. · If the complaint is about abuse or neglect, contact the Department of Health and Senior Services (DHSS) right away at: 1-800-392-0210. The resident's health and safety could be at risk. A DHSS inspector can take action to protect the resident immediately.
- The DHSS will also investigate any complaints, even if they're not about the welfare of the resident, but those complaints may not be investigated right away.

Chapter 8: Nursing homes

How long can residents stay in a nursing home?

It is the resident's right to stay in the nursing home for as long as they choose.

Discharge

A facility may only discharge a resident if:

- The transfer or discharge is necessary for the resident's wellbeing and the resident's needs cannot be met in the facility. However, there needs to be a difference between the current facility and the new one that makes it a more appropriate placement.
- The resident's health has improved to the point they no longer need the facility's services
- The resident fails to pay – but the facility must give reasonable notice in this case
- The facility closes (gets shut down or goes out of business)
- There is a need for an emergency discharge, such as when:
 - » The resident is endangering the health or safety of themselves or others in the facility
 - » When a resident's health has improved to allow a more

immediate transfer or discharge

- » A resident's urgent medical needs require more immediate transfer
- » A resident has not resided in the facility for 30 days. This typically happens when a facility doesn't do a good first intake assessment of the resident and is unable to meet their needs. When this happens, the 30-day discharge notice is no longer needed.

Note: If the facility transfers the resident based on an emergency discharge (when the health or safety of the resident and other residents in the facility is endangered), the facility must:

- Immediately notify the resident about its intent not to take the resident back along with the reason AND
- Give the resident the right to appeal.

When a facility discharges a resident, they must give written notice of their intent to discharge at least 30 days

before the intended discharge date to:

- The resident
- Any legally authorized representative
- At least one family member

The written notice must include:

- The reason for the discharge
- The effective date of discharge
- The resident's right to appeal the discharge
- The address for requesting an appeal hearing
- The location to which the resident will be discharged
- Contact information for the regional long-term care ombudsman program
- Contact information for the Missouri Protection and Advocacy Agency for residents with developmental disabilities or mental illness
- A statement that the resident has the right to stay in the facility while the appeal is pending

Chapter 8: Nursing homes

Appealing a discharge

To appeal a discharge, call the Administrative Hearings Unit, Division of Legal Services in Jefferson City at: 573-751-0335.

Hearings are usually held by phone:

- A resident may represent themselves or have a friend, family member, or legal counsel represent them
- A lawyer will represent the facility – it is the responsibility of the facility to show that the resident cannot stay in the facility

After the appeal process, the resident and facility will get the results of the hearing in writing:

- If the resident wins the appeal, the resident has the right to stay or return to the facility
- If the resident loses the appeal, the resident needs to find another facility within 10 days, and the current facility must help them relocate. No resident can be transferred until a safe and appropriate place is found for them.

Note: The only purpose of a hearing is to determine if a facility has a legal reason to discharge a resident. The hearing is not meant to voice other issues with a facility.

How can I pay for nursing home care?

There are a few different ways to pay for nursing home care. However, not every nursing home accepts every type of payment. You must make sure the nursing home meets the resident's medical and financial needs.

Medicare

To qualify for SNF coverage, Medicare patients must meet the 3-day rule before SNF admission. The 3-day rule requires that a patient have a medically necessary 3-day (back-to-back) inpatient hospital stay.

If the 3-day rule is met, a resident may be eligible for Medicare coverage for up to 100 days:

- The first 20 days are fully covered under Medicare and all services are paid for
- The 21st day and after, there is a 20% (20 of 100) co-insurance payment needed per day. Medicare will still cover 80% (80 of 100) of the cost. A resident can pay privately or through a Medigap plan (Medicare supplement insurance) if they have traditional Medicare. However, Medicare Advantage Plans don't offer Medigap plans, but most include an out-of-pocket cap.

Chapter 8: Nursing homes

How can I pay for nursing home care?

Medicare continued

The amount of Medicare coverage depends on what services the resident requires and continues to require. Medicare:

- Only pays for residents in a Medicare bed
- Only pays for residents who need a high level of care, such as tube feeding, ventilators, IVs, or therapy (such as speech or physical therapy)
- Does not cover custodial care, and there is no guaranteed coverage time
- Reviews a resident's progress weekly and determines if Medicare will continue to pay

When a resident will be taken off Medicare:

- The facility must give appropriate notice
- The resident can appeal being taken off Medicare
- The facility must provide the resident with information on the appeal process



Medicare Advantage or Medicare Complete Plans

These are private insurance contracts that replace traditional Medicare. All these plans:

- Have some coverage for SNFs – choices may be more limited under this type of insurance than traditional Medicare
- Require the same 3-day hospital admission (some Medicare Advantage Plans waive the 3-day hospital rule)
- Differ in the copay amounts required for each stay (be sure to check your plan if you have this type of coverage)

Chapter 8: Nursing homes

Medicaid (MO HealthNet)

MO HealthNet pays for the care of nursing home residents when they cannot pay themselves (Missouri Family Support Division (FSD) runs this program). Not every nursing home accepts Medicaid as a form of payment (called Medicaid-certified). If you plan to use Medicaid, make sure the facility is Medicaid-certified.

Medicaid payment for nursing homes

The Medicaid program in Missouri is called MO HealthNet, which covers all nursing home resident needs, such as room and board and medical expenses. The facility must give residents a list of any services or items not covered by Medicaid.

The resident must pay for their surplus (extra) amount, which FSD determines by:

- Adding up the resident's total monthly income
- Subtracting any of the resident's health insurance premiums (costs)
- Subtracting a personal needs allowance (PNA), which is the monthly sum of money Medicaid residents may keep from their personal income. Currently, the PNA is \$50 a month. (The PNA amount is set yearly by state regulators.)

The remainder is the resident's surplus amount.

If you don't pay the surplus to the facility, you could get a discharge letter for non-payment. And if someone else is keeping your surplus that is owed to the facility, and doesn't pay it, that person can be charged with the crime of financial exploitation (the improper use of an adult's funds, property, or resources by another individual).

Often, the facility becomes the representative payee of the Social Security check and gives the resident their personal needs allowance. A representative payee manages benefit payments for people who cannot manage their own. Social Security will notify the resident if the facility applies to be the representative payee.

Chapter 8: Nursing homes

Qualifying for Medicaid

To qualify for Medicaid payments, you must:

- Be a US citizen or “qualified alien,” AND
- Be a Missouri resident, AND
- Be age 65 or older, blind or permanently and totally disabled, AND
- Meet the financial eligibility requirements (for more information on the financial eligibility requirements, see the Medicaid (MO Health Net) section of this handbook
- Meet the 21-point medical criteria, which is based on 9 areas of care, such as mobility, behavior, medicines, and diet (The resident gets points according to how much care they need in each of these areas. If the total number is 21 or above, they meet the medical criteria for Medicaid.)

Residents who qualify for Medicaid are entitled to equal treatment just as if they were a private-pay resident: The facility must give appropriate notice

- Facilities cannot require a resident to “private-pay” for a certain number of months before applying for Medicaid
- Transfer or discharge cannot be based on Medicaid eligibility unless the facility does not accept Medicaid or there are no Medicaid beds available
- If a resident feels that they are being discriminated against because of Medicaid eligibility, they should contact the local Legal Services office and the long-term care ombudsman office for help.
-

To learn more, please see the Medicaid (MO Health Net) section of this handbook

Medicaid and married couples

There are special rules for married couples when one must enter a long-term care facility (under the Medicare Catastrophic Coverage Act of 1988). When you or your spouse enters a Medicaid-certified bed:

1. You or your spouse can request a “division of assets” assessment for the local Division of Family Services office
2. A caseworker will divide your assets – this helps prevent leaving the spouse at home with little or no income or resources. The amount the spouse at home is allowed to keep depends on the total amount of assets.
3. Once the spouse in the facility’s share is spent down to under \$5,726, they would then be eligible for Medicaid, and the spouse at home has their share for their needs, plus a monthly allotment if eligible

To learn more about the special rules for married Medicaid applicants, see the Medicaid (MO Health Net) chapter of this handbook.

Supplemental Nursing Care (cash grant)

This Medicaid program pays a portion of a resident’s care in a licensed residential care facility and some ALFs. You must meet the guidelines (above) for Medicaid eligibility. The portion paid depends on the level of care of the facility.

Chapter 8: Nursing homes

Other ways to pay for nursing home care

Private pay

If a resident is going to pay privately (out-of-pocket) for long-term care, it is important to read the nursing home contract, which should give you a list of all items and their costs, including:

- Daily rates
- Any increases for levels of care
- Specific costs for special services or medical items

Private pay residents need to consider any extra costs, including:

- Pharmacy
- Doctors and other providers
- Labs
- X-rays
- Medical supplies

Long-term care insurance

Many insurance companies offer long-term care insurance policies. If a resident wants to use this option, make sure to tell the facility, and check that they accept this payment.

Here are some things to keep in mind if you're using long-term care insurance:

- Most long-term plans ask the facility to give monthly statements listing your level of care, diagnosis, and special needs
- The plan may not pay the full daily rate, so you'll want to figure out what out-of-pocket costs may be
- Most plans do not pay for the initial period, which would be stated in the policy - for example, the first 90 to 100 days

Life care contracts

A life care contract is a binding agreement (legally enforceable) between the facility and a potential resident that usually calls for the facility to provide room, board, and other things such as medicine to the resident as needed. In exchange, the resident gives their property and money to the facility.

These contracts aren't as common anymore, but some facilities still offer them.

If someone is thinking about a life care contract, carefully consider it. Talk with a lawyer about what to write in the contract, such as:

- How to clearly define the type of care and services the facility will provide
- A way to cancel the contract if their health improves to a point that care is no longer needed at the facility (in the case of an illness that will require care until death, or a terminal illness)
- The facility's responsibility if the resident requires a higher level of care than it can provide
- The facility's responsibility to the resident if the facility closes

Any of these issues could become a problem if there is no guarantee from the facility in writing. Always have a lawyer review any contracts before signing them.

Chapter 8: Nursing homes



How are nursing homes regulated?

The Department of Health and Senior Services (DHSS) provides licensure and inspections to all long-term care facilities in Missouri. When inspecting a nursing home, DHSS looks at:

- Nursing care and procedures
- Housekeeping
- Dietary needs
- Safety standards
- Resident funds
- Activities
- Social services
- Resident rights

DHSS inspects nursing homes based on both state and federal requirements – federal regulations, set by the Centers for Medicare and Medicaid, also cover facilities that are in the Medicare and Medicaid programs.

Inspections

DHSS does 1 unannounced (surprise) inspection every 12 to 15 months and may do other inspections based on complaints through the Elder Abuse Hotline (800-392-0210).

If a resident or family files a complaint, they may get a notice about when the inspection is happening for their complaint. They are encouraged to participate in the inspections and give feedback to the inspector. And a copy of the recent inspection's survey report must be posted publicly in the facility.

Chapter 9:

Housing: Landlord and tenant relationships

In this chapter you'll learn about the rights and responsibilities of tenants and landlords.

Chapter topics:

- What are the responsibilities of tenants and landlords?
- What happens if I don't pay rent?
- What happens to my security deposit after I move out?
- Who pays for repairs?
- What are rental assistance programs?
- What is abandonment?
- What is foreclosure?

This year's housing section was edited by Susan M. Alverson, the managing attorney of the LSEM Housing Program in the St. Louis office.

Chapter 9: Landlord and tenant relationships

What are the responsibilities of tenants and landlords?

You may want to learn about landlord and tenant relationships if you are renting a property (you are a tenant).

What is a tenant?

A tenant is someone renting a property from someone else.

Basic tenant responsibilities

1. Must pay rent on time
2. Must keep an apartment clean and get rid of garbage, rubbish, etc.
3. Must not purposely destroy or damage the property
4. May not take on more occupants without permission of the landlord
5. May not sublease without getting permission from the landlord
6. Must use plumbing and electrical fixtures (bathtubs, showers, lights, light switches, etc.) in a reasonable way
7. Must give written notice 30 days before the next rent is due when leaving a month-to-month lease
8. Must not use or allow the illegal possession, sale or distribution of controlled substances (drugs) at the rented property

If you are a tenant, get to know your rights. Some tenants may end up:

- Paying illegally hiked rents
- Unknowingly agreeing to end a lease early

This may hurt elderly tenants who are on a fixed income.

What is a landlord?

A landlord is someone renting their property to someone else.

Basic landlord responsibilities

1. Must not turn off water, electricity or gas
 2. Must provide enough heat in winter
 3. Must not lock out a tenant or prevent them from entering or leaving the property (a landlord needs a court order to legally evict a tenant)
 4. Must not raise rent during the term of a formal lease
 5. Must not raise rent without giving 30-day written notice before the next rent is due in a month-to-month lease
 6. Must keep property and public areas safe, secure, sanitary, and in compliance with the local housing code
 7. If a tenant damages the property, the landlord may have to repair the damage and charge the cost to the tenant
- This may hurt elderly tenants who are on a fixed income.

Chapter 9: Landlord and tenant relationships

What are different kinds of leases?

A lease is a legal contract between a landlord and a tenant. A lease allows the tenant to use a property owned by the landlord for a certain period of time in exchange for monthly rent payments.

- A month-to-month lease operates on a month-to-month basis instead of a longer term like a year. A month-to-month lease allows more flexibility for tenants, as the tenant can end the lease with 30-days notice to the landlord. But, the landlord can raise the rent or end the lease with 30-days written notice to the tenant.
- Subleasing, or subletting, means a tenant is renting out some or all of the property they have rented. The tenant must get written approval from the landlord to sublease the property.
- Most common leases are written and are for a period of one year.

Chapter 9: Landlord and tenant relationships

Rent and eviction lawsuits

What happens if I don't pay

If you are a tenant and are going to be late paying rent or will not be able to pay rent, tell your landlord and work together on a payment plan. While the landlord does not have to accept payments plans of less than what was originally agreed, telling the landlord in advance may help avoid problems.

If you don't pay rent for any month, the landlord can sue you in a rent and possession eviction lawsuit. You will get a summons from the court that will:

- Notify you that a lawsuit has been filed by your landlord
- Say when and where you must appear in court to respond to the lawsuit

What if I get a court summons?

- Do not ignore the summons
- Contact a lawyer right away, and go to court even if you do not have a lawyer

If you get a summons and you don't appear in court when the case is scheduled, the landlord may win the judgment for rent and possession by default.

If you pay the rent due and court costs on or before the day of trial, the landlord cannot get a judgment for eviction. This is your right to "Pay and Stay".

If the court decides in favor of your landlord, the court may issue a judgement for rent plus costs and to issue an eviction order.

The landlord will ask the sheriff to schedule the eviction. The sheriff eviction could occur as soon as 10 days after the eviction court order.

Remember: The landlord cannot legally evict or lock out a tenant without a court order.

How can I avoid being evicted?

On or before the day of trial:

- Pay all rent that your landlord claims is due.
- Pay the court costs and filing fees.

Chapter 9: Landlord and tenant relationships

What is an unlawful detainer lawsuit?

If a landlord wants you to move out for some reason other than non-payment of rent, the landlord may be able to force you to move from the property.

- If you have a month-to-month lease, your landlord does not need to provide a reason to end the lease. Your landlord must give you written 30 days' notice from the next due date.
- If you DO have a long-term lease, it will state how much notice must be given, but by law it can't be less than 10 days' notice. A long-term lease will include reasons that your landlord could end your lease, such as
 - » Tenant-caused damage to property
 - » Pets in property when pets are not allowed
 - » Too many people living in the unit
 - » Nonpayment of rent

If you do not move out when the lease is ended, your landlord can file an unlawful detainer lawsuit to have you evicted. If this happens, you will get a summons to court for a court hearing. The case will be set for trial. Remember:

- Do not ignore the summons
- Contact a lawyer right away or go to court if you don't have a lawyer

After a trial, the judge decides whether your landlord properly ended the lease.

If the judge decides in favor of you, you can stay in the property.

If the judge decides in favor of your landlord:

- The court will order you to move
- The court may also force you to pay any outstanding rent, at the rate of double the rent for every month you stayed after the lease ended
- If you do not move out within 10 days (or whatever the court-ordered number of days is), you may be forcibly removed by the sheriff

Chapter 9: Landlord and tenant relationships

What happens to my security deposit after I move out?

Note: Your landlord can charge you no more than 2 months' rent as a security deposit.

What costs can my landlord take from my security deposit?

After you move out, the landlord can keep and apply the deposit to:

- Unpaid rent
- Any other unpaid fees or amounts due
- Repairs and cleaning cost

Can my landlord charge me for ordinary wear and tear?

No. Be sure to take photos of the property both before you move in and right after you move out to show that you didn't damage the property.

What's a move out inspection?

Your landlord must allow you to attend a move-out inspection where they will either:

- Return the full security deposit OR
- Provide a written list of the reasons that all or part of the security deposit is being withheld

The inspection must happen within 30 days of the end of the lease.

If your landlord doesn't offer the move out inspection, or they wrongfully withhold any part of the security deposit, you can sue and recover up to 2 times the amount that your landlord wrongfully withheld.

Chapter 9: Landlord and tenant relationships

Who pays for repairs?

Your landlord does not always have to pay for repairs, especially any damage caused by you or others while the property was leased to you.

If there are repairs you think your landlord should pay for:

- Speak to your landlord before completing or paying for any repairs
AND

- Get your landlord to agree in writing to pay for the repairs

If you suspect conditions in your apartment are in violation of housing codes:

- Call your landlord and ask for repairs
- Document the bad conditions with photos, videos, etc.
- Write your landlord requesting the

repairs

- Call the health department or building inspector if the landlord does nothing
- Contact a lawyer
- In some situations, you can withhold rent, **but only do this if you put the money aside and don't spend it**

When can I do repairs myself and deduct the costs from my rent?

Sometimes you can do a repair yourself and deduct the costs from your rent, but before you take this step, you must:

- Have lived in your unit for at least 6 months, AND
- Be current on rent and other charges, AND
- Not have any outstanding lease violations you've gotten written notice about

In addition, the condition you're repairing must:

- Be a violation of a local municipal housing or building code, AND
- Cost either less than \$300 or less than one-half the monthly rent to fix (whichever is more)
- The cost cannot be more than 1 month's rent

If all the criteria have been met, next you must:

- Give your landlord notice of your intentions to do the repair
- Your landlord must fail to respond to your notice within 14 days of being notified. If the repair is an emergency (like a plumbing issue) you just need to give reasonable notice.

Once you make the repair, if the landlord disputes paying for it, you must:

- Get a written certification from the local building or health department saying the condition violated a local or municipal housing or building code

Chapter 9: Landlord and tenant relationships

What are rental assistance programs?

What is public housing?

Public housing is rental housing that is owned and operated by local public housing authorities and subsidized by the U.S. Department of Housing and Urban Development (HUD).

Usually, tenants pay about 30% of their income for rent.

Who is eligible?

- Low-income families
- Older adults
- People with disabilities

What are the benefits of public housing for older adults?

Most housing authorities operate public housing for older adults, and some give waiting list preferences to older adults.

Some senior citizen public housing developments provide:

- Meals
- Transportation
- Social events

In many parts of Missouri, there is public housing for older adults.

How do I apply for public housing?

You can apply for public housing with your county housing authority. They operate public housing in areas where you are willing to live. Your city may also have its own housing authority where you can apply. In rural areas, apply at the local Community Action Corporation.

Once you apply, the housing authority will let you know if you qualify.

If you do not qualify for public housing, the housing authority must:

- Notify you in writing
- Tell you why you were denied
- Give you the chance to meet to talk about the denial

Chapter 9: Landlord and tenant relationships

What is Section 8 housing?

HUD funds a rental subsidy program known as the Section 8 voucher program. Section 8 vouchers help low-income families, older adults, and people with disabilities pay their rent.

The program is run by local housing authorities or community action corporations.

You can apply for a Section 8 voucher at your local housing authority.

If the housing authority decides you're eligible, they'll either give you a Section 8 voucher or put your name on a waiting list if none are available. The housing authority can open or close its waiting lists as needed for applicants for a Section 8 voucher.



What happens if I'm eligible?

Once you get a Section 8 voucher:

1. Ask your local housing authority, which gave you the voucher, for a list of landlords that accept vouchers or other resources to help your search.
2. Take your voucher to any landlord willing to participate in the program.
3. If the landlord agrees to participate in the program, they will sign a contract with the housing authority. You will sign a lease with the landlord.

4. The housing authority pays the landlord the difference between the rent you'll pay (about 30% of your adjusted gross income) and the market rate of the unit.

What happens if I'm not eligible?

If you do not qualify for a voucher, the housing authority must:

- Notify you in writing
- Tell you its reason for denial
- Give you an opportunity for an informal hearing

Chapter 9: Landlord and tenant relationships

What is project-based Section 8 housing?

Through this program, HUD provides money to privately-owned apartment owners who lower the rent for low-income families, older adults, and people with disabilities.

The HUD rent subsidy is tied to the property or unit. Some units have low fixed rental amounts. For other units, the rent may change when your income changes. Your rent will be about 30% of your monthly adjusted gross income.

The apartment owner has a contract with HUD. HUD pays the owner the difference between the contract rent and the rent you pay. If you move, you cannot apply the rent subsidy to a new unit.

To find project-based housing in your area, you can search by zip code at www.hud.gov/apps/section8

Who is eligible?

To apply, visit the management office for the apartment complex you want to live in. The owner will determine if you are eligible. If you do not qualify for project-based housing, the owner must:

- Notify you in writing
- Tell you their reason for the denial
- Give you a chance to meet to talk about the denial

Some property owners get federal tax credits for saving and renting a percentage of their apartments to low-income tenants. The rent amount is lower than market rate rents.

The amount of rent you pay is fixed and does not change if your income changes. Rent increases must be approved by the Missouri Housing Development Commission (MHDC).

Who is eligible?

To apply, visit the management office for the apartment complex you want to live in. The owner will determine if you are eligible.

Chapter 9: Landlord and tenant relationships

What is abandonment?

Abandonment is when a tenant:

- Is 30 days or more past due on rent
- Has not responded to written notices from the landlord who believes the property is abandoned

If a landlord believes that a tenant may have abandoned a property, they must:

- Send the tenant a notice in writing that they believe the tenant has abandoned the property, AND
- The notice must be posted on the property AND mailed by both first-class mail and certified mail

A property cannot be considered abandoned if:

- The tenant pays all rent due OR
- The tenant responds in writing within 10 days of the landlord's notice saying that they are not abandoning the property (the tenant should keep a copy of their response)

A landlord may have the right to enter and remove a tenant's belongings ONLY if the tenant:

- Does not pay all rent due, OR
- Does not respond in writing within 10 days of the landlord's notice

As a tenant, the best way to avoid a landlord claiming abandonment is to stay up-to-date on your rent payments. If you will not be using the property because of travel, a hospital stay, or any other reason and you are behind on rent, tell your landlord in writing that you are still occupying the unit.

Chapter 9: Landlord and tenant relationships

What is foreclosure?

Foreclosure is the action of taking possession of a mortgaged property when the property owner fails to keep up their mortgage payments. If you stop making payments on your mortgage, the property may go into foreclosure, which is when the lender takes legal ownership of the property.

Foreclosure if you're renting property

If you're renting property, and it goes into foreclosure, it may be sold at a foreclosure sale:

- You do NOT need to leave the property if this happens
- Your original lease ends with the foreclosure sale

The old owner:

- Has no legal rights regarding the property
- Has no legal right to evict you
- Has no right to enter the property after the foreclosure sale

You have the right to ask for a new lease with the new owner.

The new owner:

- Does not have to lease to you
- Has the right to ask you to move
- Can only lawfully evict you by going through the court process and getting an eviction court order against you
- Cannot use illegal eviction actions against you, such as locking you out

If the new owner does not want to lease to you, they must:

- Put their demand that you move in writing at least ten calendar days in advance
- File an eviction lawsuit against you with the court after the vacate date
- Get a court order

Chapter 9: Landlord and tenant relationships

Protecting Tenants at Foreclosure Act (PTFA)

The federal protection PTFA law allows a tenant in foreclosed property to remain in the property until the end of the lease contract with the old owner or for 90 days after the date of the foreclosure.

You will know if the new owner files an eviction lawsuit because you will receive a summons to court. You could get the summons in one (or more) of 3 ways:

- Through the mail
- Posted on your front door
- Hand-delivered to you by a special process server or sheriff
-

What happens to my original security deposit?

- Your original landlord must return your security deposit
- The deposit will not be transferred to the new owner
- If the original landlord fails to return your security deposit, you have the right to file a lawsuit against them – you may bring this claim in the small claims court of the county where the property is located

Chapter 10:

Tips for being an informed consumer and avoiding predatory lending

Chapter topics:

- How can I be an informed buyer?
- What do I need to know about contracts?
- What do I need to know about buying on credit?
- How do I work with contractors for home repairs?
- How do I buy a used car?
- What are predatory loans?
- How can I avoid time share scams?
- How do I avoid door-to-door sales scams?
- What are Collection Activities and Garnishment?
- What can I do if I have a consumer complaint?
- What's the Missouri "No call" law to stop telemarketers?

This section was updated by attorney Robert Swearingen (LSEM) and Latasha Barnes (formerly an LSEM attorney).

This section was first written by Michael Ferry, the former executive director of Gateway Legal Services, Inc. who was previously an attorney with LSEM. This chapter will:

- *Help you be a more alert and informed consumer*
- *Help you make better consumer purchases*
- *Tell you what to do if you are unhappy with a purchase*

Chapter 10: Tips for being an informed consumer and avoiding predatory lending

How can I be an informed buyer?

Professional salespeople are trained to use many aggressive tactics to get consumers to buy their products. It's important to remember the saying: "If it's too good to be true, it probably is."

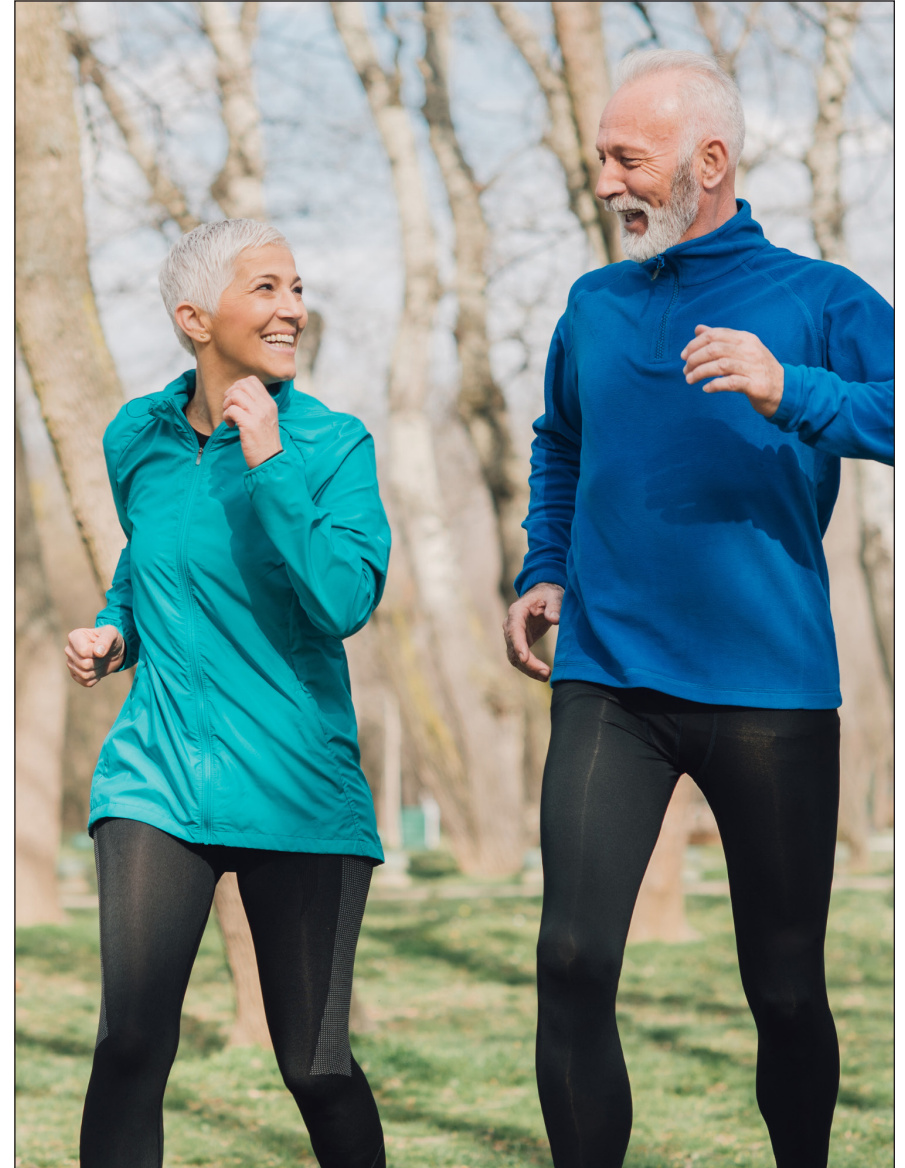
Consumer protection laws are in place to help you, the consumer. But your best protection is to be a well-informed, careful buyer.

Before you buy a product (whether a TV, supplements, or a new car):

- Compare prices from different sellers
- Look up reviews about the product or service
- Look for the evidence behind product claims

When you are thinking about buying something, remember:

- Don't buy things in a rush or if you are under stress
- Be skeptical of the salesperson. They may be nice, but they are not your trusted friend.
- Don't buy something if a seller tells you the price is good for "today only." This is just a sales tactic to pressure you into buying it.
- Buying something "as is" means no warranties
- Make sure you read and understand the return policy before buying
- You have legal rights and protections as a consumer



Chapter 10: Tips for being an informed consumer and avoiding predatory lending

What do I need to know about contracts?

Almost all things you buy involve a contract between you (the buyer) and a merchant (the seller). Have you bought a car or house, paid someone to do repair work, or bought a pair of shoes at a store? All these are examples of you making a contract with a seller.

Basic contract Do's and Don'ts of buying

Do:

- Take home a copy of the contract before signing so you can read it and think it over with family and friends
- Make sure the company or salesperson provides all promises, guarantees, and warranties in writing
 - » **Promises:** Statements made by the company or salesperson about what they will do or provide, like a promise to deliver by a certain date
 - » **Guarantees:** Assurance that a product or service will meet certain standards or work as described
 - » **Warranties:** Formal agreements where the company agrees to fix or replace the product if needed within a certain time period
- Show the contract to a friend or a lawyer if you have any questions
- Keep copies of all your contracts, payment records, and complaint letters in a safe place

Don't:

- Don't deal with a salesperson who won't let you take home the complete, unsigned contract
- Don't sign a contract you have not read (or had read to you)
- Don't sign a contract you do not fully understand
- Don't sign a contract with blank spaces that a salesperson will fill in later
- Don't sign a contract with an arbitration clause because you will lose your right to go to court
- Don't pay in full for items you have not gotten, or before work is finished

Questions to ask yourself before signing a contract

- Do I know what I am buying?
- Do I really understand the terms of the contract?
- Do I understand my obligations under the contract? (what I'm required to do)
- Am I sure I can make the full monthly payment on time?
- Can I buy a similar item somewhere else at a lower price?
- Am I satisfied with the interest rate on my purchase?
- What kind of protection do the guarantees and warranties give me?

Chapter 10: Tips for being an informed consumer and avoiding predatory lending

What do I need to know about buying on credit?

What does buying on credit mean?

When you buy “on time” or “on credit,” the seller is loaning you the money to buy something. You then agree to:

- Repay the loan over a period of time
- Pay a finance charge
- Usually, make payments once a month

Buying something on credit can be for:

- Everyday purchases, like buying groceries with a credit card
- Large purchases, like buying a car or house

Here are some common credit buying terms you should know:

- **Cash price:** The price of an item or service if you paid for it up-front, in cash
- **Finance charge:** The cost of credit, or the price you pay for getting an item without paying the entire cash price up front. Charges can include interest, or other additional charges.
- **Annual Percentage Rate (APR):** A percentage that shows the borrowing cost of your credit.
 - » The lower the APR, the less money you will have to pay
 - » The higher the APR, the more you will pay

APR is like the interest rate, but often includes other costs.

What should I think about before buying on credit?

Before you buy on credit, make sure you understand the terms of the loan. Many loans can affect your overall finances:

- Find out how much the total cost of the item will be when you add the purchase price (also called the cash price) and all the finance charges. This will be provided to you in the contract Truth in Lending “box” or disclosure.
- Find out what your monthly payments will be
- Find out if there are any other fees, such as service or administrative fees, and if you are buying credit insurance or extended warranties
- Find out what penalties will cost if you make late payments or stop making payments
- Make a budget of your monthly income and expenses to help you know if you can afford the purchase. Think about if you have other large purchases coming up. For example, you may need to replace your roof in several months.

Chapter 10: Tips for being an informed consumer and avoiding predatory lending

How am I protected for credit purchases?

The Federal Truth-in-Lending Act (TILA) requires “meaningful disclosure” of the cost of consumer credit in order to make informed choices and avoid unfair and deceptive lenders. This means that businesses that give you credit must tell you (disclose) what all costs will be, including finance charges and the APR.

If you have a credit card or account, these disclosures may be made on or before you first use the card or account. Otherwise, these disclosures must be made with each purchase.

If a lender fails to make these disclosures, you may have important legal rights that you can assert in court, which include money damages, plus court costs and lawyer’s fees.

If a security interest was taken in your home, you may also be able to undo the contract.

Talk with a lawyer if you want to learn more or exercise your rights under the TILA.

How do I work with contractors for home repairs?

A “contractor” is a person or company that a homeowner hires to do home repairs or projects.

There are a lot of contractors who have been in business for a short time and are only interested in making quick profits, instead of doing a good job.

Before you hire someone to make repairs on your home, you should:

- Contact 2 or 3 contractors for estimates to find the best price

- Check with the Better Business Bureau (bbb.org) to see if the contractor has previous or unresolved complaints
- Check their references or reviews

Once you’ve decided who to hire:

- Make them provide your agreement in writing
- Make sure agreed-upon price and any guarantees are included in writing to avoid confusion or arguments later
- Do not pay the full price until the job is finished to your satisfaction

Chapter 10: Tips for being an informed consumer and avoiding predatory lending

How do I work with contractors for home repairs?

Mechanic's Liens

A mechanic's lien is a guarantee of payment to people or companies that build or repair buildings. These might be builders, contractors, subcontractors, suppliers, or construction companies.

If you hire a contractor to do repairs on your house, they may ask you to sign a consent for a mechanic's lien to cover payment for labor and materials.

Important: If you sign a consent to a mechanic's lien, the contractor can file a lien (claim) against your house if you fail to pay for materials and/or labor for home repairs. A lien makes sure that the person or company lending money has a way to get their money back if a person can't or won't pay.

The lien stays in effect until the project is finished and the contractor is paid.

However, contractors, subcontractors, construction companies, and suppliers must have written consent from the homeowner before they can file mechanic's liens against your house. They will usually ask the homeowner to give written consent before they do any work or supply any materials.

The written consent for a mechanic's lien must:

- Be printed in 10-point bold type
- Be signed by you, the homeowner
- Include this language:
 - » "Consent of owner
Consent is hereby given for filing of mechanic's liens by any person who supplies materials or services for the work described in this contract on the property on which it is located if he is not paid."

Be very careful about signing a form like this and consider consulting a lawyer.

Chapter 10: Tips for being an informed consumer and avoiding predatory lending

What if I get sued by a contractor?

If you have not paid a contractor, subcontractor, or construction company and they want to collect money from you on a lien, they must file a lawsuit against you, and they must prove that they are entitled to your money.

If you have paid the company in full and you have not given your written consent for the party to file a lien, you are not liable to the contractor, subcontractor, or construction company.

But, if you are sued, you still need to appear in court.

Once a contractor files a lawsuit against you:

- You will get a summons that usually tells you to appear in court on a certain date and time
- **DO NOT** ignore the summons
- If you or your lawyer do not appear in court at the right time, a default judgment could be taken against you, meaning you have lost your case

Chapter 10: Tips for being an informed consumer and avoiding predatory lending

How do I buy a used car?

If you are thinking of buying a used car from a dealership:

1. Never buy a car on the first visit
2. Find out the fair market price, which is the current value of the item in the market based on what others are willing to pay for similar items. It is the amount a buyer is willing to pay and a seller is willing to accept for an item, when neither is under pressure to buy or sell.
 - a. Write down the car's make, model, year, and mileage
 - b. Visit sites like KBB.com, JDpower.com, or Edmunds.com to see the price of similar cars
 - c. Print out the fair market value and use it to negotiate a fair price
3. Ask about the car's history
 - a. The dealer should give you a Carfax or similar vehicle history report
 - b. Ask to see the car's title to see if it is a salvage or leased vehicle, which tend to have a lower market value
4. Take the car for a test drive
5. Check for mechanical problems
 - a. Make sure the car has passed safety and emissions inspections
 - b. Take the car to a mechanic and have the car looked over
 - c. If the dealer will not let you take the car to a mechanic to be inspected, go to another dealer

Important: Do not buy a used car until you know that it is in good condition, and you have negotiated a fair price for the car. Remember, you should not buy a car on your first visit to the dealer. If the dealer is being uncooperative, leave and visit another dealer.

Chapter 11:

Predatory loans

Chapter topics:

- What are predatory loans?
- How do I avoid predatory loan scams?

This year's predatory loans section was updated by Robert Swearingen (LSEM) and Latasha Barnes (LSEM). Past editions' sections were written by Kerry Kaufmann.

Chapter 11: Predatory loans

What are predatory loans?

Predatory lending refers to loans that:

- Are unreasonably expensive
- Charge very high or unnecessary fees
- Use unfair or abusive loan terms

Predatory loans are more common with older adults who are refinancing their homes. If you are considering refinancing, contact a lawyer, financial planner, or a bank officer.

Also, always work with a reputable lender (bank or credit union). There are many ways you can be taken advantage of.

Predatory lenders might:

- Use aggressive or illegal sales tactics
- Lie or deceive you
- Take advantage of a borrower's lack of understanding



Chapter 11: Predatory loans

Predatory loans might include:

- Very high interest rates
- Very high fees
- A loan that needs to be refinanced multiple times, each one with more fees added on
- Unnecessary closing costs like processing fees, underwriting fees, broker fees, documentation preparation fees, and administrative fees
- Unnecessary fees for third parties that aren't actually paid to those parties
- Padded fees for charges paid to third parties
- Requiring credit insurance
- Falsifying loan applications
- Knowingly making loans on terms the borrower cannot afford
- Presenting different terms at closing than the borrower agreed to
- A large “balloon” payment (a larger-than-normal payment)
- Car title loans - you can lose your car if you can't make payments (default on the loan)
- “Payday” loans: Small, short-term loans that are meant to cover a borrower's expenses until they get their next paycheck. These loans have high interest rates and are expected to be paid back quickly, usually within 2 weeks or by the next payday.
- “Tax refund anticipation” loans: Short-term loans that give borrowers an advance on their expected tax refund. These loans are paid back when the borrower gets their tax refund, but they often have high fees and interest rates.

It is not unusual for payday, title, and tax refund anticipation loans to have annual percentage rates (APR) of more than 100%, and sometimes 300% or higher. These loans are very profitable for the lender and very expensive for you.

Chapter 11: Predatory loans

What scams should I avoid in mortgage lending?

Some homeowners who have financial problems, or even face foreclosure, consider refinancing their homes to cover day-to-day living expenses.

Refinancing is when you replace your current loan with a new loan that has better terms, like a lower interest rate. This can make your monthly payments lower and save you money over time.

Loan flipping

In mortgage lending, loan flipping is when a loan is refinanced several times with the promise of taking cash out or lowering payments. Often only the broker and lender are benefiting, while the borrower is actually losing equity in their home.

Telemarketing tricks

Telemarketers try to convince older homeowners that they need to refinance. They purchase lists of homeowners who have recently refinanced their homes.

They also purchase lists of people who have liens or 2nd and 3rd mortgages

on their homes. These people are especially at risk.

Reverse mortgages

Reverse mortgages allow homeowners ages 62 and older to borrow money against the value of their homes. They do not have to pay the money back until they move out or die.

Reverse mortgages can allow older adults to stay in their homes. They can also help with money needed for retirement. But, some lenders are pitching the loans to older adults who they know cannot afford them.

Reverse mortgage scams to avoid:

- Some lenders or brokers trick older adults into reverse mortgages with promises that the loans are free money. They say the money can be used for a vacation without explaining the risks.
- Some lenders or brokers trick spouses into keeping loans in one spouse's name only. They don't tell the spouse that when the other

spouse dies, the full amount still owed becomes due. Many living-spouses lose their homes this way.

- Some lenders or brokers say that a reverse mortgage will help fund home repairs. Then they set up the homeowner with dishonest contractors who do poor work or charge very expensive fees.

Avoid these tricks brokers use to make monthly payments appear lower:

- Sometimes the loan payments do not include payments for taxes and homeowners' insurance. Failure to make these payments will likely violate the terms of the reverse mortgage.
- They may be hiding large prepayment penalties if you pay off the loan early

These add-ons and hidden fees can lower the homeowner's equity in the house.

Chapter 11: Predatory loans

Why are older adults at greater risk of predatory lending?

Many older adults have lots of equity built up in their homes. They've been paying off their mortgage for a long time, and don't owe much more.

They also have unexpected home repairs or medical bills.

Lenders or brokers may try to persuade older adults to refinance their mortgage to "consolidate" bills. They promise that refinancing their mortgage will pay off various bills and/or lower their monthly mortgage payments.

This can lead to the repeated refinancing of mortgages, which often serves no benefit to the homeowner. It just generates higher fees for the brokers and lenders.

How can I protect myself against predatory mortgage loans?

For a mortgage loan, your lender is required to give you a Good Faith Estimate (GFE) no more than 3 business days after the lender gets your loan application. Be sure to read it carefully.

The GFE will have important information about your loan, like:

- Your interest rate
- If the interest rate can change
- If your loan has a balloon payment, which is a large payment due at the end of a loan's term. This big payment is made after making smaller regular payments for a set

period, and it pays off the remaining balance of the loan.

- Itemized explanation of closing costs, which is the amount you must pay to finalize the loan. Closing costs include things such as:
 - » Fees
 - » Agent commissions
 - » Taxes
 - » Insurance

Federal law limits the circumstances and amount the lender is allowed to charge these fees.

Chapter 11: Predatory loans

To protect yourself against predatory lending:

- Always have a lawyer, financial planner, or trusted advisor review any refinancing documents
- Make sure that you are on the Missouri “No Call” list. There are 2 ways you can do this:
 - » Phone: 866-NOCALL1 (866-662-2551)
 - » Online: www.ago.mo.gov
- Do not give financial power of attorney to anyone without your lawyer’s advice. A financial power of attorney is a legal document that gives another person the right to handle your finances. This can include paying bills, managing bank accounts, or selling property.
- Do not sign any contract with financing provisions without having a lawyer review it. Financial provisions are terms that outline how money will be managed, shared, or used among the parties involved.
- Make sure that your total monthly payments are not more than your disposable income. A good rule is that your housing expenses should not be more than about one-third of your total income.

If you suspect that you have been a victim of predatory lending, contact a lawyer. They may be able to help you save your home. They can file complaints under the Elder Abuse Act with the appropriate agencies.

Are you worried about foreclosure?

If you are worried about foreclosure, contact a housing counselor certified by the United States Department of Housing and Urban Development (HUD). They may help you get a loan modification to lower your interest rate and monthly payment.

There is no cost for the housing counselors’ services. HUD has a list of certified counselors on its website at: <http://www.hud.gov/offices/hsg/sfh/hcc/fc>.

Chapter 11: Predatory loans

Do's and Don'ts of home refinancing per foreclosure:

Do:

- Contact a lawyer if your lender is demanding payments you don't think you owe, or you feel that you were tricked into entering into the loan

Don't:

- Do not trust anyone who asks for a fee up front to secure you a loan modification. HUD-certified counselors provide this service for free.
- Do not work with a lender or third party offering to buy your home in foreclosure for less than the home is worth
- If a lender says you can stay in the home as a tenant or buy it back later, they are likely trying to scam you out of your home. Once home ownership is transferred to them, **they are not required to allow you to stay or to sell it back to you.**

Chapter 11: Predatory loans

How do I avoid time share scams?

Many real estate developers and resort communities prey on older adults with time share plans. In a time share plan, you are not buying property. You are just buying an ownership interest in, or the right to use, real estate or property.

They often sell short periods of time, like 1 week per year. Often the property consists of condominiums, apartments, lodges, or cabins.

Time share properties do not appreciate in value. They are very hard to resell.

Never pay money in advance to any company that promises to resell your time share property.

Missouri has a statute protecting the rights of buyers of time share plans. It says that:

The buyer has 5 days after buying a time share arrangement to change their mind

- Their cancellation should be given in writing on a form the seller must provide at the time of purchase
- Often the seller will promise to provide a gift if you attend a sales presentation. If the seller fails to provide the buyer with the promised gift or cash, the buyer can collect up to 5 times the value of the most expensive gift offered, not to exceed \$1,000, in addition to other actual damages.
- If the time share plan involves an exchange program where buyers may assign or exchange their property with other time share owners, the seller must notify the buyer in writing of all information relevant to the exchange program. This must include:
 - » If the exchange program is voluntary or mandatory
 - » The procedures for qualifying and doing exchanges
 - » The names and addresses of all other time share programs participating in the exchange program

If you have questions about any time share program or feel you have been cheated by a time share seller, contact the Consumer Protection Division of the Missouri Attorney General's Office at 800-392-8222.

Chapter 11: Predatory loans

How do I avoid door-to-door sales scams?

Many people make the mistake of buying something they don't want from an enterprising door-to-door salesperson. The good news is that if you change your mind, you can do something about it.

What if I bought a product or goods I don't want from a door-to-door salesperson?

Both Missouri law and a Federal Trade Commission (FTC) rule allow you a 3-day "cooling off" period. This means you have 3 days to decide if you'd like to cancel the sale or contract for goods.

Missouri law does not require you to follow a format when you send your notice to cancel. The FTC rule involves a Notice of Cancellation form. The salesperson should give you the form along with copies of the sales contract or receipt of sale at the time of purchase.

To cancel a purchase or contract using the cooling off rule under either the FTC or Missouri law:

- Send written notice to the company or business
- Do so before midnight of the 3rd business day after the date of the transaction
- If possible, send the notice or a written letter of cancellation by certified mail with a return receipt request
- Keep a copy for your records

Once the merchant gets the notice or letter of cancellation, they have 10 days to:

- Refund any money
- Return any documents that you have signed
- Return any goods or property to you that you've traded in
- Inform you if they will pick up or let you keep any items they left with you

If anything was left with you, you must:

- Return it in its original condition
- It is not your responsibility to ship the items. The seller must pay postage or pick up the items.

Chapter 11: Predatory loans

Collection activities and garnishment

If you get behind on loan payments for a product or service, the loan company or bank may turn the debt over to a collection agency. Federal law protects consumers against abusive tactics by debt collectors.

Important: Harassment includes calling you late at night or contacting friends or family about the loan. If this happens to you, report the company to the FTC or the Consumer Financial Protection Bureau. You can also call a lawyer.

When loan companies, banks, or collection agencies win court judgments on debts you owe, they may take (garnish)

up to 25% of your wages after taxes (10% if you are “head of the household” or have dependents that you support).

There are certain exemptions from garnishment that will be explained on the garnishment form you get from the creditor. The exemptions are also set out in Missouri Revised Statutes sections 513.430 and 513.440. You should quickly file your request for any exemptions you may be entitled to with the sheriff who served the garnishment.

Note: Social Security benefits cannot be garnished, and most pension benefits usually can’t be either.

What can I do if I have a consumer complaint?

When something goes wrong with a purchase, or if a repair job on your car or house was poorly done, you can seek satisfaction in a number of ways:

- First, make a complaint in writing or in-person to the company that sold you the product or service. Make sure you’re reaching the proper authority, like a store manager.
- You can also file a complaint with:
 - » The Missouri Attorney General’s Office: ago.mo.gov/other-resources/forms/
 - » The Federal Trade Commission: reportfraud.ftc.gov/#/
 - » The Consumer Financial Protection Bureau: consumerfinance.gov/complaint/
- Small claims court is also available to consumers who believe that they have been treated unfairly – the amount in dispute must be \$5,000 or less. For more information from the Missouri Courts about using small claims court, go to: <https://www.courts.mo.gov/page.jsp?id=704>
- Better Business Bureau arbitration can also be helpful. To learn more about this, go to: <https://www.bbb.org/all/bbb-dispute-handling-and-resolution>

Chapter 11: Predatory loans

Complaints

When you make a complaint to a store or service provider:

- Make sure to include receipts and other documents that help explain your case
- If you are making your complaint in-person, try to remain calm, but firm
- Ask people to clarify if you do not understand something
- If you contact the store or business by mail, send your complaint letter by registered mail and keep a copy for your records
- **Important:** Never send or give away originals of any receipt, contract, or document

If taking your complaint directly to the store does not help, contact:

- Your local community's Better Business Bureau – to find your local BBB, go to: <https://www.bbb.org/bbb-directory>
- Or the Missouri Attorney General's Office - ago.mo.gov/other-resources/forms/

Beware of consumer arbitration

Arbitration is a form of alternative dispute resolution where the parties pay a neutral person, called an arbitrator, to issue a binding ruling on the dispute.

Beware of contracts that include an “arbitration clause” that lets the creditor force you to arbitrate disputes relating to the contract:

- These contracts can mean that you give up the right to go to court, which may deny you many important procedural rights that may be available in court.
- Arbitration can also be more expensive than court.
- Arbitrators are not required to follow the law, and your right to appeal an arbitrator's decision is very limited.
- You can request that the arbitration clause be removed from the contract. If the creditor refuses to remove the clause, carefully weigh the risks and benefits. You may be able to get the same service or product with a company that does not include an arbitration clause in their contract.

Chapter 11: Predatory loans

Small claims court

If your dispute involves \$5,000 or less, you can try small claims court. Keep in mind that it is usually easier and cheaper to solve your complaint outside of court.

How do I file a small claims lawsuit?

1. Go to the Associate Circuit Court clerk in the county where you made the purchase of the product or service

2. The clerk will give you a form to fill out and file. See also forms here: <https://www.courts.mo.gov/page.jsp?id=704>

3. You will need the exact name and address of the person or business you are suing (the defendant) to put in the form

4. You will pay a filing fee

5. You can either pay the cost of mailing the summons via certified mail or pay the sheriff to serve the summons to the defendant.

The clerk can answer any questions about court procedures. After you file your claim, make sure you know:

- The docket number of your case
- The time, date, and location of your court hearing. You will need to show up in-person

How do I prepare for my small claims court hearing?

- 1.** Organize all documents, such as bills, receipts, and letters, so that you can make a complete and orderly presentation of your case
- 2.** Make some notes on what you want to say so that

Small claims court is helpful because:

- The court costs are minimal
- The procedure is informal
- You do not need a lawyer to represent you (though you or the opposing party may have one)

you can make a full, brief statement of the facts

3. Decide what witnesses, if any, you want to appear at the hearing. Witnesses may be subpoenaed (required) if they are reluctant to appear voluntarily and if they are important to the case.

4. Check with the court before the hearing to find out if the defendant has been served with the summons. If they have not, the clerk can tell you about your options.

Important: You must appear in court at the scheduled time and place for your hearing – if you don't, your

lawsuit might be dismissed by the court.

Don't worry if the business or person you are suing is represented by a lawyer. The judge's job is to ensure that the proceedings stay informal. Any lack of legal knowledge will not work against you.

If the defendant offers to settle your suit before the court hearing, consider it. If you do settle, tell the court. If not, be ready for your scheduled court hearing.

Chapter 11: Predatory loans

What happens if I lose?

Either side can request a new trial after the ruling. If you want a new trial, **you must file your request within 10 days** of the first ruling. You may need the help of a lawyer.

What happens if I win?

If you win money, you still must get the defendant to pay. The defendant may voluntarily agree to pay you in a certain way — all at once or in installments.

Sometimes a defendant who has lost in court will not pay the judgment. When this happens, the court clerk can help you complete the forms to garnish the wages or bank account of the defendant.

Other court procedures may be available to collect a judgment, but they are difficult to pursue without the help of a lawyer.

What is the Missouri “No Call” law?

A law that prohibits telemarketers from contacting residents at home or by cell phone. To be added to the No Call list:

- Call Phone: 866-NOCALL1 (866-662-2551), or
- Register with the Missouri Attorney General’s office online: <https://ago.mo.gov/get-help/no-call/#:~:text=The%20No%2DCall%20law%20allows,by%20the%20Attorney%20General’s%20Office>
- You only need to register once, and you can register all your phone lines if you have more than one

Note: It can take up to 3 months for your name to get on the telemarketer’s No Call list.

If a telemarketer violates the No Call law by contacting you after your registration is complete, you can report the telemarketer to the Missouri Attorney General’s office. A telemarketer who violates the law faces a civil penalty of up to \$5,000. To report a violation to the Missouri Attorney General’s office, go to: <https://ago.mo.gov/get-help/no-call/#:~:text=The%20No%2DCall%20law%20allows,by%20the%20Attorney%20General’s%20Office> .

Chapter 12

Consumer information - health and life insurance

As you reach retirement, your insurance needs may change. For example, you may need more health insurance or less life insurance. You may need to think about choosing new insurance or keeping a current policy.

This section will help you learn about life and health insurance so you can find the right amount of coverage you need.

Chapter topics:

- Life insurance
 - » Two important types of life insurance
 - » Important life insurance terms
 - » Questions to ask when thinking about your life insurance needs
- Health insurance
 - » Health Insurance Marketplace
 - » Medicare
 - ◇ Costs of Medicare Part A
 - ◇ Costs of Medicare Part B
 - ◇ Medigap
 - ◇ Medicare Advantage
 - ◇ Qualified Medicare Beneficiary (QMB)
 - ◇ Specified Low-Income Medicare Beneficiary (SLMB)

This year's section was updated by Geoffrey Oliver, an Affordable Care Act Specialist at LSEM. Past editions' Insurance section was updated by Mary Sweet, and written by Michael Ferry, currently the executive director of Gateway Legal Services, Inc. and previously a long-time attorney with LSEM.

Chapter 12: Health and life insurance

Life insurance

Life insurance provides financial protection for your family in the event of your death. The people who will get this money are called your “beneficiaries.” They can use the money as they need to.

Life insurance can:

- Provide financial security to your dependents
- Act as an investment. For example, you can cash it in for money or use it to help you get a loan

It’s helpful to learn the basics of life insurance if:

- You already own insurance and are wondering if you should continue the coverage
- You want to buy a new policy

Two important types of life insurance

Term insurance

Term insurance is a type of policy where you can get a specific amount of life insurance coverage for a certain period of time — or term. This type of policy has no cash value (meaning you can’t cash it in for money) and the coverage ends when the term is over. For example, if you have a term insurance policy that covers you until you are age 65, the policy and coverage will end when you turn 65.

Whole-life insurance

Whole-life insurance (also called straight-life or ordinary life) is a type of policy that gives you life insurance coverage for your whole life. This type of policy has a cash value that you may get if you decide to end the policy. The cash value will increase the longer you have the policy. Usually, whole-life policies are more expensive than term insurance policies.

Chapter 12: Health and life insurance

Important life insurance terms

Face value

The face value of your policy is the amount of coverage you have. This is the money your beneficiaries will receive when you pass away. For example, if you have a policy with a face value of \$5,000, your beneficiaries will be paid \$5,000 if you die while the policy is still active.

Some policies may give additional coverage, often double the face value, if you die from an accident.

If you have any loans outstanding against the policy, the amount of money your beneficiaries get will be lowered by that amount.

Cash value

The cash value of a whole-life insurance policy is the amount of money you may get from:

- Cancelling your policy, OR
- Borrowing against it

Each way has its own advantages:

- Cancelling your policy allows you to get the cash value of your policy, but ends your coverage. If you choose to end your coverage, tell your insurance company right away. If you don't, but stop paying the premiums, the insurance company will continue your coverage and take the premiums from the cash value. The policy will then end when the cash value is \$0.
- Taking out a loan against your policy allows you to get a loan, usually at a low interest rate, while your policy continues. If you have any loans you have not paid off at the time of your death, the amount of money your beneficiaries get will be lowered.

Usually the cash value of a policy will be less than its face value (but this may not be true if the policy is fairly old).

Chapter 12: Health and life insurance

Questions to ask when thinking about your life insurance needs

Do others depend on you for their financial support? If so, for how long?

If you die, will there be expenses that someone will need to pay, such as funeral expenses? If so, are there more affordable options instead of buying a life insurance policy?

Is your main goal for getting a life insurance policy to leave money to someone? If so, would your money be better spent in a bank account or investments instead of paying insurance premiums?

A few things to keep in mind as you decide if life insurance is right for you:

- Your need for life insurance may lower over time as your children grow up and become independent
- The cash value of the insurance policy is usually lower than the amount you will spend on premiums



Chapter 12: Health and life insurance

What do I need to know about health insurance?

The Affordable Care Act (ACA) requires that most people have health insurance. To make the right choice for you, you'll need to balance the costs and benefits.

- If you are currently getting or are eligible for Medicaid, you may not need to buy additional health insurance
- If you have insurance through a group plan from a former employer, you may have all the coverage you need
- If you don't have insurance through Medicaid or an employer, you may have other options through the Health Insurance Marketplace (Marketplace) or Medicare

Health Insurance Marketplace

The ACA created new options in the private health insurance market.

You can buy an insurance plan through the Health Insurance Marketplace (also called "Obamacare"), if you are:

- Retired early and your former employer doesn't offer group coverage, or it isn't affordable
- Under age 65 and don't have other affordable coverage options
- Under age 65 and eligible for the Medicaid Spenddown program but can't afford to pay your monthly spenddown

Adults who are eligible for Medicare aren't eligible to buy a plan through the Marketplace.

Depending on your household income, you may qualify for financial help to lower the cost of your coverage.

Chapter 12: Health and life insurance

What are my financial help options?

Premium Tax Credits

Premium tax credits (PTCs) can lower the monthly cost (premium) of your Marketplace plan. The amount of your PTC is based on your income and household size. If your yearly household income is between 100 – 400% of the Federal Poverty Level (FPL), you may qualify for PTCs.

| Family Size | 100% FPL (2023) | 400% FPL (2023) |
|-------------|-----------------|-----------------|
| 1 | \$14,580 | \$58,320 |
| 4 | \$30,000 | \$120,000 |

Cost Sharing Reductions

Cost Sharing Reductions (CSRs) lower your Marketplace plan's out-of-pocket costs, like deductibles, co-pays, and co-insurance. The amount of CSRs that you qualify for are based on income and household size. If your yearly household income is between 100-250% of the Federal Poverty Level (FPL), you may qualify for CSRs.

| Family Size | 100% FPL (2023) | 250% FPL (2023) |
|-------------|-----------------|-----------------|
| 1 | \$14,580 | \$36,450 |
| 4 | \$30,000 | \$75,000 |

For more information on health insurance and financial help through the Marketplace, go to covermissouri.org to find in-person, one-on-one help in your area.

Chapter 12: Health and life insurance

What do I need to know about Medicare?

Medicare is a health insurance program that helps with medical costs for older adults (age 65 or older) and some people with disabilities under age 65. While Medicare covers many of the costs of medical care, it does not cover all of them.

What are some of the costs I might pay under Medicare Part A?

Medicare Part A covers some of the costs of hospitals and skilled nursing homes.

Hospital care costs in 2023

- The deductible is \$1,600
- Days 1 – 60 of your stay are covered
- Days 61 – 90 will currently cost \$400 a day
- Days 90 – 150 will currently cost \$800 a day and uses lifetime reserve days (you have 60 reserve days to use over your lifetime)
- Days 150+ are not covered by Medicare and will be paid out-of-pocket

Skilled nursing home care costs in 2023

- Days 1 – 20 of your stay are covered
- Days 21 – 100 will cost \$200.00
- Days 101+ are not covered by Medicare and will be paid out-of-pocket

What are some of the costs I might pay under Medicare Part B?

Medicare Part B covers some of the costs of doctor's visits and outpatient care. These are some of the costs you may have to pay under Medicare Plan B:

- A \$226 deductible
- 20% of the Medicare-approved charges for outpatient care

Chapter 12: Health and life insurance

Do I need supplemental health coverage (Medigap)?

Most people covered by Medicare need supplemental health coverage to help pay for costs that Medicare doesn't cover, like deductibles and co-insurance. Many private insurance companies offer supplemental (Medigap) plans, but they can be confusing and differ in value.

Most Medigap plans only cover Medicare deductibles and co-insurance costs. They exclude the same services that Medicare excludes.

Important information about Medigap coverage

The terms “medically necessary” or “customary charge” in a health insurance plan mean the plan only pays the deductibles and co-insurance based on what Medicare will pay, not the whole doctor's bill.

For example, you get a doctor's bill for \$600. The amount Medicare will pay for the doctor's services are \$450:

- **Medicare Part B** will pay 80% of what Medicare will pay, which is \$360 (80% of \$450 = \$360)
- **A supplemental insurance plan** will pay the other 20% of what Medicare will pay, which is \$90 (20% of \$450 = \$90)
- **You will then pay \$150**, the difference between the doctor's bill and what Medicare will pay (\$600 - \$450 = \$150) (unless the doctor accepts “assignment”*)

*A doctor who accepts “assignment” has agreed not to charge patients more than the amount that Medicare will pay, but the patient is still responsible for 20% of the charge. However, if the patient has a supplemental insurance plan, it will cover this 20%, leaving the patient with no balance.

This is most important for Part B of Medicare, which includes your doctor and outpatient costs. This is less important for Part A, or hospital costs, because hospitals generally can't charge the patient more than what Medicare pays.

Chapter 12: Health and life insurance

Questions to ask when thinking about supplemental insurance

For Medicare Part A

- Does the plan pay the annual deductible (\$1,600 in 2023) that must be met before Medicare will kick in for the first 60 days of a hospital stay?
- Does the plan cover the amount per day (\$400 in 2023) that Medicare will not cover if the hospital stay lasts between 61 and 90 days?
- Does the plan pay the amount per day (\$800 in 2023) that Medicare will not pay if a hospital stay is more than 90 days, which requires me to use some of the lifetime reserve days?
- Does the plan cover medical and hospital costs if I am hospitalized more than 150 days, when I can no longer get Medicare?
- Does the plan pay the amount per day (\$200 in 2023) that Medicare will not pay for a stay in a skilled nursing facility that is between 21 and 100 days?
- Does the plan cover the costs of staying in a skilled nursing home for more than 100 days, when I can no longer get Medicare?

For Medicare Part B

- Does the plan pay the annual deductible (\$226 in 2023) that must be met for Part B to kick in?
- Does the plan cover the full 20% of medically necessary charges that are not covered under Medicare Part B?
- Does the plan cover costs that Medicare may not cover?
- Does the policy cover costs not covered under Medicare, such as prescription drugs, hearing aids, dental care, routine exams, or custodial care in a nursing home?

Be careful of expensive plans that offer \$50,000 or more in hospital protection. You may not benefit from these because in most cases, you would have to be hospitalized for “medically necessary” services for more than 6 months.

Chapter 12: Health and life insurance

What is Medicare Advantage?

Medicare Advantage (or Part C) plans are an alternative to Original Medicare and are offered by private companies.

Medicare Advantage plans give you the same benefits as Original Medicare and are similar to Medigap policies. They offer:

- A range of benefits to cover out-of-pocket costs, such as deductibles and co-insurance
- Coverage if you use up your hospital benefits through Medicare
- Coverage for other benefits not covered by Medicare, such as prescription drugs, routine eye exams, annual physicals, hearing exams, eyeglasses, or hearing aids (offered by some plans)

However, most Medicare Advantage plans have lowered these additional benefits in recent years. Also many companies are withdrawing from the Medicare Advantage program. This means that many members will have

to return to Original Medicare and may need a Medigap plan.

What is Qualified Medicare Beneficiary (QMB)?

Qualified Medicare Beneficiary (QMB) is a Medicare Savings Program that helps pay for Medicare premiums and makes payments to medical providers for Medicare coinsurance and deductibles. You may qualify if you are:

- Single with an income less than \$1,215 per month and assets that do not exceed \$9,090
- A married couple with a combined income less than \$1,644 per month and assets that do not exceed \$13,630

What is Specified Low-Income Medicare Beneficiary (SLMB)?

SLMB is another Medicare Savings Program that helps pay for Medicare Part B premiums. There are two tiers, SLMB1 and SLMB2, with different income limits.

You may qualify for SLMB1 if you are:

- Single with an income of \$1,458 or less per month and assets that do not exceed \$9,090
- A married couple with a combined income of \$1,972 or less per month and assets that do not exceed \$13,630

You may qualify for SLMB2 if you are:

- Single with an income of \$1,641 or less and assets that do not exceed \$9,090
- A married couple with an income of \$2,219 or less per month and assets that do not exceed \$13,630

The income and asset limits for these programs may change each year in April. These numbers are accurate as of April 1, 2023.

The Missouri Family Support Division (FSD) runs the QMB and SLMB programs and each of these programs have additional eligibility criteria, beyond income and resources. To learn more, visit: <https://dssmanuals.mo.gov/wp-content/uploads/2020/09/im-4msp.pdf>

Chapter 13

Planning for property and other asset transfers after death

Chapter topics:

- What to do when someone dies
- Arranging a transfer of assets after death
- 5 options for arranging a transfer of assets after death
 - » Doing nothing
 - » Executing a last will and testament
 - » Executing a living trust
 - » Providing for non-probate transfers
 - » Making someone else a joint owner with right of survivorship
- Definitions

This chapter will tell you about:

- Options and tools for transferring property to heirs and beneficiaries after death, and the advantages and disadvantages of each option
- What will happen if you fail to plan
- Probate for the decedent's (person who died) estate
- The ways that property of an incapacitated or disabled person can be managed during their life

Items in **bold** are defined at the end of this chapter.

This chapter is meant to:

- Give general information to the public
- Give suggestions about appropriate approaches to reach different estate planning goals

This chapter is not meant to:

- Replace the advice of a qualified estate planning or elder law lawyer who is familiar with the situation, facts, and goals

The author shall not have any liability or responsibility for any loss or damage from relying on the information in this chapter.

This chapter in this edition was edited by Samuel Zachry of Kirkland Woods & Martinsen. Samuel practices in the area of estate planning, representing clients in the preparation and administration of estate planning documents such as Wills, Trusts, and Durable Powers of Attorney. Additionally, Heidi Bremson at KC Elder Law provided edits to this chapter for this edition.

The prior edition was written by Christine A. Alsop, of the Elder & Disability Advocacy Firm of Christine A. Alsop. Ms. Alsop concentrates on the areas of estate planning, elder law and helping those who are disabled in the greater St. Louis area.

Chapter 13: Planning for property and other asset transfers after death

What to do when someone dies

When a person dies, family members or other people most close to the decedent (person who died) must deal with legal and financial issues. It's a good idea to:

- Contact a lawyer who is familiar with handling estates (whether or not there is a will or assets to be probated).
- When there is a valid will, contact the **personal representative** named if they are not aware of the person's death. They should contact a lawyer who is familiar with estate and probate law
- File an original will with the probate court, even if there are no assets. If you do not do this, the will may not be valid (this is required by Missouri law)
- Make sure all costs are paid – this includes the decedent's hospital bills, funeral, tax liability, and other debts (sometimes these are paid for out of **jointly held or non-probate transfer assets**)

All of these items must be done before any heirs or beneficiaries can be guaranteed their rights to the decedent's property.

If any of these items are delayed, it can make settling the estate harder and more expensive.

Chapter 13: Planning for property and other asset transfers after death

What is probate?

If a person dies leaving property that is not transferred via a living trust, non-probate transfers, or a right of survivorship, this property must go through probate.

Probate is the legal process that recognizes the will and appoints the executor or personal representative who will administer the estate and distribute assets to the intended beneficiaries. A probate proceeding takes place in the probate court of the county where the decedent lived.

Probate estate

Probate estate is all property titled (owned) in the decedent's name alone. It is distributed only under the decedent's will or according to Missouri law. It consists of all property and cash assets owned by the decedent alone at the time of death, including:

- Bank accounts
- Land
- Furniture
- Buildings
- Cars
- Stocks and bonds
- Proceeds of life insurance (Insurance proceeds are only part of the probate estate if the estate is the beneficiary).
- Pension plans
- Retirement accounts payable to the estate

Property that is not a part of the probate estate includes:

- Property that is titled with a joint tenant or
- Property that has a non-probate transfer designation or beneficiary designation (other than to the estate), which often includes:
 - » Insurance policies
 - » Annuities
 - » Retirement accounts

The choice of probate procedures depends on the value of the estate. Almost all probate proceedings require that you use a lawyer, unless the probate estate is worth less than \$40,000 (called a small estate).

Chapter 13: Planning for property and other asset transfers after death

Five options for arranging a transfer of assets after death

1. Do nothing:

If the person who died did not have a plan for their assets, and they are held in only their name, the assets must be handled through the probate court.

The probate court will decide how to distribute those assets through the guidance of the probate laws in the state where the decedent lived. These laws are called the “rules of intestate succession” or the “rules of descent and distribution.” They provide a formula for dividing the assets in this way:

1. First, among a surviving spouse and children, if there are any
2. Then if there are none, to other relatives based upon degree of relatedness by blood or adoption

Missouri's probate laws

Missouri's probate laws are set out in Chapters 472 through 475 of the Missouri Revised Statutes. These laws only apply to a decedent who lived in Missouri at the time of their death or had property in Missouri at the time of their death. For more information, contact a lawyer familiar with Missouri's probate laws.

The importance of a good estate plan

The best plan is an individual estate plan made with an experienced estate planning lawyer. Probate laws are not as good as making a plan ahead of time. An estate planning lawyer can help:

- Reflect the intent, wishes, and concerns of the person
- Ensure a smooth transition when a second marriage or blended family are involved, or when property is not being divided equally among heirs
- Avoid family disputes and other misunderstandings

Chapter 13: Planning for property and other asset transfers after death

Five options for arranging a transfer of assets after death

2. Execute a last will and testament

A last will and testament is used to:

- Designate a guardian for minor children
- Name someone as personal representative (once called the executor)
- Administer your estate after you die
- Designate who is to inherit from you after your death

A last will can help assure that your property transfers to a spouse, children or relatives. There are multiple ways to distribute your probate estate if there is a will in place.

A carefully drafted will allows you to control how your property is handled after death:

- In general, a will works to transfer only assets for which no other plan of inheritance is in place (plans of inheritance include joint ownership, beneficiary designations, or the use of a trust, among others)
- A will does not go into effect until death. So, it cannot help manage your affairs before you die.
- **A will does not avoid probate.** Instead, the will guides the probate court in how to distribute the decedent's property and the payment of debts

Missouri's requirements

A will is valid in Missouri if it follows these requirements:

1. The maker of the will must be at least 18 years old (maker is called a testator if a man, and a testatrix if a woman) – except for a minor who is emancipated by a court ruling, marriage, or is in active military service, AND
2. The maker must have testamentary capacity (be of “sound mind”) at the time the will is prepared, AND
3. The will must be in writing and signed by the maker, AND
4. The will must be witnessed by at least 2 people who do not receive any property from the will, and the witnesses must sign their names at the end of the will with the maker present

A notary is not required to create a valid will. However, a notary is needed to create a **self-proving will**.

A self-proving will means the 2 witnesses have sworn that they signed the will following the requirements for a valid will. Because of this, the 2 witnesses will not need to appear in court to prove their signatures.

A self-proving will is recommended because witnesses may:

- Die before the maker of the will
- Be hard to find

Chapter 13: Planning for property and other asset transfers after death

Personal representative

A will names a **personal representative** (previously called the executor) to:

- Be in charge of the probate estate
- Administer the probate estate

A personal representative is usually one or more people who are:

- 18 years old or older or
- A bank or a trust company

A personal representative does not have to be a resident of Missouri. But it is a good idea to choose a representative who lives close to help manage the estate.

The administration of the probate estate involves:

- Paying outstanding debts from the estate
- Paying taxes from the estate
- Distributing the estate according to the will or by intestate succession (what happens when someone passes away without a valid will or some other legal declaration)

The personal representative:

- Is not personally liable for the debts and taxes of the person who died
- Must use the decedent's assets, if any, to pay off any debts and taxes
- Does not have to use their own money to pay the decedent's debts and taxes

If the personal representative can't complete their duties, the court will appoint someone else. This can be avoided if the maker of the will lists a replacement person to replace the first choice.

Limits on distributing property by will

Missouri law allows you to distribute your estate how you want. Family members can be **disinherited** or treated differently. However, there are exceptions.

A surviving spouse can choose to either:

- Receive what was provided by the will, OR
- Ask the Probate Division (by petition) for:
 - » One-third of the estate, if there

are children, OR

- » One-half of the estate, if there are no children

This is called a "spousal election against the will."

You may make a will and then later marry or have a child. If you do not add them to your will, the court will give the spouse or child a share of your estate that they would have received if you had died intestate (without a will).

There are exceptions to this, such as if it appears you left them out intentionally, or if you provided for the left out spouse or child in another way instead of naming them in your will.

However, with a prenuptial agreement (also called a prenap), you can avoid this default rule, and disinherit a spouse.

If you divorce your spouse, they are automatically disinherited, even if you don't update your will. The court will assume you did not mean to leave them anything in the will if it was made before the divorce.

Chapter 13: Planning for property and other asset transfers after death

Checking the validity of the will

When a will is involved, the court:

1. Calls in the witnesses to the will, who testify to the validity of the execution of the will (If it is a **self-proving will**, this step is removed)
2. Then moves through the administration process

Administration of the will

After the validity of the will is checked, the court moves directly to the next step, which is called administration. The basic job of administration and accounting for assets must be done whether:

- The assets are handled by a personal representative in probate, or
- The assets do not go through probate because they were (1) jointly owned, or (2) transferred to a living trust during lifetime. If they are in a trust, the trustee will owe his or her duties (such as administering the trust and accounting for the assets) to the beneficiaries of the trust rather than to the probate court.

The court may allow immediate distribution if:

- The value of the probate estate is less than the exemptions allowed (a maximum \$15,000 homestead allowance and a reasonable living expenses maintenance allowance, which is decided by the court, for 1 year) to the surviving spouse and minor children, and the spouse requests a refusal of letters. The refusal of letters allows the spouse to collect such assets.
- There is no surviving spouse, the estate is less than \$15,000, and a creditor has a claim against the estate

A friend or relative may also be able to use this procedure to be repaid for funeral bills.

The court may allow immediate distribution if:

- A small estate affidavit is filed, AND
- The value of the entire probate estate, including real estate, is worth less than \$40,000 after all debts, liens, and encumbrances (this is considered a small estate)

Chapter 13: Planning for property and other asset transfers after death

An estate must go through full administration if:

- It cannot be administered by a refusal of letters, or
- It is not a small estate

Full administration normally takes at least 9 months. It can take longer if:

- More complicated property is involved
- Claims are filed against the estate

The court supervises this administration unless the deceased specifically authorized an independent administration in the will or all the heirs agree to independent administration. Independent administration means that the personal representative:

- May distribute the entire estate with the help of a lawyer
- Doesn't need a court order

For example, the personal representative could sell the decedent's real estate without a court order. The personal representative is then required to only make a final report to the court.

An estate, whether administered independently or supervised by the court, must remain open for at least 6 months to:

- Allow creditors to file claims
- Give individuals the opportunity to challenge the will

Costs of Probate

Missouri law allows a personal representative to be compensated (paid) for their services and creates minimum rates.

Please keep in mind that this fee schedule applies only to estates worth more than \$40,000. This compensation, paid out of the probate estate, is a percentage of the value of the estate:

- On the first \$5,000 – 5 percent
- On the next \$20,000 – 4 percent
- On the next \$75,000 – 3 percent
- On the next \$300,000 – 2¾ percent
- On the next \$600,000 – 2½ percent
- On all over \$1,000,000 – 2 percent

The personal representative may waive (not claim) this compensation and choose not to receive it. Because the personal representative's compensation is taxable, many personal representatives waive the fee if they:

- Are beneficiaries of the will or trust, and
- Will receive more money as a beneficiary

The lawyer who performs services for the estate is also entitled to, at minimum, the compensation listed above. The court can allow more compensation if the court decides it is reasonable. A family can also negotiate a fee with the lawyer that is different from the above.

Chapter 13: Planning for property and other asset transfers after death

5 options for arranging a transfer of assets after death

3. Executing a living trust

A living trust:

- Sets out the powers and duties of the trustee
- Designates the beneficiaries
- Designates how and when the beneficiaries are to receive their benefits

A living trust is a way you can avoid probate while keeping control and use of the property during your lifetime. A married couple may also create a joint trust. Different customized instructions can be included to deal with a variety of potential future problems.

A living trust is created by a settlor and the assets of the trust are managed by a trustee. A settlor may serve as the trustee or the beneficiary. A settlor should also choose the successor trustees and beneficiaries. A trust can have multiple trustees and beneficiaries.

Living trusts are revocable (able to be cancelled), which allows the creator of the trust to:

- Change the trust's provisions, or
- Revoke (end) the trust completely

However, a living trust generally becomes irrevocable (unable to be cancelled) once the settlor dies or becomes incapacitated (unfit or unable to do things normally).

A trust must be:

- In writing
- Executed (signed or created) by a settlor with testamentary capacity (is of "sound mind")
- Prepared by an experienced estate planning lawyer. The use of online "forms" can cause expensive problems for families and should be avoided
- Notarized - in Missouri, many financial institutions will not accept trusts without a notary's signature

Missouri Uniform Trust Code

All trusts in Missouri are governed by the Missouri Uniform Trust Code (MUTC). This code provides a series of default provisions in case the trust doesn't mention a particular issue. Many of the provisions of the MUTC can be overridden by the trust maker. The MUTC sets forth the trustee powers and duties that are not specifically listed in the trust. For more information, contact a lawyer familiar with the MUTC.

Chapter 13: Planning for property and other asset transfers after death

Advantages of a living trust

- One of the main advantages of a living trust is that it avoids probate. Probate can interrupt:
 - » Control of assets
 - » The flow of income to one's spouse or other family members
- There are also costs and fees of administration that lower the net value of the devise or bequest (gift) to the heirs, such as:
 - » Court costs
 - » Lawyer fees
 - » Personal representative fees
- A living trust can help with the property management during your lifetime if you become incapacitated.
- Finally, a living trust can also help lower estate taxes, particularly for married couples.

Missouri Uniform Trust Code

A living trust must be funded. Funding is the process of changing title of assets to the living trust.

Let's use Robert Smith as an example. In order to fund his living trust, he:

1. Creates a revocable living trust
2. Retitles his bank account so that "Robert Smith Revocable Living Trust" is the owner, with Robert Smith as trustee

The bank account would no longer be in the individual name of Robert Smith. The living trust only affects assets that had the title changed to the trust.

Pour-over will

A pour-over will can be used to transfer assets into a trust after death that are:

- Not titled in the name of the trust, and
- Only have the name of the decedent on title

Assets that are transferred into a trust with a pour-over will still have to be administered through probate court. This is because the title must be changed by the court into the name of the trust. A pour-over will is essentially a "safety net" used to catch any assets that the trust maker did not transfer to the trust during his or her life. It is used to make sure those assets are dealt with in the way the trust maker wants.

Chapter 13: Planning for property and other asset transfers after death



Changing your will or living trust

A will or living trust that meets all of the requirements is valid until it is:

- Changed, or
- Revoked (cancelled)

A will or living trust that is valid in another state where you lived is also valid in Missouri. However, when changing states, you should talk with a local lawyer to have the will or living trust reviewed.

If you change your mind about something in the will or trust, or if you need to change it for another reason, you can execute a:

- Codicil (a document stating alterations or changes to the original will), or
- Trust amendment

The codicil must be executed and witnessed. The trust amendment must be notarized. Changes may require a redrafting of the original document and should always be done by a lawyer.

Never write on a will or living trust after it is executed. This may make the entire document invalid. Always talk with a lawyer about how to change a will or living trust!

Chapter 13: Planning for property and other asset transfers after death

5 options for arranging a transfer of assets after death

4. Providing for non-probate transfers

Non-probate transfers are transfers of a decedent's property that do not need to go through probate court.

The non-probate transfer of real estate can be done with a **beneficiary deed**.

This specifies that upon the death of the grantor (the person transferring the real estate), the real estate will automatically be transferred to someone else, which can include trusts in addition to individuals.

There are 3 other basic types of non-probate transfers:

(1) Beneficiary designation on certain financial arrangements, such as:

- i. IRAs
- ii. Life insurance
- iii. Annuities

(2) Pay on death (POD) on assets listed in dollars, such as:

- i. Bank accounts
- ii. Promissory notes

(3) Transfer on death (TOD) for assets not listed in dollars, such as

- i. Titles to boats
- ii. Titles to motor vehicles
- iii. Corporate stocks or brokerage accounts

All are revocable (able to be cancelled) if:

- (1) The **transferor** is competent, and
- (2) It does not pass any interest to the beneficiary during the transferor's lifetime, and

If the beneficiary lives longer than the transferor and is legally competent, they avoid probate when the transferor dies

Who can be a beneficiary of a non-probate transfer?

A non-probate transfer can:

- Designate one or more alternative beneficiaries in the event of death of the primary beneficiary or other contingency
- Designate a trust to be a beneficiary

Problems with non-probate transfers

People who use non-probate transfers often have problems they did not expect. For example:

- The transferor becomes incapacitated and there is no plan to manage the property before the transferor dies; or
- The value of the asset shrinks or grows in relationship to the transferor's other assets, distorting the balance among all the various beneficiaries of the estate

When the transferor dies, the non-probate transferor plan may be inadequate if the beneficiary:

- Dies before the transferor
- Is incapacitated
- Is on government benefits such as:
 - » SSI
 - » Medicaid
- Is in legal proceedings such as:
 - » Divorce
 - » Bankruptcy
 - » Creditor problem

Chapter 13: Planning for property and other asset transfers after death

Life insurance policies

Life Insurance policies do not take the place of a will.

If the life insurance policy benefits are payable to the estate after death, the proceeds will:

- Go through the probate court
- Be distributed according to the will

If the policy benefits are payable to a beneficiary other than the estate, such as a spouse or other relative, the will has no effect on the distribution and the named beneficiary will receive the proceeds.

Estate Taxes

An estate tax is a tax imposed by the federal and state governments. Missouri does not currently have an estate tax, but Illinois does.

The gross estate (total before deductions and exemptions) for estate tax purposes is:

- All property owned at death
- Certain property transferred during one's lifetime in which an interest was retained or kept
- Property transferred in contemplation of death
- Joint property
- Life insurance
- Retirement benefits

The estate tax is then imposed on the taxable estate, or net estate, after deductions and exemptions. The federal estate tax liability is reduced by estate tax paid to the state, in the decedent lived in a state with an estate tax.

Most simple estates do not require the filing of an estate tax return. These might include:

- Cash
- Publicly traded securities
- Small amounts of other easily valued assets, and no special deductions or elections
- Jointly held property

An estate tax return needs to be filed in the year the decedent passed away if the estate with combined gross assets and prior taxable gifts exceeds a certain amount. These amounts for the past 5 years are:

- \$11,400,000 in 2019
- \$11,580,000 in 2020
- \$11,700,000 in 2021
- \$12,060,000 in 2022
- \$12,920,000 in 2023

Most estates are not taxed because they are worth less than the amounts listed above.

Chapter 13: Planning for property and other asset transfers after death

5. Making someone else a joint owner with right of survivorship

Joint tenancy with a right of survivorship is a specific form of co-ownership. Property owned this way is not distributed by will when one of the owners dies. This property avoids probate and automatically passes to the surviving joint owner or owners. Joint tenancy between husband and wife in Missouri is called “tenancy by the entireties.”

Problems with joint ownership

Joint ownership may simplify distribution of your property after death. However, it can cause problems, such as:

- If the property was intended to be shared among heirs
- If there is a disagreement between the remaining joint tenants
- Your control over jointly held property is limited because the property is also owned and controlled by a joint owner or owners
- Creditors of the joint owner may also seize (take) the property
- It may make qualifying for government benefits more difficult
- If a joint owner becomes mentally incompetent, the property can be subject to **probate guardianship** and conservatorship

Estate planning lawyers rarely recommend joint ownership of property as a way of avoiding probate. This is due to the risks of adding another person’s circumstances to your own.

Chapter 13: Planning for property and other asset transfers after death

Real estate transfers before death

Many older adults try to sell or give away their property either to:

- Avoid probate, or
- Make it easier on family members when they are gone

If you are planning a property transfer or a change in title (for example, adding a name to a deed) you should consider these points before doing so:

(1) If you (the property owner) deed your house to someone (which means to transfer by deed) without keeping your name on the deed, the new person on the deed can force you to move out of the house. They can also sell the house whether you want them to or not.

(2) If you deed your house to someone, there could be large tax consequences. These consequences could be avoided if you instead transfer it when you die.

(3) If you want to add a person to the deed as a joint tenant (a person with an equal property share and a right of survivorship), the deed must say **as joint tenants with right of survivorship**. However, if a married couple owns property jointly, there's automatically a right of survivorship.

(4) If you add another person to the deed as a joint tenant, you cannot sell the property without the joint owner's permission. Also, upon death the property will automatically

belong to the other person if they are alive.

(5) If someone wanted to sell their property, the deed must have the name of the current owner. If the property has someone else's name on it (such as a deceased family member), the name of the deceased family member must be removed from the title before it can be sold. Contact a lawyer to find out how this can be done.

(6) In Missouri, if you are married, you cannot deed your house that is held jointly with your spouse to another person without your spouse's signature.

(7) Lifetime transfers (transfers made during life) may have negative effects on capital gains taxes.

(8) Lifetime transfers, such as real estate transfers like these, can also have an effect on your government benefits, such as Medicaid. There are many other options to adding someone's name to a deed. Other options include:

- a. A beneficiary deed
- b. A living trust

Chapter 13: Planning for property and other asset transfers after death

Definitions

Beneficiary – A person named to receive an asset. They may or may not be related to the owner of the asset.

Beneficiary deed – A type of real estate deed which specifies that upon the death of the grantor (the person transferring the real estate), the real estate will automatically be transferred to someone else, which can include trusts in addition to individuals. This ensures that the home or land avoids probate.

Beneficiary designation – Allows a person to transfer assets directly to individuals, regardless of the terms of their will.

Claim – A debt or liability owed by the decedent at the time of death, the funeral expenses, and the costs and expenses of administering the probate estate. A “claimant” is a creditor who files a claim against a probate estate.

Codicil – A legal document that allows a person to make changes to their will without having to create an entirely new will.

Decedent – A person who has died (deceased).

Devisee – A person or entity (such as a charity) that is named in a will to receive certain property.

Disinherit – To preventing someone from inheriting one’s property

Disposition – The result of a probate case that determines what property will be distributed or given and where. It is the court’s decision of what should be done about a dispute that has been brought to its attention.

Distributee – A person or entity to receive a distribution through probate.

Estate plan – A person’s plan to prepare and arrange for the management and disposal of their estate during their life, if the person becomes incapacitated, or after the person’s death. This can include wills, powers of attorney, trusts, and more. Full administration – The complete probate administration process that will happen if there is not an exception, such as if there are refusal of letters or it is a small estate.

Heir – A person or entity to receive real estate or personal property of a person who has died without a will. An heir is determined by the Missouri statute of intestate succession.

Intestate – A person who dies without a will is said to have died “intestate.”

Intestate succession – What happens when someone dies without a valid will or other legal declaration.

Chapter 13: Planning for property and other asset transfers after death

Definitions

Joint tenancy – A form of ownership by two or more individuals together. It differs from other types of co-ownership because the surviving joint tenant immediately becomes the owner of the whole property upon the death of the other joint tenant. This is called a “right of survivorship.”

Letters of administration – A document from the probate court that appoints a personal representative for an estate of a person who has died without a will (intestate). They are to be in charge of and manage the estate.

Letters testamentary – A document from the probate court that appoints a personal representative for an estate of a person who has died with a will (testate). They are to be in charge of and manage the estate.

Non-probate transfer designation – A transfer of property that happens when the owner dies, according to a beneficiary designation.

Personal representative – A person appointed by the court to be in charge of a decedent’s probate estate. Also called an executor or administrator.

Probate – The legal process that recognizes the will and appoints the personal representative who will administer the estate and distribute assets to the intended beneficiaries.

Probate estate (or probate property) – The real estate and personal property owned by the decedent. It is subject to administration supervised by the probate court, including any income after death, if the property is not dealt with by another method.

Probate guardianship – When the probate court appoints a guardian to manage and look after the affairs and finances of a person who is unable to do these tasks themselves.

Publication – A notice published in a newspaper in the county where the decedent resided. This provides potential creditors with notice of the decedent’s death so that they may make a claim.

Refusal of letters – Allows the collection of a decedent’s assets which are owned in the decedent’s name alone when the value of those asset(s) is under a certain threshold. The probate court issues an order to the person applying (the “applicant”), allowing them to collect the decedent’s assets. Refusals are generally only available for spouses, creditors, and minor children of the decedent. They are filed in the county where the decedent was living at the time of their death.

Revocable – Able to be cancelled or revoked.

Chapter 13: Planning for property and other asset transfers after death

Definitions

Right of survivorship – When a surviving joint tenant immediately becomes the owner of the whole property upon the death of the other joint tenant. The property does not need to go through probate.

Self-proving will – A will that includes a sworn statement from 2 witnesses saying they watched the will maker sign a valid will.

Settlor – A person who creates a trust.

Small estate – An estate worth less than \$40,000 and meets certain requirements.

Testamentary capacity – The mental capacity a person needs to create or execute a will or a trust. This includes: (1) being able to understand the ordinary affairs of their life; (2) being able to understand the nature and extent of their property; (3) knowing the people who were the natural objects of the bounty; and (4) intelligently weigh and appreciate their natural obligations to those people and know that they are giving their property to the people mentioned in the will or trust.

Transferor – A person who makes a transfer.

Trustee – A person who is responsible for managing and administering the finances of a trust, according to the instructions.

Testate – A person who died leaving a valid will is said to have died “testate.”
Testator or Testatrix – A person who has made a will

Chapter 14:

Power of attorney, personal custodian and guardianship

Words to know:

- Attorney-in-fact – The person named in a power of attorney to act on behalf of someone else
- Principal – The person who creates a power of attorney
- Personal custodian – An appointed person who shall collect, hold, maintain, manage, invest and reinvest the custodial property
- Guardian – A person appointed by the court to have care and custody of a person who is unable to care for him or herself
- Ward – A person who is unable to care for him or herself and has a court appointed guardian
- Conservator – A person appointed by the court to manage the financial resources of a person who is unable to manage his or her own financial resources
- Protectee – A person who is unable to manage his or her own financial resources and has a court appointed conservator

Chapter topics:

- Power of attorney
- Durable financial power of attorney
- Missouri Personal Custodian Law
- Guardianship and conservatorship

This edition was edited by Samuel Zachry, of Kirkland Woods & Martinsen. Samuel practices in the area of estate planning, representing clients in the preparation and administration of estate planning documents such as Wills, Trusts, and Durable Powers of

Attorney.

The prior edition was written by Christine A. Alsop, of the Elder & Disability Advocacy Firm of Christine A. Alsop. Ms. Alsop concentrates on the areas of estate planning, elder law and helping those who are

Chapter 14: Power of attorney, personal custodian and guardianship

Power of Attorney

If illness or disability limits a person to home or a hospital, they may find it hard to take care of their personal business. If this happens, they can create a **power of attorney**.

A power of attorney is created when one person (the “principal”) gives someone else (the “attorney-in-fact” or “agent”) written authority to act in the principal’s name.

Normally, the attorney-in-fact is a friend or relative, not a lawyer. Because the power of attorney may be used to the principal’s disadvantage, the principal must be very careful about picking an attorney-in-fact.

How is power of attorney creat-

A power of attorney is created by a written document stating:

- The name of the principal
- The name of the attorney-in-fact
- The specific powers given to the attorney-in-fact

Power of attorney example:

Mr. Lee is going on a 6 month vacation around the world. Before leaving on his extended vacation, he names his son, Mark, as his attorney-in-fact. This way Mark can tend to Mr. Lee’s financial obligations while Mr. Lee is abroad. Mr. Lee can give Mark a very narrow set of powers while he is gone, such as only the power to pay Mr. Lee’s utility bills. Or he can give Mark more broad, general powers, which could include making gifts, taking out loans, or buying and selling real estate on Mr. Lee’s behalf.

Chapter 14: Power of attorney, personal custodian and guardianship

Durable financial power of attorney

One problem with the power of attorney is that the principal may give away only the powers he or she actually possesses. If the principal later loses the capacity (ability) to conduct his or her affairs, the attorney-in-fact also becomes unable to act.

The power of attorney ends with either the incapacity or death of the principal. A Missouri law, the **Durable Power of Attorney Act**, provides a solution to this problem. A power of attorney will continue after the principle becomes incompetent if:

- (1) The power of attorney is titled a “Durable Power of Attorney”
- (2) The power of attorney document states that the power is “durable” and includes a section specifying that the power of attorney will not end in case of disability or incapacity, and
- (3) The document is signed by the principal, dated and notarized.

The Durable Power of Attorney generally does not need to be filed with the local Recorder of Deeds unless it affects real estate. So, if the attorney-in-fact needs to execute a real estate deed on behalf of the principal, the Durable Power of Attorney must be recorded.

Springing powers

A Durable Power of Attorney may have “springing powers.” This means that the powers given to the attorney-in-fact are only effective when the principal is incapacitated and is unable to conduct his or her affairs. This type of Durable Power of Attorney requires that 1 or 2 doctors certify that the principal is incapacitated.

Chapter 14: Power of attorney, personal custodian and guardianship

Power of attorney may be ended or changed in several ways

- One can specify a date for the power of attorney to expire in the original agreement.
- Changes can be made simply by notifying the attorney-in-fact by spoken or written communication. However, it is best to sign a new power of attorney, which will describe the new powers or new attorney-in-fact and revokes the prior power of attorney.
 - » It is a good practice to notify your attorney-in-fact that you have signed a new power of attorney modifying or revoking the attorney-in-fact's powers. Written communication is greatly preferred.
- The power of attorney may also be changed or ended by filing a written notice in the office of the Recorder of Deeds in the city or county of the principal's residence.
 - » Filing the power of attorney is only required when the power of attorney affects real estate (for example, when the attorney-in-fact sells land on behalf of the principal and records a deed).

When is durable power of attorney ended?

A Durable Power of Attorney will be ended automatically if the attorney-in-fact is no longer qualified to act.

- If the attorney-in-fact is a spouse and a divorce occurs, the power of attorney automatically ends.
- At the time of death.
- A successor (back-up) attorney-in-fact can be listed, or you may establish a procedure to select a back-up in the event that the attorney-in-fact is unwilling or unable to act.

Chapter 14: Power of attorney, personal custodian and guardianship

What are the general powers of an attorney-in-fact?

An attorney-in-fact with general powers also has all the rights, powers, or purposes that are given in the Durable Power of Attorney. Missouri law requires that a Durable Power of Attorney specifically give authority for the attorney-in-fact to have the power do any of these actions:

- To execute, amend, or revoke any trust agreement
- To fund with principal's assets any trust not created by the principal
- To make or revoke a gift of the principal's property in trust or otherwise
- To disclaim a gift or devise of property to or for the benefit of the principal
- To create or change (in some circumstances) survivorship interests in the principal's property or property in which the principal may have an interest
- To designate or change the designation of beneficiaries to receive any property, benefit or contract right on the principal's death
- To give or withhold consent to an autopsy or postmortem examination
- To make a gift of, or decline to make a gift of, the principal's body parts under the Uniform Anatomical Gift Act
- To nominate a guardian or conservator for the principal, and if so stated in the power of attorney, the attorney-in-fact may nominate himself as such
- To give consent to or prohibit any type of health care, medical care, treatment or procedure
- To designate one or more substitute successor or additional attorneys in fact
- To exercise, to revoke or amend the release of, or to contract to exercise or not to exercise, any power of appointment granted to the principal

What is not allowed?

Missouri law does not allow the attorney-in-fact to make or end a will for the principal or to make or end a living will (also called a Health Care Directive) for the principal.

No attorney-in-fact may require the principal, against their will, to take any action or to stop them from taking any action or to carry out any actions specifically not allowed by the principal while not under any disability or incapacity.

Chapter 14: Power of attorney, personal custodian and guardianship

Missouri Personal Custodian Law

Another method of allowing another person to conduct business for you is to appoint them as **personal custodian** under the Missouri Personal Custodian Law. This law deals with property.

Under this law, you can transfer the following to another person to hold for you as **custodian of the property**:

- Some or all of your property
- Personal property
- Real estate

It's important to know that the title to the property still remains with you. The custodian is a property manager only.

The custodian does the following for your benefit and in the way you direct:

- Holds the property
- Manages the property
- Invests the property

How do I set up a personal custodian?

To transfer property to a custodian, you must:

- Complete a written document describing which property is being transferred
- If the property is real estate, you need to complete a **deed** transferring the property to the custodian

The written documents should always state that the person receiving the property is a personal custodian acting for you under the Missouri Personal Custodian Law.

What if I become incapacitated?

Similar to a Durable Power of Attorney, a personal custodianship may be effective even after you become incapacitated. The custodian administers the property for your benefit as you directed before you became incapacitated or as the custodian deems wise.

Chapter 14: Power of attorney, personal custodian and guardianship

Can I end (revoke) the personal custodianship?

You may end the personal custodianship unless you are not competent or have stated in writing that the custodianship is irrevocable (cannot be ended). The custodian must transfer the property back to you if you end the custodianship and are competent to receive the property.

The personal custodianship provides an alternative method for older adults to avoid the necessity of a conservatorship as well as transferring property into joint tenancy or outright to another person.

Discuss your situation thoroughly with a lawyer before you decide to create a personal custodianship.

Guardianship and Conservatorship

A **guardian** is a person appointed by the court to have care and custody of a person (the “**ward**”) who is unable to care for him or herself.

A **conservator** is a person appointed by the court to manage the financial resources of a person (the “**protectee**”) who is unable to manage his or her own financial resources.

Guardianships and conservatorships may have far-reaching effects for all people involved. Before an individual starts guardianship or conservatorship court proceedings, they should be certain that it’s absolutely necessary. Consider whether the proposed ward or protectee is able to make decisions concerning his or her personal or business affairs.

How is a guardianship or conservatorship implemented?

Because guardianships and conservatorships have such serious consequences, the law gives special protection for the person who may become the ward or protectee. You must get notice of the upcoming court proceedings.

- If you object to the proceedings, you have the right to challenge the guardianship or conservatorship in

court.

- You have the right to a court-appointed lawyer (if you cannot afford a private lawyer) and to a hearing.
- This hearing will decide whether a guardianship or conservatorship is needed.
- You may bring your personal doctor or other witnesses to testify on your behalf.

- » In addition, your lawyer can question the witnesses appearing against you.
- You are not required to testify and you cannot be forced to testify.
- The court-appointed lawyer will make a report to the court regarding whether the guardianship or conservatorship are warranted (needed).

Chapter 14: Power of attorney, personal custodian and guardianship

What happens if the court decides I need a guardian?

If the court finds that you (the ward) need a guardian, the court will appoint someone. The guardian must provide for your basic needs:

- Food
- Shelter
- Medical care

The guardian must not limit the ward's freedom, limiting only what is necessary to ensure safety. Each year the guardian must prepare a report for the court on the personal status of the ward.

What happens if the court decides I need a conservator?

If the court finds that you (the protectee) need a conservator, the court will also appoint someone. The conservator may or may not be the same person who is appointed as your guardian. The conservator must manage the protectee's financial resources. The conservator may:

- Pay bills
- Receive public benefits (like social security)
- Sell and buy real estate and personal possessions
- Otherwise control the protectee's assets

The conservator must get court approval before taking any action with the ward's assets. The conservator must file a yearly report that lists all transactions made in the protectee's name. The conservator must also deposit with the court an amount of money (called a bond) to ensure honest and wise management of the protectee's estate. This bond is bought from an insurance company with money from the protectee's estate.

Limited guardian or conservator

Sometimes a person suffers from only a mild disability or partial incapacity. If that is the case, the court may appoint a "limited" guardian or conservator. This can keep many of the person's legal rights, such as the right to vote or drive a vehicle. A person keeps power over those affairs he or she is capable of managing. The guardian or conservator manages the rest. The use of a living trust and durable powers of attorney can help avoid this procedure.

Chapter 14: Power of attorney, personal custodian and guardianship

The procedure for appointing a guardian or conservator is as follows:

1. A petition must be filed with the probate court.
2. The person for whom a guardian or conservator is sought must get notice of the filing and be informed of his or her rights to have a lawyer and a hearing. The court will appoint a lawyer to represent the potential protectee.
 - a. If only a conservatorship is sought and the court determines that the disability exists, the court can appoint the conservator without further notice or hearing if the potential protectee (1) desires the appointment, (2) understands its purpose, and (3) makes a reasonable choice of conservator. This is provided that the conservator is suitable, qualified and has accepted or will accept the appointment.
3. In all other cases, the probate court will hold a hearing on whether a guardian or conservator is required.
 - a. Before the court will appoint a guardian or conservator, a finding must be made that the person is incapacitated or disabled. Evidence usually involves testimony by a doctor, either in person or in writing. The lawyer representing the person may challenge this evidence and offer other medical evidence.
4. If incapacity or disability is proven, the court will appoint a guardian, conservator, or both.
 - a. If the ward or protectee is able to give their choice of person, the court will give strong consideration to that choice. If no such choice is given, the court may review an individual's estate planning documents to see if the potential ward has listed a choice of guardian or conservator.
 - b. You may specify in your will, power of attorney, or other advance directive the person that you want to be your guardian or conservator.
 - i. No person or corporation licensed as a facility by the Missouri Department of Mental Health or the Missouri Department of Social Services (for example, a nursing home), nor any administrator, owner, operator, manager or employee of such a facility may be appointed guardian or conservator of any resident of their facility. However, they can be appointed guardian or conservator if they are related to the ward or protectee who is a resident.

Chapter 14: Power of attorney, personal custodian and guardianship

What if I want to be a guardian or conservator?

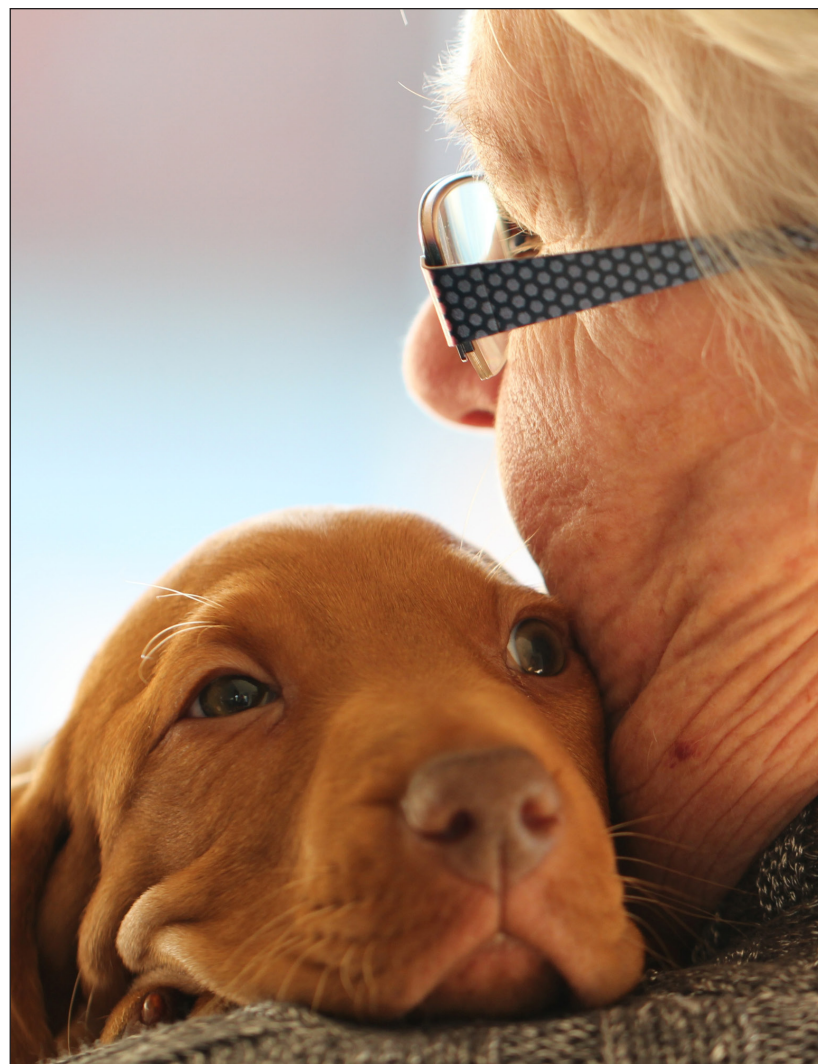
If you want to become a guardian or conservator, remember that you may need to post a bond. You will also need a lawyer. Once appointed, you take responsibility for the ward and may use the ward's assets only for maintenance of the ward and his or her property and valid expenses. You must ask the court's approval before taking any action with the ward's assets. You must keep accurate records for making your yearly reports to the court.

How is a guardianship or conservatorship ended?

A guardianship or conservatorship can be ended in several ways.

- A guardianship ends with the death of the ward.
- If the protectee's property is exhausted, the court may order the conservatorship ended.
- A ward can request that the court review his or her capacity.
 - » A new hearing will be held and more evidence will be considered. If the court finds that the ward or protectee has regained capacity, the guardianship or conservatorship will be changed or ended.

If there is no one to act as a guardian or conservator for a person who needs help, contact the Office of the Public Administrator for the county in which the person lives. They may be able to start the proper process and act as guardian or conservator.



Chapter 15: Protective services and adult abuse

Protective services and adult abuse

The content for this chapter 15 of the 21st edition was updated by KC Elder Law, website: kcelderlaw.com, Phone: 816-220-4119

The prior edition was written by Christine A. Alsop, The Elder & Disability Advocacy Firm of Christine A. Alsop, LLC. Ms. Alsop concentrates her practice on elder law and estate planning in the St. Louis area.

Protective services

In its broadest sense, protective services describes a network of public and private social services agencies available to help people with their personal or financial affairs. These agencies help mentally or physically vulnerable people who live alone and have become unable to care for themselves.

For people unable to make necessary decisions to manage their own affairs, long-term help may come by appointing a guardian. (See Guardianship section.)

Elder Abuse Law

The Elder Abuse Law directs the Missouri Department of Health and Senior Services (DHSS) to establish a program to respond to reports of alleged elder (older adult):

- Abuse
- Neglect
- Exploitation (being taken advantage of)

They also work with older and disabled adults in resolving these situations of alleged abuse.

Missouri has 2 protective services laws:

1. **The Adult Abuse Law** protects adults of all ages, including senior citizens, from physical harm from a present or former household member.
2. The **Elder Abuse Law** specifically protects older adult citizens against financial abuse, physical abuse, and neglect.

The program is based on an individual's right to self-determination. Self-determination is when a person controls their own life.

No decisions are made about a competent (capable) adult without their involvement and consent. Every effort is made to keep a person in their own home.

Chapter 15: Protective services and adult abuse

Can I get into trouble for reporting abuse?

Missouri's law says that people who (in good faith) report suspected abuse or cooperate with an investigation will be immune from criminal or civil liability. It further says that the identity of the reporter shall not be disclosed except with the permission of the reporter or by court order. Anonymous reports are also accepted.

To report abuse in Missouri, please call 1-800-392-0210 or 1-800-735-2466 (TDD)

Callers should be prepared to give:

- The alleged victim's name and address
- An account of what happened
- Where and when it happened
- Who the suspected abuser might be

Note: Abuse is defined as the infliction of physical, sexual or emotional injury or harm, including financial exploitation by any person, firm or corporation and bullying.

What happens after abuse is reported?

After DHSS receives a report, it does an investigation to determine whether the older adult is facing serious physical harm and is in need of protective services. If protective services are necessary, the department will review and evaluate the needs of the person. With the consent of the older adult, the department can provide:

- Casework (working with the people who need help)
- Counseling
- Help finding other living arrangements (if needed)

If the person in need of protective services is unable to consent to these services, then the director of the Department of Social Services can initiate court proceedings to get a guardian for the person. (See Guardianship section.)

Offenses against an older adult: criminal charges

Older adult (elder) abuse is a crime in Missouri. A person may be charged in connection with an act that causes harm to a person 60 years old or older.

Chapter 15: Protective services and adult abuse

What are the levels of criminal charges?

The provisions of the Elder Abuse Law describe elder abuse in the first, second and third degrees. First and second degree abuse involve physical harm. Third degree elder abuse can involve “grave emotional distress” as well as threats and intimidation.

Elder abuse in long-term care facilities

Missouri law states that any person who knowingly abuses or neglects a resident of a long-term care facility shall be guilty of a class “D” felony.

Adult Abuse Law

The Missouri Adult Abuse Law applies to anyone 18 years old or older who is in danger of suffering physical injury from a current or former household member.

The abused adult may file a complaint (called the “petition”) in court. If good cause is shown, the adult can immediately get an ***ex parte* order of protection** that same day.

What does an ex parte order of protection do?

This order can prevent the abusive person from entering the person who filed the complaint’s home. It can stop the person from doing the following to the complainant:

- Abusing
- Threatening
- Molesting
- Disturbing

How long does an ex parte order of protection last?

This *ex parte* order is served on the abuser by a sheriff and lasts for 15 days. There is also a procedure for filing for an order of protection during non-business hours (check with your local court for this information).

Chapter 15: Protective services and adult abuse

What happens after the ex parte order of protection is filed?

- A court hearing is held within 15 days after the petition is filed.
- The respondent (the accused abuser) receives notice of the hearing.
- The complainant must prove the abuse accusations in the petition.
- If proof of abuse is shown, the judge can issue or continue a protective order for up to 180 days.
 - » The protective order may be renewed, after a hearing, for a second 180-day period.
- The abusive party must comply with the order or face arrest.

Who do I contact?

If you want protection under the Missouri Adult Abuse Law, contact your county circuit court clerk. If you don't have a lawyer, the clerks of the court are required to give you guidance in filing the petition. You may also want to contact a lawyer to help you.

Chapter 16: Advanced directives and durable Power of Attorney for Healthcare

The content for this chapter 16 of the 21st edition was updated by KC Elder Law Website: kcelderlaw.com, Phone: 816-220-4119

The prior edition was written by Christine A. Alsop, The Elder & Disability Advocacy Firm of Christine A. Alsop, LLC. Ms. Alsop concentrates her practice on elder law and estate planning in the St. Louis area.

Advance directives

Advance directives are a way for patients to provide instructions for their medical care (for example, to refuse a particular treatment or treatments) in advance of suffering conditions that would make the patients unable to provide such instructions. A competent patient always has the right to refuse treatment for themselves or direct that treatment be stopped. However, without an advance directive, patients may lose that right once they become incapacitated.

The two most common forms of advance directives are the statutory living will and the durable power of attorney for health care.

Chapter 16: Advanced directives and durable Power of Attorney for Healthcare

Statutory living will

Introduction

Missouri's Living Will Law, found in Chapter 459 of the Revised Statutes of Missouri, allows a person (the declarant) to execute a specific type of healthcare directive which directs their doctor and medical facility to withhold or withdraw medical procedures that only prolong the dying process.

The Missouri statute authorizing the creation of living wills specifies that the statement or declaration be in substantially the following form:

"I have the primary right to make my own decisions concerning treatment that might unduly prolong the dying process. By this declaration I express to my physician, family and friends my intent. If I should have a terminal condition, it is my desire that my dying

not be prolonged by administration of death-prolonging procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw medical procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain. It is not my intent to authorize affirmative or deliberate acts or omissions to shorten my life, rather only to permit the natural process of dying."

The **living will** must be:

- In writing
- Dated
- Signed (by the declarant or by a person other than the declarant at the declarant's express direction)

If the living will is not in the declarant's handwriting, 2 people must witness it. The witnesses must be at least 18 years old. Anyone making a living will should always keep the original and give copies to their:

- Doctor
- Hospital (for inclusion in medical files)
- Family members

The living will can be ended (revoked) in any manner by which the declarant can show they want to end it (e.g., verbally or in writing). When revoking a living will, it is a good practice to gather and destroy all existing copies of the living will.

Chapter 16: Advanced directives and durable Power of Attorney for Healthcare

When does the living will become effective?

The living will becomes effective only when the declarant, suffering from a terminal condition, is no longer able to make and communicate treatment decisions. It is important to remember that as long as the declarant is able to make and communicate treatment decisions, the living will is not effective.

What the living will does and does not do

The living will does not:

- Authorize mercy killing
- Allow any affirmative act to shorten life
- Prevent administration of medicine or any medical procedure necessary to give comfort or to reduce pain

The Missouri statute uses the following 2 terms to describe when a living will applies

- “Death prolonging procedure”
- “Terminal condition”

The statute defines both of the above terms as relating to a condition where death will happen within a short period of time, regardless of whether certain treatment is provided. In other words, the patient will die shortly with or without:

- Artificial resuscitation (also called

CPR)

- Use of a ventilator
- Artificially supplied nutrition and hydration
- Other invasive surgical procedures

Living wills and other advance directives by definition, only avoid treatment when:

- Death is imminent and
- The treatment is ineffective to avoid or significantly delay death

The statute does not allow a living will to direct the withholding or withdrawing artificially supplied nutrition and hydration, which is nutrition supplied through a feeding tube or IV (a needle in the vein).

A living will is simply one type of advance directive. Recent court cases have made it clear that people have the right to make other types of advance directives that go above the limitations of the living will statute.

A common example of this is the Durable Power of Attorney for Health Care and Health Care Directive, discussed in the next section. The Missouri Bar has created a Durable Power of Attorney for Health Care and Health Care Directive in a document available from it upon request. The document can be obtained by:

- Visiting <https://missourilawyershelp.org/legal-topics/durable-power-of-attorney-for-health/>
- Or calling 573-635-4128

Chapter 16: Advanced directives and durable Power of Attorney for Healthcare

What the living will does and does not do

Those directives need to be “clear and convincing,” and may include instructions to withhold or withdraw artificially supplied nutrition and hydration or other treatment or machinery which may maintain a patient in a persistent vegetative state.

These expanded advance directives can be tailored to meet the needs and desires of each individual patient, and need not be in any standard form. For example, they can specify that certain procedures are to be used for a reasonable period of time and then discontinued if they do not prove to be effective.

Additional advance directives should be signed, dated and witnessed in the same manner as living wills.

Dealing with your doctor and hospital

Some doctors and health care facilities do not recognize the living will as a way for a patient to control their own medical treatment. These doctors and facilities are required to take all reasonable steps to transfer the patient to a doctor and facility that will honor the living will.

Talk to your doctor before signing your living will

To prevent any problems in honoring your living will, it is very important that you talk about it with your doctor before you sign one.

Chapter 16: Advanced directives and durable Power of Attorney for Healthcare

Durable power of attorney for health care

Introduction

Missouri has laws that give citizens a right to designate another person to make health care decisions for them if they become incapacitated.

The law allows what is known as a “durable power of attorney for health care.” The person who creates the document is called the “principal.” The person who is designated to act is called an “attorney-in-fact.” The attorney-in-fact may be any adult you trust to make important decisions for you. It cannot be:

- An attending physician (doctor)
- The owner, operator or employee of a health care facility where you are a resident

The durable power of attorney for health care must be:

- In writing
- Signed by the principal
- Notarized

It comes into effect only when 2 licensed doctors certify the person is incapacitated, unless the document requires a different number. In any event, certification by at least 1 doctor is required.

Can the durable power of attorney for health care be ended?

A competent patient may revoke (end) the durable power of attorney for health care at any time and in any manner by which the patient can show that they wants to revoke it. The revocation is effective upon it being communicated by the principal to the attorney-in-fact or the attending doctor.

Chapter 16: Advanced directives and durable Power of Attorney for Healthcare

What the durable power of attorney for health care does and does not do

Under the durable power of attorney for health care, your attorney-in-fact may make every possible decision regarding health care. This includes decisions to enter a hospital, to undergo an operation, and even to terminate life-support systems. If you want to enable your attorney-in-fact to authorize the withdrawing of artificially supplied nutrition and hydration, however, the document must provide a specific grant of authority to do so.

What is the difference between “Durable Power of Attorney for Health Care” and a “Living Will”?

A living will is a statement saying that the person signing the document does not want any extraordinary procedures that simply keep them alive. A living will does not authorize anyone else to make health care decisions for you, but a durable power of attorney does.

More information

The Missouri Bar has created forms for:

- Health care directive
- Durable power of attorney for health care a
- HIPAA privacy authorization (valid in Missouri)

Single copies of the forms are available at no charge by sending a written request to:

Health Care Proxy Form
HIPAA Privacy Authorization Form

The Missouri Bar

P.O. Box 119

Jefferson City, MO 65101 Or call The Missouri Bar at 573-635-4128.

You can also find a copy of this document on The Missouri Bar website at www.mobar.org.

Chapter 16: Advanced directives and durable Power of Attorney for Healthcare

Patient Self-Determination Act

Introduction

An important federal disclosure law went into effect on December 1, 1991. The law, known as the Patient Self-Determination Act (the act), is an amendment to the Medicare and Medicaid provisions of the Social Security Act.

Who it affects

The act affects all Medicare and Medicaid provider organizations. These organizations include:

- Hospitals
- Skilled nursing facilities
- Home health agencies
- Hospices
- Pre-paid health care organizations

In general, the act requires these organizations to provide written information to patients about their rights under state law to make their own health care decisions. These rights include the patient's right to:

- Refuse medical treatment
- Create advance directives

What are advance directives?

Advance directives are written instructions authorized by the patient about their health care in the event that they are incapacitated. 2 forms of advance directives that are legal in Missouri include:

- Living wills
- Durable powers of attorney for health care

Both living wills and durable powers of attorney for health care are covered elsewhere in this chapter.

Chapter 16: Advanced directives and durable Power of Attorney for Healthcare

How the Act applies to the patient

The act exists to inform you of your rights.

Example:

- When being admitted to the hospital, the staff must give you written information about your health care rights under state law
 - » This should include information about living wills and health care powers of attorney
- If you have a living will or health care power of attorney, you should let the staff person know so they can make it part of your records (if that has not been done already)
- Your care cannot depend on whether or not you have an advance directive
- Organizations affected by the act cannot discriminate against you because you do or do not have an advance directive

An important note, the time to make health care decisions should not be at admission to a hospital or other health care facility. You should make these decisions while you are healthy and not under any pressure. To avoid any confusion or misunderstanding, you should also talk about your health care wishes with these people ahead of time:

- Close family members
- Your doctor
- Clergy
- Close friend



Chapter 17:

Veterans benefits

Learn about the Aid and Attendance program available through your veterans benefits. This information is current as of March 2022, but may change at any time.

- For more information about the Aid and Attendance program, visit <https://www.va.gov/pension/aid-attendance-housebound>
- For information about the Missouri Veterans Commission nursing homes, visit <https://mvc.dps.mo.gov/homes>

Chapter topics:

- What is the Aid and Attendance program?
- Who is eligible for the Aid and Attendance program?
- How do I learn more about the Aid and Attendance program?

By M. Brigid Fernandez, JD, LCSW, CELA. Ms. Fernandez is an elder law attorney with Fernandez Elder Law, LLC and assists older adults, their families, and persons with disabilities with living, financial, health and long-term care planning. Ms. Fernandez is a Certified Elder Law Attorney and a VA-accredited attorney.*

**Certified as an Elder Law Attorney by the National Elder Law Foundation. Neither the Supreme Court of Missouri nor The Missouri Bar reviews or approves certifying organizations or specialist designations.*

Chapter 17: Veterans benefits

What is the Aid and Attendance program?

The Aid and Attendance program gives wartime veterans and their surviving spouses (widow or widower) a pension to pay for long-term care. This pension is a benefit from serving in the military and meeting all other criteria. This chapter gives an overview of the eligibility rules for this nonservice-connected pension program. To learn more, visit <https://www.va.gov/pension>.

Who is eligible for the Aid and Attendance program?

Requirements for making the claim:

The person making the claim may be:

- The veteran, OR
- A surviving spouse, OR
- A disabled adult child

Minimum active duty service requirements:

If the Veteran's active duty began:

- **Before September 8, 1980:** Veteran must have served at least 90 days on active duty and at least 1 day during a wartime period
- **On or after September 9, 1980:** Veteran served at least 24 months on active duty or the full period the veteran was called or ordered to active duty. Some exceptions apply.
- **After October 16, 1981 and the Veteran was an officer:** Veteran did not serve on active duty for at least 24 months before this date

Eligible periods of wartime service:

World War II (WWII) - December 7, 1941 to December 31, 1946

Korean War - June 27, 1950 to January 31, 1955

Vietnam War* - August 5, 1964 to May 7, 1975

(For veterans who served "in country" before August 5, 1964, the eligible period also includes November 1, 1955 to August 4, 1964)

Gulf War - August 2, 1990 to a date yet to be set

Discharge requirement:

Veteran must have a discharge that was other than dishonorable.

Age or disability requirements:

The person making the claim must be:

- Age 65 or older, OR
- Declared by their doctor to be permanently and totally disabled, which can include being a resident of a skilled nursing facility (SNF) for long-term care due to a disability. This disability can be due to a nonservice-connected

Chapter 17: Veterans benefits

Care requirements:

The person making the claim must:

- Need help from another person to complete daily living activities, which may include assisted living or home healthcare, OR
- Be bedbound (unable to leave their bed) due to illness, OR
- Be a resident of a skilled nursing facility due to loss of abilities related to physical or mental disability, OR
- Be blind with a visual impairment of 5/200 or less in both eyes, or concentric contraction of 5 degrees or less of the visual field, even with corrective eyewear

Financial limit requirements:

The person making the claim must:

- Have a countable income below the maximum annual (yearly) pension rate (MAPR), AND
- Meet net worth and annual income limits, along with their family (as decided by the VA), set by Congress
- Their net worth may be lowered by subtracting certain allowable educational expenses and/or unreimbursed medical expenses (specific criteria applies). Net worth is the value of a person's financial and non-financial assets minus any liabilities (like debts).

Maximum aid and attendance pension rates (MAPR)

MAPR is the maximum benefit amount a person can receive.

Single veteran - \$24,610 annually

Married veteran, or veteran and 1 dependent - \$29,175 annually

Widowed spouse - \$15,816 annually

The MAPR goes up with more dependents or when 2 veterans in the same household make claims, and may go up due to an annual cost of living increase.

Surviving spouse requirements

A surviving spouse must:

- Have been living with the veteran at the time of the veteran's death, unless the separation was due to medical reasons (there are other exceptions related to separation), AND
- Have been married to the veteran for at least 1 year before their death, OR
- Have had children with the veteran before or during the marriage (minor or disabled children may qualify for benefits on their own)

Chapter 17: Veterans benefits

Combined net worth and income limit

For this program, the combined income and assets (items that are owned and have value) of the person making the claim cannot be more than \$138,489 (limit effective December 1, 2021). This combined net worth and income limit is adjusted each year. Special rules apply in deciding countable income and assets for VA purposes.

Look back period

The VA applies a 36-month look back period on asset transfers. This means the VA will review any asset transfers that happened within 36 months (3 years) before applying for benefits. Asset transfers are when someone gives ownership of any asset to someone else

If assets are transferred for less than fair market value during the look back period, there may be a penalty period of up to 5 years – this means you will not be eligible for pension benefits during this time. The monthly penalty period rate is currently \$2,431 (effective December 1, 2021).

If you are interested in the Aid and Attendance program, be careful when advised to make gifts, transfers, or to buy annuities (an investment that provides you with money during retirement), as they could make you ineligible for the program for a certain amount of time.

How do I learn more about the Aid and Attendance program?

A veteran or surviving spouse should consult with a VA-accredited lawyer or Veterans Service Office representative before applying for Aid and Attendance benefits.

To find a VA-accredited lawyer in your area, visit: <http://www.va.gov/ogc/apps/accreditation/index.asp>. To apply for Aid and Attendance benefits, visit: <https://www.va.gov/find-forms/about-form-21-2680/>.

Chapter 18:

Expunging criminal records

Individuals who committed certain crimes may have those offenses sealed (made private) under Missouri's expungement law.

Chapter topics:

- What are criminal records?
- What is expungement?
- What criminal records can be expunged?
- What are the eligibility requirements for expungement?
- What is the expungement process?

Authors: Latasha Barnes (LSEM Attorney) and Nyree Bradley (LSEM Law Clerk)

Chapter 18: Expunging criminal records

What are criminal records?

A record is created anytime someone is arrested, charged, or convicted of a criminal offense. In Missouri, these records remain unless they are cleared or sealed.

Who can look up criminal records?

Many people can look up criminal records, including:

- The general public
- Law enforcement
- Government agencies
- 3rd party background check sites (like BeenVerified)
- Credit reporting agencies (like TransUnion, Experian, and Equifax)

You can look up your own criminal records through:

- MuniCourt.net
- Case.net
- Missouri Highway Patrol's Criminal Justice Information System

What is expungement?

Expungement is the process of “sealing” or making a criminal record private. The process is intended to restore an individual to the status they had before the criminal record was created as though the incident never occurred.

When a criminal record is expunged, the public will no longer be able to see it without obtaining a court order to view or reopen the record.

What does expungement mean for a person?

Expungement makes certain criminal records private. This means legal restrictions are lifted, and a person can get back certain opportunities after a crime, such as:

- Limits on job or housing options
- Loss of a professional or business license
- Not being able to vote
- Not being able to own a gun

Once a criminal record has been expunged, a person can say they have not been arrested or convicted of that offense. For example, if someone is applying for an apartment, they do not have to report the details of an expunged offense even if asked.

However, there are certain times when a person has to share details about expunged criminal records, such as when applying for:

- A state professional license, certificate, or permit
- Any gambling, lottery, or horse racing licenses
- Any gun permits
- A job with a:
 - » Lottery or gambling entity
 - » Emergency services provider
 - » Law enforcement agency
 - » Bank, savings institution, or credit union
 - » Insurance agency or insurer

Chapter 18: Expunging criminal records

What criminal records can be expunged?

These types of crimes can be expunged

Records involving over 1,900 types of criminal offenses can be expunged. This includes offenses related to:

- Minor in possession of alcohol
- Criminal non-support (failure to pay child support)
- Arrests (if falsely arrested, no probable cause, or no charges filed)
- 1st DWI offense
- Prostitution under the age of 18
- Unlawful use of weapons
- Stolen and mistaken identity
- 1st degree property damage
- Stealing
- Possession of forging tools
- Fraudulent use of a credit or debit card

These types of crimes cannot be expunged

Missouri has recently added to the list of offense that can be expunged. However, there are many crimes that cannot be expunged, such as those that involve:

- Class A felonies
- Offenses that require registration as a sex offender
- Felony offenses where death was part of the offense
- Felony assault
- Felony conviction for kidnapping
- Misdemeanor or felony domestic assault
- 2nd or additional DWI offenses

There are many other crimes that cannot be expunged.

Chapter 18: Expunging criminal records

What are the eligibility requirements for expungement?

Waiting period

After a criminal record is created, you must wait a certain amount of time to file a petition for expungement. The length of the waiting period depends on the type of offense and record involved:

- **For an arrest record:** You can petition for expungement 3 years from the date of the arrest.
- **For a misdemeanor, municipal violation, infraction, or minor offense:** You can petition for expungement 1 year after the date you completed your sentence for that offense.
- **For a felony:** You can petition for expungement 3 years after the date you completed your sentence.
- **For a 1st time DWI:** You can file a petition 10 years after the date of arrest, and only if there aren't any further alcohol-related incidents.

Other eligibility requirements

To qualify for expungement, you must also meet these requirements:

- No additional misdemeanors or felonies
- No pending charges
- Completed your probation or parole
- Paid any fines
- Not be a threat to public safe
- And in the “interests of justice”. This means that the court must determine that clearing the record is the right decision based on the evidence they have.

Chapter 18: Expunging criminal records

What is the expungement process?

The expungement process has 3 main steps:

1. A petition for expungement is filed and served
2. The objection period
3. The expungement hearing

If someone wants to go through the expungement process, it is a good idea to hire a lawyer.

1. Filing and serving a petition for expungement

To start the process, you must:

1. Fill out a Petition for Expungement form. You can find expungement forms here: www.courts.mo.gov/page.jsp?id=191585
2. File the form with the court in the jurisdiction where the record is located
3. Pay the filing fee

If you cannot afford to pay the filing fee, you may ask the court to waive it by filing a Motion and Affidavit in Support of Request to Proceed as a Poor Person. You can find this online at www.courts.mo.gov/hosted/probono/AppFormaPauperis.htm

Naming all defendants

The petition for expungement must name all people or agencies (defendants) who may have records related to the offense, including all:

- Law enforcement agencies
- Courts
- Prosecuting or circuit attorneys
- Municipal prosecuting attorneys
- Central state repositories of criminal records

If an agency or court isn't named on the petition, it may not be able to expunge the records of the offense

Combining related offenses

If there are multiple offenses charged at the same time or that involve the same facts and/or circumstances, you can include them in the same petition. It will then only count as a petition for one offense.

Chapter 18: Expunging criminal records

2. Objection Period

After your petition for expungement is filed, it will be served on the people and agencies you listed as defendants. Each defendant will be notified of the petition for expungement and will have 30 days to file any objection.

3. The expungement hearing

The court will hold a hearing to determine if your petition for expungement should be approved.

- If an objection is filed, the court must hold a hearing within 60 days of the objection filing unless the parties agree otherwise.
- If no objection is filed within 30 days after service, the court may hold a hearing at any reasonable time after giving the parties advance notice.

During the hearing

- The court may hear evidence or testimony about the offense or violation listed in the petition
- Victims of the offense or violation must have a chance to speak at the hearing
- The court may make a decision based only on the victim's testimony

After the hearing

If the petition is approved, the court will make an expungement order. This means:

- The defendants listed in the petition must close (not destroy) the records
- The defendants must remove the records from “easy access” – this means court clerks, administrative agencies, law enforcement agencies, and others “without good cause” will not be able to access the expunged records without a court order.

If the petition is denied, you may re-file the petition in a year or appeal the decision in court. Seek legal counsel to find out what your next steps may be.

Chapter 19:

Adult Abuse Law

Learn about the Missouri Adult Abuse Law: What kind of protection it offers, who can get protection, how to get protection, and how long protection can last.

Chapter topics:

- What is the Missouri Adult Abuse Law?
- How can someone get protection from the Missouri Adult Abuse Law?
- How do I learn more about the Missouri Adult Abuse Law?

Author: Robert Boedeker, Attorney and Co-Manager, Lasting Solutions Program at Legal Services of Eastern Missouri.

Chapter 19: Adult Abuse Law

What is the Missouri Adult Abuse Law?

The Missouri Adult Abuse Law applies to anyone age 17 or older who needs a restraining order to keep them safe from physical harm. A restraining order is a temporary court order that can prohibit an individual from carrying out a particular action, especially approaching or contacting a certain person.

This law protects against 3 types of danger:

1. Domestic violence - Applies to any person who was abused or threatened with abuse by:

- A spouse
- A former spouse
- A person related by blood or marriage
- People living together or who have lived together
- A current or former intimate partner
- Anyone they share a child with

It is designed to stop these things and threats of these things:

- Assault – a physical attack
- Battery – an unlawful beating, or other wrongful physical violence against a human being without their consent
- Coercion - the use of bribes, threats of force, or intimidation to gain cooperation or compliance
- Harassment - repeated conduct that is not wanted and offensive
- Sexual assault - sexual contact or behavior without explicit (clear) consent from the victim
- False imprisonment - when a person (who does not have legal authority or justification) intentionally restrains another person's ability to move freely
- Abuse of a pet

Chapter 19: Adult Abuse Law

2. Stalking, which uses a narrower definition of 'stalking' than most people use. The behavior must:

- Happen more than once, AND
- Have no legitimate purpose, AND
- Be unwanted or uninvited, AND
- Cause the victim or any reasonable person in their place to fear physical harm

It can include online communication or activities, and can be done directly, indirectly, or through a third party.

3. Sexual assault, defined as any involuntary (not by choice) sexual act done:

- By force, OR
- By threat of force, OR
- By duress (forcible restraint or restriction), OR
- Without the consent of the person assaulted

It also includes attempted acts, and there is no requirement that the perpetrator (offender) know or have a relationship with the person assaulted.

Chapter 19: Adult Abuse Law

How can someone get protection from the Missouri Adult Abuse Law?

There are 2 steps to get protection from the Missouri Adult Abuse Law:

1. File a complaint (petition) for an order of protection in court
2. Present your case at a hearing

File a complaint (petition)

Here is how it works:

1. The petitioner may file a complaint in court
2. If good cause is shown, the judge can immediately give an “ex parte” temporary order of protection a few hours later based on their story alone
3. The temporary court order must be delivered (served) to the accused abuser
4. This order lasts until a full court hearing to hear both sides of the story and decide if a full order of protection is warranted, which takes about 2 weeks

Note: If filing a complaint outside of business hours, your local court may have a special way to apply for an order of protection at a police station or other approved location.

An “ex parte” order is a temporary emergency court order that protects the petitioner from an abusive person. These orders can prevent the abusive person from:

- Being around or contacting the petitioner
- Entering the petitioner’s home or workplace
- Further abusing, threatening, or molesting the petitioner
- Disturbing the petitioner’s peace

Chapter 19: Adult Abuse Law

Present your case at a hearing

After filing the petition, the court will schedule a hearing date and time.

Before the hearing, you should gather as much evidence and documentation about the events in your application for the order of protection, such as:

- Police records
- Pictures
- Phone records
- Emails
- Witnesses who can testify about the events

During the hearing, both you (the petitioner) and the accused abuser (the respondent) will tell your side of the story and present evidence to the judge

The judge will then make a decision after hearing both sides.

Judge may grant a full order of protection

If the judge agrees that an order of protection is necessary, they will grant a full order of protection. A full order of protection can last between:

- 6 months to 1 year
- 2 to 10 years in more serious cases if the judge believes the abuser is a serious danger to the petitioner or minor children in their household

The respondent (abuser) must comply with the order or be arrested. Full orders may include other conditions, such as:

- Custody and visitation of children
- Rental or mortgage payments
- Child and spousal support
- Medical bills
- Firearm restrictions
- Attorney fees
- Requirements for counseling or treatment
- Possession of pets, residences, cars, and other personal property

Renewing an order of protection

All orders are renewable at the end of their period, and some renewed orders can be extended for another 2 years or longer. In some cases, an order can be renewed for the rest of the respondent's (abuser's) life.

How do I learn more about the Missouri Adult Abuse Law?

If you need protection under the Missouri Adult Abuse Law, contact your county circuit court clerk. If you do not have a lawyer, the clerks of the court are required to give guidance in filing the petition. You may also want to contact a lawyer to help you.

Chapter 20

Social Security survivors benefits

Chapter topics:

- What are Social Security survivors benefits?
- Who is eligible to get survivors benefits?
- How do I apply for survivor benefits?

Author: Pinky Hunter, Public Benefits Specialist at Legal Services of Eastern Missouri and Kate Holley, attorney Program Director for Public Benefits at Legal Services of Eastern Missouri.

Chapter 20: Social Security survivors benefits

What are Social Security survivors benefits?

Money that certain eligible family members, including widows, widowers, and dependents, may get after someone dies.

Who is eligible for their family to get survivors benefits?

If someone dies and they are working, or have worked, and paid into Social Security, their spouse, children, and parents may get survivors benefits (money) based on the deceased worker's earnings. The person who died must have worked long enough to qualify for benefits.

Who is eligible to get survivors benefits?

One-time payment

A spouse that lived with the person who died (worker) or their child, may be eligible for a **one-time payment** of \$255.00 (amount adjusted each year) to help with final expenses (funeral, etc.).

Monthly benefits

Certain family members of the person who died (worker) may be eligible for **monthly benefits**:

- A widow or widower age 60 or older (age 50 or older if disabled)
- A widow or widower of any age caring for the worker's child who is under age 16 or disabled
- An unmarried child of the worker who is either:
 - » Younger than age 18
 - » Over age 18 with a disability that began before age 22
- A stepchild, grandchild, step grandchild, or adopted child under certain circumstances
- Parents of the worker, age 62 or older, who are dependent on the worker for at least half of their financial support
- Surviving divorced spouse under certain circumstances

Chapter 20: Social Security survivors benefits

Beware of fraud:

Social Security will **not** contact you to start an application. If someone calls you to start an application, **do not provide personal information over the phone.**

How your family qualifies for Social Security survivors benefits:

You qualify for your family to get Social Security survivors benefits by earning Social Security credits when you work and pay Social Security taxes. Because every person's situation is different, a survivor's family should contact Social Security to discuss their choices.

Prepare this information about yourself before you apply for survivors benefits

Social Security will **not** contact you to start an application. If someone calls you to start an application, **do not provide personal information over the phone.**

Your basic information

- Your name and Social Security number (and your name at birth if different)
- Your date of birth and place of birth (State or foreign country)
- Your citizenship status

How to apply for survivor benefits

To apply for survivor benefits after someone dies, you can:

- Call toll-free at 1-800-772-1213, or 1-800-325-0778 (TTY) if you are deaf or hard of hearing (7 a.m. - 7 p.m. weekdays)

- Visit your local Social Security office in person

Right now, you cannot apply online. But Social Security adds on-line services regularly, so you may review available on-line services at www.socialsecurity.gov.

Chapter 20: Social Security survivors benefits

Prepare this information about yourself before you apply for survivors benefits

Answers to these questions about your basic information

- Was there a public or religious record made of your birth before age 5 (birth certificate)?
- Have you used any other Social Security number?
- Were you living with the worker at the time of their death?
- What are the dates and locations of your marriages? For marriages that have ended, how, when, and where did they end?
- If you have former spouses, what are their:
 - » Names
 - » Dates of birth (or age)
 - » Social Security numbers (if known)

Answers to these questions about your work and earnings

- Did you ever work for the railroad industry?
- What is the amount of your earnings for this year, last year, and next year?
- Within the past 14 months, did you become unable to work because of illnesses, injuries, or other conditions? If “yes” what date did you become unable to work?

Answers to these questions about benefits

- Have you or anyone else ever filed on your behalf for:
 - » Social Security benefits
 - » Medicare
 - » Supplemental Security Income (SSI)If “yes,” on whose Social Security record did you or anyone else apply?
- Have you ever earned social security credits under another country’s social security system?
- Were you ever in the active military service before 1968? If “yes” what were your dates of service and did you receive or are you eligible to receive a pension from a military or Federal civilian agency?
- Have you qualified for or do you expect to get a pension or annuity based on your own employment with the Federal government of the United States or one of its States or local subdivisions?
- What month do you want your benefits to begin? If you are within 3 months of age 65, do you want to enroll in Medical Insurance (Part B of Medicare)?

While it’s helpful to gather as much information as possible before you apply, do not delay the application because you can’t answer any of these questions.

Chapter 20: Social Security survivors benefits

Prepare this information about the person who died (worker) before you apply for survivors benefits

Social Security will **not** contact you to start an application. If someone calls you to start an application, **do not provide personal information over the phone.**

Answers to these questions about the worker's basic information

- What is the worker's:
 - » Name
 - » Sex at birth
 - » Social security number
 - » Date of birth
 - » Date of death
 - » Place of death
- Where was the State or foreign country of the worker's fixed permanent residence at the time of death?
- What were the dates and locations of the worker's marriages? For marriages that have ended, how, when, and where they ended.
- If the worker has former spouses, what are their:
 - » Names
 - » Dates of birth (or age)
 - » Social Security numbers (if known)
- Did the worker have a parent who was dependent on them for $\frac{1}{2}$ of their financial support at the time of the worker's death or at the time the worker became disabled?

Answers to these questions about the worker's work and earnings

- Did the worker ever work for the railroad industry?
- What was the amount of the worker's earnings in the year of their death and the year before their death?
- Did the worker have earnings in all years since 1978?
- During the 14 months before the worker's death, were they unable to work because of illnesses, injuries, or conditions at any time? If "yes", what date did they become unable to work?

Answers to these questions about benefits

- Did the worker ever file for:
 - » Social Security benefits
 - » Medicare
 - » Supplemental Security IncomeIf "yes," on whose Social Security record did they apply?
- Had the worker ever earned social security credits under another country's social security system?
- Was the worker ever in the active military service before 1968? If "yes" what were their dates of service? Did they receive or were they eligible to receive a pension from a military or Federal civilian agency?

Chapter 20: Social Security survivors benefits

Prepare this information about yourself before you apply for survivors benefits

Prepare these documents

- The worker's Death certificate (proof of the worker's death)
- The worker's Birth certificate (or other proof of birth)
- Proof of your U.S. citizenship or lawful alien status if you were not born in the United States
- U.S. military discharge papers, if you had military service before 1968
- Your final divorce decree, if you're applying as a surviving divorced spouse
- Marriage certificate (you must prove that you were married to the deceased worker when they died, or were married and divorced)
- Birth certificate of any child seeking survivor benefits
- Adoption decree, or other legal documents, showing the worker had care or custody of the person seeking survivors benefits

Learn more about survivors benefits

- [Visit www.ssa.gov/benefits/survivors](http://www.ssa.gov/benefits/survivors)
- Call 1-800-772-1213 1-800-325-0778 (TTY) if you are deaf or hard of hearing

Chapter 21

Reverse Mortgages

Chapter topics:

- What is a reverse mortgage?
- Why might I consider a reverse mortgage?
- How does a reverse mortgage work?
- What are the requirements for a HECM loan?
- How do I learn more about reverse mortgages?

Author: Buz Zeman, Executive Director of Housing Options Provided for the Elderly (HOPE)

Chapter 21: Reverse Mortgages

What is a reverse mortgage?

A reverse mortgage is a type of loan for homeowners ages 62 and older. It is a way to borrow money based on your home's equity. Home equity is the amount of your home that you actually own – it's the difference between what your home is worth and what you owe your lender. As you make payments on your mortgage, you reduce your principal (the balance of your loan), and you build equity. For example, say your house is worth \$100,000 and you have \$20,000 left to pay on your mortgage. Your home equity is \$80,000.

Here is the difference between a regular and a reverse mortgage:

| Regular Mortgage | Reverse Mortgage |
|--|--|
| With a regular mortgage, you usually buy your home and make monthly payments to gradually pay off the loan over many years | With a reverse mortgage, you are borrowing money based on the equity in your home, and the lender makes payments to you, which you must pay back |

Chapter 21: Reverse Mortgages

Types of reverse mortgages

The most common reverse mortgage is called the Home Equity Reverse Mortgage (HECM). HECM loans are:

- Through a Federal Housing Administration (FHA)-approved lender
- Insured by the federal government through the U.S. Department of Housing and Urban Development (HUD)

Much less common reverse mortgages are those sold by private companies.

These are generally used when:

- The home is valued over \$1,000,000, OR
- A HECM loan does not work

Properties eligible for a HECM

Eligible properties may include:

- Single family homes
- Multi-family homes with up to 4 units (Borrower must live in one of the units)
- Condominiums that meet FHA requirements
- Manufactured homes that meet FHA requirements (Built after 1978)

There are a few important facts to know about private reverse mortgage loans.

Private loans are not insured, which means:

- Less money is loaned as a percentage of the home value
- You could potentially get less money with a private loan than with an HECM loan
- It is possible you could end up owing more than what your home may sell for

Private loans are less likely to be regulated and have an increased risk of being scams. You should be very careful when considering a private reverse mortgage loan. Review the terms and conditions of the contract carefully for predatory or unfair loan terms.

Since HECM's are the most common type of reverse mortgage, we will be focusing on HECM loans for the rest of this article.

Why might I consider a reverse mortgage?

A reverse mortgage may be an ideal option for older adults who may be looking to supplement their income or may not have heirs to inherit the home. A reverse mortgage will allow you to convert your home's equity into cash that can be used to cover living expenses.

Chapter 21: Reverse Mortgages

How does a reverse mortgage work?

How much money can I borrow from a HECM?

The amount of money you can get from a HECM depends on a few things:

- Value of your house – the current market value of your house will help determine the amount of the loan
- Your age – the older you are, the more money you can borrow
- Interest rates – the lower the current interest rates, the more money you can get

For example, you have a home that is worth \$100,000. At age 62, with today's (2023) interest rates, you could borrow 40% of your home's value, or \$40,000, with a HECM reverse mortgage.

What if my regular mortgage isn't paid off?

When you get a HECM loan, the money will first be used to pay off your regular mortgage.

For example, let's say you still owe \$10,000 on your existing mortgage. Following the previous example, you may get a reverse mortgage for \$40,000. You can use this to pay off the remaining \$10,000 on your regular mortgage. This gives you \$30,000 left over to use as you wish.

If you are thinking about getting a reverse mortgage, it is helpful to have most or all of your original mortgage already paid off. The less remaining mortgage you have to pay off, the more cash you can get from the loan.

When do I pay off an HECM loan?

The HECM loan does not need to be paid back until you (the borrower) move out of the home – no matter how long that is. This may be after you sell the home or pass away.

You can pay off the loan, or a part of it, any time. There are no penalties for paying off the loan early.

What do I have to pay back?

Once you move out, you or your heirs must pay:

- The amount borrowed
- Closing costs
- Insurance fees
- Interest

Settling the debt at the end of the loan

Borrowers must settle the debt at the end of the loan once the last borrower has moved out or passed away. You or your heirs have a few options:

- If the debt is less than the value of the home, sell the home, use the sale to pay off the loan, and keep the difference, OR
- Heirs can buy the home for the remaining balance on the loan, OR
- Heirs can buy the home for 95% of its current market value, OR
- If the debt is more than the value of the home, sign the house's deed over to the lender and not owe anything

Chapter 21: Reverse Mortgages

What are the requirements for a HECM loan?

Borrower requirements:

- You must be age 62 or older
- Have paid off your mortgage, or a large part of it
- Live in the property as your private residence

You must also:

- **Attend a counseling session** by a HUD-approved HECM counselor, usually by phone. The counseling session will review:
 - » The pros and cons of a reverse mortgage
 - » Different payment options
 - » How to select and negotiate with a lender

Housing Options Provided for the Elderly (HOPE) is one reverse mortgage counseling agency: 314-776-0155.

- **Buy HECM insurance** – insurance guarantees you will never owe more than what your home may sell for (a non-recourse loan) and that the lender will get back the loan amount and any debt. If your home sells for less than what you owe on the HECM loan, the insurance will pay the difference.
- **Pay** property taxes, homeowners' insurance, and any Homeowner Association fees
- **Maintain** your home

Failure to do so could result in foreclosure on the HECM loan.

How do I learn more about reverse mortgages?

You can learn more about reverse mortgages at:

www.consumerfinance.gov/consumer-tools/reverse-mortgages/

Chapter 22

Unemployment insurance benefits

Learn about unemployment insurance (UI) benefit programs for Missouri residents.

Chapter topics:

- What are UI benefits?
- How do I apply for UI benefits?
- How do I know if I'm eligible for UI benefits?
- When can I get UI benefits and how much should I expect?
- What can I do if I am denied UI benefits?

Author: Latasha Barnes, Attorney at Law, and Nyree Bradley, Law Clerk with the Senior Law Program at Legal Services of Eastern Missouri.

Chapter 22: Unemployment insurance benefits

What are unemployment insurance (UI) benefits?

Unemployment insurance (UI) benefits give temporary cash assistance to workers who have:

- Lost or quit their job
- Had their hours lowered by their employer
- Left their employer to relocate with a spouse that is on active or reserve military duty

Eligible workers may get full or partial UI benefits for up to 20 weeks during a benefit year (a 1 year period after filing a UI claim).

The UI program is a joint state-federal program, and the Division of Employment Security (DES) runs Missouri's UI program.

How are these benefits funded?

All benefits are funded through taxes paid by employers to the Missouri Unemployment Compensation Fund. No deductions are made from employees' paychecks. DES collects the taxes from employers and pays UI benefits to eligible workers.

However, you are only eligible if your employer contributes. Not all Missouri employers are required to contribute, so some Missouri workers are uninsured and ineligible to get UI benefits.

How do I apply for UI benefits?

To apply, you must file a claim. First you will create an account on Missouri's Online Unemployment System, Uinteract. Here are instructions for how to create an account and file a claim.

To file a claim, you will need:

- Your Social Security Number
- Gross earnings for the week you

file your claim including vacation, holiday, or Worker Adjustment and Retraining Notification (WARN) pay. *Gross earnings, or gross wages, are what employees earn before taxes, benefits, and other payroll deductions are withheld from their wages.*

- Name, address, and dates of employment for each of your employers over the last 18 months
- Banking information: Routing and account number (optional)

When should I file a claim for UI benefits?

File your UI benefits claim as soon as you are separated from your employer. For questions or help, call a Regional Claims Center representative:

- Jefferson City 573-751-9040
- Kansas City 816-889-3101
- St. Louis 314-340-4950
- Springfield 417-895-6851
- Outside local calling area 800-320-2519

Chapter 22: Unemployment insurance benefits

How do I know if I'm eligible for UI benefits?

There are different UI benefit programs that have their own eligibility requirements:

- Regular UI benefit program
- Military Unemployment Benefits for trailing spouses
- Disaster Unemployment Assistance
- Federal UI programs

Regular UI benefit program

In Missouri, to be eligible for regular UI benefits, you must meet all of these requirements:

- Lost your job through no fault of your own, or quit for good cause related to the work or the employer. In general, “good cause” includes:
 - » Medical illness
 - » Disability
 - » Other serious reason that may prevent someone from working
- Base period requirements: (A base period is the first 4 of the last 5 completed calendar quarters before you filed your claim, which is 12 months out of a 15-month period)
 - » You must have made at least \$2,250 from an insured employer during your base period – at least \$1,500 during one of the calendar quarters, and at least \$750 during the remainder of the base period
 - » Your total base period wages must be:
 - * At least 1.5 times higher than your highest quarter wages during the application base period, OR
 - * You must make at least 1.5 times more than the Taxable Wage Base during 2 of the 4 base period quarters (The taxable wage base is the maximum amount of an employee's gross wages that can be taxed in a calendar year)

Chapter 22: Unemployment insurance benefits

How to determine your base period

Your base period is the first 4 of the last 5 completed calendar quarters before you filed your claim, which is 12 months out of a 15-month period. A claim week starts on Sunday and ends on Saturday.

| If you file a claim on a Sunday between: | Your base period is these prior 12 months (or 4 quarters): |
|---|---|
| January 1 – March 31 | October 1 – September 30 |
| April 1 – June 30 | January 1 – December 31 |
| July 1 – September 30 | April 1 – March 31 |
| October 1 – December 31 | July 1 – June 30 |

The wages paid during this period are used to compute your:

- Maximum benefit amount (MBA), which is the maximum amount of benefits you may get during a benefit year (or the length of your eligibility), AND
- Weekly benefit amount (WBA), which is the amount you get for one week of unemployment

Chapter 22: Unemployment insurance benefits

Taxable Wage Base

The taxable wage base is the maximum amount of an employee's gross wages that can be taxed in a calendar year. The taxable wage base can be raised by \$1,000 or lowered by \$500 for any year. The state taxable wage base cannot go above \$13,000 or below \$7,000. See Section 288.036(2) RSMo.

| Calendar year | Taxable wage base |
|---------------|-------------------|
| 2022 | \$11,000 |
| 2021 | \$11,000 |
| 2020 | \$11,500 |
| 2019 | \$12,000 |
| 2018 | \$12,500 |

Military Unemployment Benefits for trailing spouses

Missouri law allows spouses of active or reserve military personnel to be eligible for UI benefits if leaving their job to relocate with their spouse.

To be eligible for these benefits, you must:

- Be separating from your employer to relocate to a new residence with a spouse on active or reserve duty
- Be a Missouri resident
- Remain employed as long as you can, within reason, before relocating (the Division of Employment Security (DES) reviews if a person made their best effort to stay employed)

You do not need to notify your employer in advance.

If you are a federal employee and your military spouse is transferred out of the country, you must file your initial claim for UI benefits before you leave the U.S.

You are not eligible for benefits if your military spouse completed their service and is moving to find employment elsewhere.

Chapter 22: Unemployment insurance benefits

Disaster Unemployment Assistance

The Disaster Unemployment Assistance (DUA) program gives temporary benefits to people whose employment or self-employment has been lost or interrupted as a direct result of a major disaster and who are not eligible for regular UI benefits.

A major disaster means any disaster that results in a Presidential declaration of a disaster, such as:

- A natural disaster, such as a tornado, earthquake, snowstorm, flood, drought
- Other types of disasters, such as an explosion or natural gas leak

To be eligible for DUA benefits, 1 of these conditions of unemployment must have happened as a direct result of the disaster:

- You had a week of unemployment after the date the major disaster began
- You are unable to reach your place of employment (physically or remotely - this will vary based on the type of work)
- You were scheduled to start work and the job no longer exists, or you were unable to reach your job (physically or remotely)
- You became the primary financial support in your home because the head of household died as a direct result of the disaster
- You cannot work because of an injury caused as a direct result of the disaster

If you meet 1 of the qualifying conditions above, you must also meet all of these eligibility requirements:

- You are not eligible for regular UI benefits
- You are unemployed as a direct result of the disaster
- You are able and available for work, unless injured as a direct result of the disaster
- You filed an application for DUA benefits within 30 days of the date of the public announcement of the availability of DUA funds

Chapter 22: Unemployment insurance benefits

Federal UI programs

In response to the COVID pandemic, U.S. legislators expanded eligibility requirements for benefits by creating federal programs under the CARES Act. Examples are the Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) programs. However, these expired on December 26, 2020. For these programs to continue, new legislation must be passed by Congress and signed by the President.

You may be ineligible for UI benefits under these federal programs if you:

- Have been discharged for misconduct connected with work
- Quit for reasons that are not your employer's fault
- Refused a suitable work offer (as determined by DES)
- Are not able or available to work (as determined by DES)

How much should I expect to get?

Eligible workers may get full or partial UI benefits for up to 20 weeks during a benefit year.

Your weekly benefit amount is 4% of the average of your 2 highest quarters during the base period. Your maximum monthly benefit amount is 20 times the weekly benefit amount, or 1/3 of your total base period wages.

The maximum weekly UI benefit amount in Missouri is \$320. UI benefits are subject to federal and state income taxes.

To get an estimated benefit amount for you, use the Unemployment Benefit Calculator.

When can I get UI benefits?

Getting your benefits

If eligible, you will start getting your UI benefits within 22 days of filing your claim. You can get your UI benefits:

- By direct deposit to your bank account, OR
- As a prepaid debit card by mail after you have filed your claim and it has been established (approved)

You must file a request for payment by the end of each week (Saturday), even if you are not getting benefits yet. You will not get UI benefits for any week that you did not request payment on time.

Note: For anyone paying child support, The Division of Child Support Enforcement can take up to 50% of your weekly benefits if you are delinquent (behind) on your child support payments.

Chapter 22: Unemployment insurance benefits

Filing an appeal

You and your past employers have a right to appeal:

- If the DES decides you're ineligible, OR
- If you're disqualified, OR
- If you want to appeal the amount of UI benefits you're awarded

The appeal must be within 30 days of getting a "Notice of Deputy's Determination." If you do not file your appeal within the time limit, you may lose your right to an appeal. In general, only situations beyond your control are considered a "good cause" for filing late.

Request an appeal hearing

A copy of the Claimant Request for Appeal of Unemployment Insurance Determination can be found at <https://labor.mo.gov/media/pdf/4607-ai> . To request an appeal, send a statement to DES that includes:

- Reason why you're appealing
- Name and contact information
- Claim number or SSN
- Your signature

You can submit your statement:

- Online: Uinteract account
- By fax: 573-751-1321
- By Mail: Division of Employment Security Appeals Tribunal, P.O. Box 59, Jefferson City, MO 65104-0059

You must continue to file weekly requests for payment during the appeal process, or you cannot be paid even if the decision is in your favor.

Chapter 22: Unemployment insurance benefits

The appeal hearing process

The appeal process includes a hearing with an Appeals Tribunal in which both parties (you and your past employer) have a chance to argue their case and present their evidence. An Appeals Tribunal is when a person (called a referee) is appointed to conduct hearings on UI determinations, such as an attorney who holds hearings, examines witnesses, and makes recommendations to a judge.

Most appeal hearings are over the phone, but each party has a right to request an in-person hearing.

It's important to participate in the hearing:

- If you file an appeal and don't join in the hearing, the hearing will be canceled, and the outcome will stay the same
- If your past employer files an appeal, and you do not join in the hearing, the hearing will be based on evidence from the employer. Without your testimony and evidence, the employer may win the appeal. If they do, you will have to pay back any benefits you got.

Here is how the hearing process works:

1. A referee will take evidence and sworn testimony about the issue under consideration
2. After the hearing, the referee will issue a written decision, which contains their findings of fact, conclusions of law, and decision
3. The losing party or DES has 30 days to appeal the referee's decision to the Labor and Industrial Relations Commission
4. The Commission will decide based on a review of the entire record. In most cases, you will not be required to join a second hearing. The Commission may take any of these actions to the referee's decision:
 - a. Affirm
 - b. Remand (send back to the referee for more information or to fix problems in the record)
 - c. Reverse
 - d. Or modify the referee's decision
5. The losing party or DES has 30 days to appeal the Commission's decision to the appropriate court of appeals (the part of the judicial system responsible for hearing and reviewing appeals from legal cases that have already been heard in a trial-level or other lower court)

Chapter 22: Unemployment insurance benefits

How to prepare for an appeal hearing

At the appeal hearing:

- You have a right to have a lawyer (legal representation) with you
- You will have a chance to present evidence and witnesses, so it helps to gather all the information you plan to present, which may include:
 - » Any documents that help explain your separation from your employer
 - » W-2 statements and tax returns
 - » Paystubs
 - » Bank statements

How do I learn more about UI benefits?

To learn more about UI benefits, visit the Missouri Department of Labor and Industrial Relations website: <https://labor.mo.gov/unemployed-workers>

You can also email the Regional Claims Center at esuicclaims@labor.mo.gov

Or call your Regional Claims Center:

- Jefferson City: 573-751-9040
- Kansas City: 816-889-3101
- St. Louis: 314-340-4950
- Springfield: 417-895-6851
- If you're outside your local calling area: 800-320-251

Chapter 23

Housing discrimination

This chapter discusses your housing rights and what to do if you have been discriminated against in housing.

Chapter topics:

- What laws protect against housing discrimination?
- What are all the protected classes in housing discrimination?
- Who must follow housing discrimination laws?
- What actions are discriminatory in housing?
- Disabilities and housing
- What does having an “accessible apartment” mean?
- How do I file a housing discrimination complaint?
- Where can I find more information and help?

Author: Kennedy S. Moehrs Gardner, former Staff Attorney at the Metropolitan St. Louis Equal Housing & Opportunity Council (EHOC).

Chapter 23: Housing discrimination

What laws protect against housing discrimination?

It's important to know that housing discrimination is illegal. Discrimination is the unjust or unfair treatment of different groups of people, based on specific characteristics such as race, gender, age, sex, or disability.

The Fair Housing Act (FHA)

The FHA is a federal law passed in 1968 to protect individuals from discrimination in housing based on numerous protected classes.

Protected classes include:

- Race
- Color
- National origin
- Religion
- Sex
- Familial status (having children under 18 in the household or being pregnant)
- Disability

The FHA also protects people who live with or are related to someone with a disability who are buying or renting housing. Recently, the FHA's protections were extended by Executive Order to prohibit discrimination in housing based on sexual orientation and gender identity, but that change has not been incorporated into the FHA's text.

To learn more about the FHA and what it covers, visit: www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview

The Missouri Human Rights Act (MHRA)

The MHRA is a law that also protects people in Missouri who are being discriminated against in housing. However, its protections have been limited by recent changes. To learn more about the MHRA and what it covers, visit: labor.mo.gov/mohumanrights/discrimination

The Illinois Human Rights Act (IHRA)

The IHRA is a law that adds more protections for people living in Illinois. To learn more about the IHRA and what it covers, visit: dhr.illinois.gov

The Consumer Credit Protection Act (CCPA)

The Consumer Credit Protection Act protects you from unfair credit and lending practices. To learn more about the CCPA and what it covers, visit <https://www.consumerfinance.gov/>

Chapter 23: Housing discrimination

What are all the protected classes in housing discrimination?

Protected classes are groups of people that are protected by anti-discrimination laws.

Protected classes

| Fair Housing Act (FHA) protected classes | Additional class in Missouri | Additional classes in Illinois | Additional classes in St. Louis City |
|---|--|--|---|
| <ul style="list-style-type: none">• Race• Sex• National Origin• Color• Disability• Familial Status (pregnant women and families with children under age 18)• Religion | <ul style="list-style-type: none">• Ancestry | <ul style="list-style-type: none">• Marital status• Age (40 and over)• Ancestry• Sexual orientation• Gender identity• Domestic violence status• Source of income• Military status• Unfavorable discharge from military | <ul style="list-style-type: none">• Gender identity• Gender expression• Sexual orientation• Source of income |

Currently, age is not a protected class under the FHA or the MHRA.

Chapter 23: Housing discrimination

Who must follow housing discrimination laws?

The FHA and MHRA apply to most:

- Landlords
- Property owners
- Managers
- Developers
- Real estate agents
- Mortgage lenders
- Homeowners' associations
- Insurance providers

There are some exceptions when the FHA and MHRA do not apply, such as:

- Owner-occupied dwellings with 4 units or less
- Single family homes sold or rented without a real estate agent or broker
- Housing owned by religious organizations
- Private clubs that limit the occupancy of their members

However, FHA and MHRA might apply if any kind of discriminatory housing practices are used.



Chapter 23: Housing discrimination

What actions are discriminatory in housing?

It is discrimination (or considered illegal) for someone to do the following actions because of a person's inclusion in a protected class:

| Topic | Example of discriminatory acts |
|-------------------|---|
| Buying or renting | <ul style="list-style-type: none">• Refusing to rent, sell, or negotiate housing, or making housing unavailable• Discouraging someone from inspecting, purchasing, or renting• Falsely denying that housing is available for inspection, sale, or rental• Limiting choices of housing available• Steering someone to a certain area of a building or neighborhood• Setting different prices, charges, terms, conditions, or privileges• Using different applications, criteria, or procedures• Advertising housing by showing a bias for or against members of a protected class |
| Selling | <ul style="list-style-type: none">• Persuading someone to sell their home because a protected class is moving into the building or neighborhood |
| Services | <ul style="list-style-type: none">• Providing different housing services or facilities• Denying or not doing maintenance or repairs because of the individual's inclusion in a protected class• Refusing to provide homeowners insurance• Discriminating in the terms of homeowners insurance |
| Accommodations | <ul style="list-style-type: none">• Refusing to make reasonable accommodations/modifications in rules, policies, or practices for someone with a disability• Discriminating against someone with a disability in housing funded by the federal government |

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| Topic | Example of discriminatory acts |
|------------------------------------|---|
| Mortgages | <ul style="list-style-type: none">• Refusing to give someone financial assistance or a loan based on their protected class• Refusing to give someone information about loans based on their protected class• Putting different terms or conditions on loans• Discriminating in housing appraisals• Refusing to purchase loans• Denying someone a mortgage because of their age• Denying someone a mortgage because they get income from a public assistance program• Discriminating against someone for using any of their rights under the Consumer Credit Protection Act |
| Land Use and Zoning | <ul style="list-style-type: none">• Using ordinances or policies to make housing unavailable |
| Harassment | <ul style="list-style-type: none">• Harassing someone based on their protected class |
| Reporting an act of discrimination | <ul style="list-style-type: none">• Threatening, coercing, intimidating, or interfering with someone exercising a fair housing right or with someone helping another person exercise this right• Retaliating (getting revenge) against someone who files a fair housing complaint or helps someone file a complaint. If you file a complaint, the laws that protect you from being threatened, coerced, intimidated, interfered with, or retaliated against are there to protect you from further harm. |

Chapter 23: Housing discrimination

Disabilities and housing

How does the FHA define disability?

Under the FHA, disability status means someone with a physical or mental impairment that substantially limits 1 or more major life activities.

For example:

- Multiple Sclerosis
- Cancer
- Arthritis
- Post-Traumatic Stress Disorder
- Dementia
- Bipolar Disorder
- And many more

If you have a disability and you live in government subsidized housing, you may have additional protections available to you.

Reasonable accommodations

A reasonable accommodation is a change to a housing rule, policy, practice, or service that allows a person with a disability an equal opportunity to use and enjoy a dwelling. This includes public and common use spaces.

Common examples of reasonable accommodations are:

- Getting an accessible parking space close to the building for someone with mobility issues
- Letting someone move to a ground floor unit that is more accessible
- Making an exception to a “no pets” rule for someone with a support animal
- Changing the date rent is due to accommodate someone’s benefits payment

You can make an accommodation request at any time. To do so:

- You must show that the accommodation is necessary for you to use or enjoy the dwelling.
- The request must be reasonable, meaning it can’t cause:
 - » An undue financial or administrative burden to the housing provider, such as installing an elevator in a 4-unit apartment building
 - » A fundamental change in the way a housing provider operates, such as asking a housing provider to bypass all application requirements and fees to allow you to move in.

Chapter 23: Housing discrimination

How are accommodations protected under the FHA?

Under the FHA, it is illegal for housing providers to:

- Refuse to make reasonable accommodations in rules, policies, practices, or services when they may be necessary for you to use and enjoy your home.
- Make you pay extra deposits or fees to get an accommodation.

Assistance animals

Under the FHA, there are 2 types of assistance animals—service dogs and support animals.

Service dogs

- A service dog is a dog that is trained to do work or tasks to help someone with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability
- These tasks must be directly related to the person's disability
- If the dog is trained to do at least 1 task to help, other than emotional support, the dog is considered a service animal and should be

allowed in housing

- Only dogs can qualify as service animals under the FHA

Support animals (or other assistance animals)

- A support animal performs tasks, gives assistance, or gives emotional support to someone with a physical or mental impairment.
- A support animal is not specifically trained like a service dog is.
- Support animals can be animals other than dogs, such as a cat, bird, or hamster.
- Your housing provider may ask questions if you request a reasonable accommodation for an assistance animal. You can see the questions they may ask in the FHEO-2020-01 notice linked below.

If you are making an accommodation request for an assistance animal, send a note from your doctor about how you need the animal for a disability. Some websites offer registrations or certificates to license support animals – but these licenses are **not** recognized by

the FHA. A doctor's note is much more reliable and is supported by the FHA.

More information about accommodations

For more information on requesting reasonable accommodations in housing:

- Visit HUD's page about reasonable accommodations and modifications: www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications

For more information on getting reasonable accommodations with animals:

- Visit www.hud.gov/program_offices/fair_housing_equal_opp/assistance_animals
- Read the FHEO-2020-01 notice, Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act (from January 28, 2020). www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf

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Reasonable modifications

A reasonable modification is a change in the physical structure of a building that allows a person with a disability an equal opportunity to use and enjoy a dwelling. This can include the interior and exterior of the building, as well as public and common use spaces.

Examples of reasonable modifications are:

- Installing a ramp to access the entrance of the building or your unit
- Installing grab bars in the bathroom of a unit
- Widening doorways in a unit
- Replacing door handles with levers

A modification request must be reasonable. This means the request can't cause:

- An undue financial or administrative burden to the housing provider. For example, asking your housing provider to change the entire parking lot instead of giving you a closer parking space.

- A fundamental change in the way a housing provider operates

If you request a reasonable modification, you must have your housing provider's approval before you can start making the modification.

Your housing provider cannot make you move to a new unit instead of making a modification. It is up to you if you want to move to another unit.

Who pays for and maintains the modification?

As the tenant, you would pay for:

- The cost of the modification
- The maintenance and upkeep of the modification
- If you are renting, your landlord can ask that before you move out, you restore your space to the way it was before the modification as long as it is not unreasonable.

The housing provider would pay for:

- Reasonable wear and tear
- The use of more expensive materials
- Maintaining the modification if it is made to a common area they usually maintain

How are modifications protected under the FHA?

Under the FHA, your housing provider cannot refuse your request for a reasonable modification. However, as mentioned above, they can refuse your request if it is a financial or administrative burden or will change the way the housing provider operates.

More information about modifications

For more information on asking for reasonable modifications, visit HUD's page about reasonable accommodations and modifications: www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications

Chapter 23: Housing discrimination

How do I make an accommodation or modification request?

You can request a reasonable accommodation or modification at any time.

Make your request in writing to the housing provider. It should say:

- You're an individual with a disability under the FHA
- The accommodation or modification you need
- That you need it to use and enjoy your home

You do not need to add details about your disability in the request.

It is extremely helpful and encouraged to also send a letter from your doctor saying:

- You are being treated for a disability
- The accommodation or modification is related to your condition
- The accommodation or modification is necessary for your wellbeing

Your doctor does not have to add any specifics about your condition unless you ask them to.

Sharing information about your disability

If your housing provider already knows of your disability and the need for the accommodation or modification is obvious, they should not ask you for more information.

Your housing provider may ask for more information from you if:

- Your disability isn't obvious or known to the provider, or
- The need for the accommodation or modification isn't obvious

If your disability is not obvious, your housing provider may request information to:

1. Verify that your disability meets the FHA's definition
2. Describe the needed modification
3. Show the relationship between your disability and the modification you're requesting

The housing provider must keep your information confidential.

What if my request is denied?

If your accommodation or modification request is denied, your housing provider should talk with you about:

- Other options to meet your needs
- Finding a compromise

*If you and your housing provider can't reach a compromise, you can file a discrimination complaint with HUD.

Chapter 23: Housing discrimination

What does having an “accessible apartment” mean?

Disability is the 1 protected class in which individuals can be discriminated against purely on the environment around them.

The FHA seeks to remedy that with design and construction requirements. All new construction of multifamily housing (with 4 or more units) built for first occupancy after March 13, 1991 are required by the FHA to be accessible to persons with disabilities.

To follow the accessibility requirements, the housing must include:

1. An accessible building entrance on an accessible route
2. Accessible public and common use areas
3. Usable doors that allow wheelchairs to pass through
4. Accessible routes into and through your unit
5. Light switches, electrical outlets, thermostats, and other

environmental controls in accessible locations

6. Reinforced walls for grab bars

7. Kitchens and bathrooms that allow for wheelchair use

The FHA defines “accessible” and “usable” specifically for each of these 7 requirements. Builders must follow the FHA’s guidelines.

If you live in a building built after March 13, 1991, and you think it does not meet these requirements, you can:

- File a claim as described in the “How do I file a housing discrimination complaint?” section below
- Contact a fair housing agency to help you investigate the property

Housing for Older Persons exemption

In 1995, the FHA was amended to accommodate an increasing population of older people. Under the new law, facilities or living communities that qualify as housing for older persons can refuse to rent or sell to younger people or families with a younger family member. These types of housings are exempt from liability for familial status discrimination.

The Housing for Older Persons exemption applies to housing that is:

- Provided under a federally funded program designed to assist elderly people
- Intended for and operated for people age 55 and older
- Intended for and occupied only by people age 62 and older

Chapter 23: Housing discrimination

How do I file a housing discrimination complaint?

If you want to file a housing discrimination complaint, there are a few ways to do it. It will depend on the type of complaint and whether you file with HUD, MCHR, or a civil rights commission of your local government. Before filing a complaint, know that it is a long process, it may take up to 3 years or longer.

Filing a complaint with HUD

The most common way is to file a complaint with the US Department of Housing and Urban Development (HUD).

To file a complaint:

- Visit HUD's complaint page at: www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint
 - » Here you can learn how to fill out a form online, by email, by phone, or by mail
- Contact an agency to help you file a complaint

You must file a complaint with HUD within 1 year of when the discriminatory act happened. So, it is important to submit a complaint as soon as possible.

The HUD complaint process

It is important to note that the HUD complaint process is not quick. A typical HUD complaint from filing to decision usually takes months to years.

In Missouri, there are multiple ways to file a complaint, through:

- The US Department of Housing and Urban Development (HUD)
- The Missouri Commission on Human Rights (MCHR)
- The Civil Rights Enforcement Agency of St Louis City
- Filing a claim directly in a state or federal court

Once you have filed a complaint, you become a “complainant”. Then HUD begins an investigation.

1. HUD will investigate the allegations of discrimination provided in the complaint
 - HUD will contact you for all the documentation they need to do the investigation
 - Throughout the investigation, HUD will try to negotiate a settlement between the complainant (you) and respondent (your housing provider). This is called conciliation. This process can happen alongside the investigation. You and your housing provider may agree on a settlement before HUD makes a decision.
2. Once HUD finishes the investigation, they will notify you with their decision
 - They will decide either “cause” or “no cause”

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What does “cause” mean?

If HUD decides “cause” for your case, that means they found enough evidence to prove you were discriminated against.

They will then file a charge against the opposing party for violating the law. You can then choose to have your case heard by:

- An Administrative Law Judge
- A federal court – if you want to take your case to federal court, the Department of Justice will file the action for you and represent you in the proceedings

You may be awarded actual and punitive damages as well as attorney’s fees.

What does “no cause” mean?

If HUD decides “no cause” for your case, that means they did not find enough evidence to prove you were discriminated against. Your case will then be over with HUD. You can try to take your case to federal court, but it may be challenging.

Filing a complaint with MCHR

If you want to file a claim under the Missouri Human Rights Act (MHRA):

- First, you must file a complaint with the Missouri Commission on Human Rights (MCHR)
- Your MCHR complaint must be filed within 180 days of when the discriminatory act happened
- If you skip filing with MCHR and instead file directly in state court under the MHRA, your claim with the state will likely be invalid
- You can file a complaint through MCHR here: laborwebapps.mo.gov/mohumanrights/File_Complaint

What does “no cause” mean?

The process is very similar to HUD’s process. It often takes months to years to complete from start to finish.

Once you have filed a complaint:

1. An investigator will be assigned to your complaint
2. Your complaint is served to the opposing party (your housing provider)
3. The MCHR determines if it has jurisdiction over the complaint. If they do have jurisdiction, you have 2 options:
 - a) You can ask for a “Notice to Sue” to file your claim in state court. If you choose this, your case will be closed. You will have 90 days after receiving the Notice to Sue to file the claim in state court.
 - b) Or you can continue with MCHR’s investigation process. If you choose this, an investigator will try to mediate a settlement between you and your housing provider.

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Choosing to continue MCHR's investigation process

If no settlement has been reached, MCHR will decide either “No Violation” or “Probable Cause”:

- **“No Violation”** means MCHR will close the case and notify you of your right to appeal their decision in court
- **“Probable Cause”** means MCHR will again attempt to mediate a settlement. If it is not settled, the case will be set for a hearing or be dismissed.

If your case is set for a hearing, it will take place in front of a Hearing Examiner:

- They will look at the evidence and issue a recommended finding and order to the MCHR
 - » You may be represented by an Assistant Attorney General at this hearing
- The MCHR will issue a “Final Decision and Order”
 - » If they find no discrimination, they will dismiss the case
 - » If they find there was discrimination, they will order remedies for you. These remedies may include money or directing the housing provider to make the accommodations.

Filing a complaint in Illinois

The IHRA is a law that adds more protections for people living in Illinois. To learn more information and what it covers, visit: dhr.illinois.gov

Filing a complaint with the Civil Rights Enforcement Agency

If you are facing housing discrimination in the City of St. Louis, you can file a Charge of Discrimination Form with the Civil Rights Enforcement Agency of the City of St. Louis. The process is similar to filing with the HUD or MCHR. To learn more and file a Charge of Discrimination Form, visit www.stlouis-mo.gov/government/departments/civil-rights-enforcement/report-discrimination.cfm

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Filing a complaint directly in state or federal court

You can also file a claim directly in state or federal court. You must file a complaint within 2 years of when the discriminatory act happened.

To start the process, you will file a Petition alleging discrimination:

- It must contain facts and law that will prove you have been discriminated against under the FHA, Missouri Human Rights Act (MHRA), or Illinois Human Rights Act.

The process is very similar to HUD's process. It often takes months to years to complete from start to finish.

- It can be complicated if you do not know fair housing law
- It can cost a lot of money. There are fees for filing a complaint and for other steps throughout the process.
- If you are filing a complaint under the Missouri Human Rights Act (MHRA), but choose to not file a complaint with the Missouri Commission on Human Rights (MHRC), your complaint may be cancelled immediately.

Where can I find more information and help?

If you believe you have been discriminated against in housing, call the United States Department of Housing and Urban Development to file a complaint or to speak with a HUD employee to discuss the possibility of filing a complaint. You can also file a HUD complaint via mail or online through HUD's website.

For more information on filing a fair housing complaint, please refer to HUD's website: <https://www.hud.gov/fairhousing/fileacomplaint>

You can also contact the HUD St. Louis Field Office at (314) 418-5400 or call the Kansas City Regional Office of FHEO at (913) 551-6958.

Resources

RESOURCES – AREA AGENCIES ON AGING

For information and referrals on programs and resources in your area which benefit older adults and persons with disabilities, contact the Area Agency on Aging (AAA) in your community. See the map of all Missouri counties, grouped by their AAA region to find your local agency. <https://health.mo.gov/seniors/pdf/AAARegion.pdf>

Aging Ahead

14535 Manchester Road
St. Louis, MO 63011
(636) 207-0847
(800) 243-6060
www.agingahead.org

Aging Best

201 W. Broadway, Suite 1-E
Columbia, MO 65201
(573) 443-5823
(800) 369-5211
www.agingbest.org

Aging Matters

1078 Wolverine, Suite J
Cape Girardeau, MO 63701
(573) 335-3331
(800) 392-9771
www.agingmatters2u.com

Care Connection for Aging Services

106 W. Young Street
Warrensburg, MO 64093
(660) 747-3107
(800) 748-7826
www.goaging.org

Mid-America Regional Council AAA

600 Broadway, Suite 200
Kansas City, MO 64105
(816) 421-4980
(800) 593-7948
www.marc.org/community/aging

Northeast MO AAA

815 N. Osteopathy
Kirksville, MO 63501
(660) 665-4682
(800) 664-6338
www.nemoaaa.com

Region X AAA

531 E. 15th Street
Joplin, MO 64804
(417) 781-7562
www.aaaregionx.org

SeniorAge AAA

1735 S. Fort Avenue
Springfield, MO 65807
(417) 862-0762
(800) 497-0822
www.senioragemo.org

St. Louis AAA

1520 Market Street, 4th Floor, Room 4065
St. Louis, MO 63103
(314) 612-5918
(877) 612-5918
www.slaaa.org

Young at Heart Resources

809 N. 13th Street
Albany, MO 64402
(660) 240-9400
(888) 844-5626
www.yahresources.org