

# Elder Law

The newsletter of the Illinois State Bar Association's Section on Elder Law

## At the Intersection of Trust Administration and Real Estate: Sibling Rivalry and the Family Home

BY NICOLE M. SOLTANZADEH

Land is unique and siblings make poor co-trustees. Both concepts have been drilled into us as lawyers: The first since our 1L years in property law class, the second from years of watching sibling rivalry play out in court. As the case of *Ashby v. Pinnow, et al.*, 2020 IL App (2d) 190765, demonstrates,

settlers and trustees are best advised to keep these key concepts in mind when creating and administering a trust.

The parties in *Ashby* are three siblings, David W. Ashby (Plaintiff), and Bonnie Pinnow and Mark Ashby (Defendants).

*Continued on next page*

At the Intersection of Trust Administration and Real Estate: Sibling Rivalry and the Family Home  
1

Everyday Tech Tips  
1

CARES Act Includes Substantial Revisions to the Federal Confidentiality of Substance Use Disorder Patient Records (42 C.F.R. Part 2)  
4

Updates & Resources  
6

Mark Your Calendars...  
8

Call for Articles  
8

## Everyday Tech Tips

BY TRENT L. BUSH

If you've ever attended a "60 Tips in 60 Minutes" session at an ISBA CLE, you've undoubtedly learned a thing or two about a cool little technology tip or trick that makes your everyday technology experience a little more enjoyable. These could be little features that are already built into the programs you use or devices you can pickup online. Regardless, these little gems can make you a more efficient and satisfied attorney at the end of the day.

In the spirit of "60 Tips", this series of articles highlights some of the things that I find particularly helpful in my day-to-day tech life. I encourage you to use the online

comments to add your tips, which I may include in future articles.

In this second installment, I focus on some hardware and equipment to enhance your computing experience.

1. **Laptop** – Most computer users these days want to be mobile. While there are a variety of ways to do that, I'm still a fan of a nice, small laptop.

I like and use an HP EliteBook Notebook PC. It's small, light, mobile, and has a pretty good battery life. It has more horsepower than I really need for the remote desktop sessions I use most of the time,

*Continued on page 3*

## Illinois Attorney General Has Ramped Up Illinois Estate Tax Audits

CONTINUED FROM PAGE 1

Their rivalry stems from their parents' naming these three children co-trustees and co-beneficiaries of their trust, the primary asset of which was a five-acre parcel of land in Plainfield, IL that included the parents' home. The terms of the trust required that, upon the parents' death, the land would be divided in equal shares among the children/beneficiaries. Apparently, no further instruction as to how the five acres were to be divided was included in the trust.

Dad died in 2004 and Mom died shortly thereafter in 2006. Four years after Mom's death, in 2010, Defendants conveyed one-third of the property to Plaintiff and conveyed two-thirds of the property to themselves. However, the two-thirds of the property conveyed to Defendants included the parents' home and was thus improved land with a net taxable value of \$62,397. The one-third of the property conveyed to Plaintiff had a net taxable value of \$20,000, and consisted solely of vacant/unimproved land. The trustees' deeds were recorded in 2010.

Notably, during this time, Plaintiff was homeless (and had been homeless from 2008 to 2012), had no access to a computer, and was not informed of these conveyances until he met with an attorney in 2018. Upon discovery of the conveyances, Plaintiff filed suit against Defendants in 2018 to quiet title (Count 1), for partition (Count 2), and for breach of Defendants' fiduciary duties (Count 3).

On August 7, 2019, the circuit court of Kendall County dismissed Plaintiff's complaint with prejudice, on the grounds that 1) Plaintiff failed to assert a proper claim to quiet title, 2) under the terms of the Trusts and Trustees Act (now repealed and replaced by the Illinois Trust Code), Defendants had an absolute right to convey the property in the manner they had, and 3) the action for breach of fiduciary duty was time-barred under the applicable statute of limitations.

Plaintiff appealed, and the appellate court affirmed the lower court's ruling as to

count three; however, the court reversed and remanded as to counts one and two.

*Counts one and two: Action to Quiet Title and Equitable Distribution/Partition.*

"An action to quiet title in property is an equitable proceeding wherein a party seeks to settle a dispute over ownership of property or to remove a cloud upon his title to the property." *Ashby* at ¶ 14, citing *Lakeview Trust & Savings Bank v. Estrada*, 134 Ill. App. 3d 792, 811 (1<sup>st</sup> Dist. 1985).

"A plaintiff suing to remove a cloud from title must be in possession of the property unless the property at issue is vacant and undeveloped or other grounds of equitable relief are established, such as mistake or fraud." *Id.*, citing *Lakeview*, at 812 and citing *Nowakdnowski v. Sobeziak*, 270 Ill. 622, 625 (1915). Otherwise, the proper remedy is an action for ejectment.

Because the property at issue was neither vacant nor undeveloped, the appellate court analyzed the alleged facts to determine whether "other grounds for equitable relief" were plead. Namely, Plaintiff asserted that such grounds existed because 1) Defendants conveyed the property out of trust without requisite notice; 2) unequal shares of the trust were conveyed; and 3) Plaintiff accordingly suffered harm.

With regard to notice, here, the court looked to section 10 of the Trusts and Trustees Act, which required that, in the event there are three or more trustees of a trust, a majority of trustees can act only when prior written notice is given to the trustees, or said notice is waived. 760 ILCS 5/10. Because the statute, as well as concepts of fundamental fairness, required that Defendants give Plaintiff notice prior to the transfer of title, and because unequal shares of the trust were conveyed and thus Plaintiff suffered financial harm, Plaintiff's pleadings created a genuine issue of material fact.

As affirmative defenses, Defendants argued that the notice requirement under Section 10 of the Trusts and Trustees act was only directory, and not mandatory, which

## Elder Law

This is the newsletter of the ISBA's Section on Elder Law. Section newsletters are free to section members and published at least four times per year. Section membership dues are \$30 per year.

To join a section, visit [www.isba.org/sections](http://www.isba.org/sections) or call 217-525-1760.

### OFFICE

ILLINOIS BAR CENTER  
424 S. SECOND STREET  
SPRINGFIELD, IL 62701  
PHONES: 217-525-1760 OR 800-252-8908  
WWW.ISBA.ORG

### EDITORS

Karen A. Kloppe

### PUBLICATIONS MANAGER

Sara Anderson

✉ [sanderson@isba.org](mailto:sanderson@isba.org)

### ELDER LAW SECTION COUNCIL

Walter J. Zukowski, Chair  
James C. Krupp, Vice-Chair  
Dolores Ann Wigman, Secretary/CLE Coordinator  
Amber Drew, Ex-Officio  
Kathleen Elizabeth Curler  
Anthony J. DelGiorno  
Alyx Paige Durachta  
Michael H. Erde  
John W. Foltz  
Daniel C. Hawkins  
Stephen D. Iden  
Robert W. Kaufman  
Megan Eileen Kinney  
Karen A. Kloppe  
Edward J. Mitchell  
Lauren L. Pierucci  
Constance B. Renzi  
Sherri R. Rudy  
Timothy Scordato  
Hon. Sarah D. Smith  
Lawrence J. Stark  
Mark L. Karno, Board Liaison  
Melissa L. Burkholder, Staff Liaison  
Heather A. McPherson, CLE Committee Liaison

DISCLAIMER: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

the court rejected. Defendants argued that Plaintiff's claim was both untimely and not governed by the 40-year statute of limitations for actions to quiet title since Plaintiff was never in possession of title. This, too, was rejected by the court, on the grounds that Plaintiff was not seeking to have the land returned to him in his individual capacity but rather to the trust, and thus the 40-year statute of limitations applied. Finally, Defendants argued that Plaintiff abdicated his duties as trustee, and thus cannot now complain about Defendants' execution of those duties. This argument, too, was rejected by the court, under the doctrine of unclean hands. He who seeks equity must do equity, and the doctrine precludes a party from taking advantage of his own wrong.

For these same reasons, the court found that the trial court's dismissal of the partition action was similarly wrongful.

*Count three: Breach of Fiduciary Duty.* As for count three, the appellate court addressed the question of whether the five-year statute of limitations should have been tolled due to

Defendants' failure to notify Plaintiff of the conveyance. Ultimately, the court found that there was no fraudulent concealment such that the five-year statute should have been tolled, as Plaintiff could have discovered the truth of the alleged impropriety through reasonable inquiry. Because Defendants recorded the deeds with the Kendall County Recorder of Deeds, Plaintiff was put on constructive notice of the deed's existence.

Although in some respects, *Ashby* reminds us of the obvious, there are noteworthy takeaways. When in doubt and when deeding title, we should counsel our clients to err on the side of caution because land is so unique. This may mean that we should counsel them to provide notice to beneficiaries and co-trustees, to avoid self-dealing, and to consider seeking clarity from the court when either suggestion becomes difficult to follow. When administering real estate, we should always record the deed, as doing so not only puts the world on notice of a conveyance, but also begins the running of a statute of limitations. And when counseling

parents on their estate plans, not only should we warn them of the dangers of naming their children as co-trustees, but we should also build solutions for contention into those plans. Such solutions could include a frank discussion in advance with the children, or a planned auction among the beneficiaries, or the inclusion of a trust protector to appoint a special, independent trustee for situations where the trustees may be unable to agree on the appropriate disposition of an asset.

While there is little we can do to curb sibling rivalry as attorneys, there is much we can do to reduce the consequences of that rivalry, especially when it comes to something as special as land and the family home thereon. ■

---

*Nicole Soltanzadeh is principal with the Law Office of Nicole M. Soltanzadeh, LLC and practices in the areas of trusts and estates and real estate. Nicole is a graduate of the University of Michigan, the George Washington University Law School, and Northwestern University.*

## Everyday Tech Tips

CONTINUED FROM PAGE 1

but it's powerful enough to run the video production software I use on occasion. The price runs around \$1,000-\$1,200 depending on the model.

**2. Docking Station** – If you use a laptop as your primary computer, your eyes and hands will very much appreciate you investing in a docking station. This will enable you to drop the laptop on the docking station and seamlessly use your full size keyboard and mouse (preferably wireless – see part one of the series) and generously-sized monitor (preferably dual monitors – see below).

I like and use the HP EliteBook UltraSlim Docking Station (<https://store.hp.com/us/en/pdp/hp-2013-ultraslim-docking-station>). These are usually under \$200 and host numerous USB and DisplayPorts. If you want to take your laptop to court or to a meeting down the hall, you can just pop it off the docking station and go.

**3. Dual Monitors** – Not every attorney

in my office uses dual monitors. However, everyone who has tried it has said that they wouldn't go back. Whether you're a transactional attorney comparing documents or a litigator drafting a memorandum, you will likely enjoy having dual monitors. Doing so allows you to have multiple programs and windows open that you can drag from one monitor to the other as desired.

I like and use a 24" HP FHD IPS Monitor with Tilt/Height Adjustment and Built-in Speakers ([https://smile.amazon.com/dp/B072M34RQC/ref=cm\\_sw\\_em\\_r\\_mt\\_dp\\_U\\_qkHACbPMK9W6G](https://smile.amazon.com/dp/B072M34RQC/ref=cm_sw_em_r_mt_dp_U_qkHACbPMK9W6G)) for my primary monitor. These generally run about \$110. For my secondary monitor, I like a 19" monitor with 4:3 ratio in portrait mode (i.e., vertical). This allows you to comfortably see and edit a full page document. I like and use an Acer 19" 1280x1024 IPS VGA monitor for this purpose ([https://smile.amazon.com/dp/B01LJUNTZC/ref=cm\\_sw\\_em\\_r\\_](https://smile.amazon.com/dp/B01LJUNTZC/ref=cm_sw_em_r_)

[mt\\_dp\\_U\\_-oHACbSM6EJA9](https://smile.amazon.com/dp/B01LJUNTZC/ref=cm_sw_em_r_mt_dp_U_-oHACbSM6EJA9)). These are generally available for around \$100.

**4. Monitor Stand** – While you're upping your monitor game, I highly recommend investing a little bit for a monitor desk mount stand. These allow you to free up significant desk space by eliminating the monitor stands. They also allow you to nicely accommodate the vertical monitor mentioned above and get your monitors at a comfortable and proper height to reduce neck and eye strain.

I like and use a VIVO Dual Monitor Desk Mount Stand with C-clamp and Bolt-through Grommet Options ([https://smile.amazon.com/dp/B009S750LA/ref=cm\\_sw\\_em\\_r\\_mt\\_dp\\_U\\_4tHACb3DTBVQT](https://smile.amazon.com/dp/B009S750LA/ref=cm_sw_em_r_mt_dp_U_4tHACb3DTBVQT)). With this unit, if you're lucky enough to have a grommet in the right spot, you can just bolt the unit on a single pole through the grommet. If not, you can use the c-clamp option to securely clamp the pole to your

desk. Alternatively, if you are a brave DIYer, you can find a 2" forstner bit and create a hole in the desk right where you want it. In any event, you'll love the flexibility and space-saving features of a stand.

5. **Standing Desk** – The standing desk concept has been around for a while now. If you're able to get out of your chair frequently, maybe you wouldn't benefit from one. However, if you find yourself spending hours at a time hunkered down at your desk, you (and your health) may benefit from a standing desk option. These models come in a variety of shapes and sizes.

If you're unsure whether you'll like a standing desk, an inexpensive (and therefore

easy to abandon) option would be to a desk riser option that allows you to keep your existing desk. You simply place the riser on your desk, put your monitor and keyboard on top of it, and with the push of a lever or button, you can be sitting or standing in seconds. We have purchased several FlexiSpot models for our staff and they seem to be well made and sturdy.

I have recently incorporated a standing desk into a new desk that I built for my office. This was a DIY kit sold by Autonomous. There are two heavy duty legs, two motors, one control unit, and one height switch. The materials and construction appear to be heavy duty and of high quality. More to come

on this after I have some time to test the standing experience more!

For more information on these items, be on the lookout for a series of tech tips in the very near future. Meanwhile, please remember to submit your favorites in the comments.■

---

*Trent L. Bush*  
*Ward, Murray, Pace & Johnson, P.C.*  
*202 E. Fifth St. | P.O. Box 400*  
*Sterling, IL 61081*  
*P: 815.625.8200*  
[www.wmpj.com](http://www.wmpj.com)  
[bush@wmpj.com](mailto:bush@wmpj.com)

# CARES Act Includes Substantial Revisions to the Federal Confidentiality of Substance Use Disorder Patient Records (42 C.F.R. Part 2)

BY GERALD (JUD) E. DELOSS, J.D.

---

On March 27, 2020, the U.S. Congress passed and the president signed an unprecedented \$2 trillion stimulus package in response to the coronavirus pandemic (COVID-19), known as the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Among the numerous provisions intended to address the COVID-19 pandemic are significant revisions to the federal regulations governing the Confidentiality of Substance Use Disorder Patient Records, under 42 U.S.C. § 290dd-2 and the corresponding regulations found at 42 CFR Part 2 (Part 2). These revisions more closely align Part 2 with the Privacy and Security Regulations under the Health Insurance Portability and Accountability Act ("HIPAA") but also add heightened protections against use or disclosure of Part 2 records in legal or other proceedings, as well as imposing ground-breaking new anti-discrimination protections.

In most situations, Part 2 currently requires that patient consent or a valid court order be obtained prior to disclosure of Part 2 records. The legislation would retain the consent requirement but now only requires initial patient consent before a Covered Entity, Business Associate, or Part 2 Program may use or disclose the Part 2 records for Treatment, Payment, and most Health Care Operations, as each of those terms is defined under HIPAA or Part 2. The legislation excludes from permissible Health Care Operations uses or disclosures for the creation of de-identified health information or a limited data set, and fundraising for the benefit of a Covered Entity. However, the legislation does permit the use or disclosure of de-identified information for certain public health purposes.

Currently, Part 2 imposes the same patient consent or court order requirement upon most disclosures of Part 2 records by a recipient of those records (a "Lawful

Holder") and applies those restrictions to downstream recipients of the data indefinitely. Under the new legislation, a recipient would be permitted to re-disclose the Part 2 records in accordance with HIPAA. Specifically, it will be permissible for a patient's prior written consent to be given once for all future uses or disclosures for purposes of Treatment, Payment, and Health Care Operations, until the patient revokes such consent in writing. Each of the disclosures will be subject to the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") accounting of disclosures requirements.

Currently, Part 2 prohibits the use of Part 2 records in criminal or civil proceedings without patient consent or a stringent court order protocol that imposes certain procedural requirements meant to address privacy concerns. The legislation creates an even stronger set of protections and prohibitions which mandates that records

may not be disclosed or used in any civil, criminal, administrative, or legislative proceeding conducted by any Federal, State, or local authority, against a patient, including that:

- The record or testimony shall not be entered into evidence in any criminal prosecution or civil action before a Federal or State court
- The record or testimony shall not form part of the record for decision or otherwise be taken into account in any proceeding before a Federal, State, or local agency
- The record or testimony shall not be used by any Federal, State, or local agency for a law enforcement purpose or to conduct any law enforcement investigation
- The record or testimony shall not be used in any application for a warrant

These protections are critical as disclosures to third parties would not necessarily fall under Treatment, Payment, or Health Care Operations.

The legislation introduces explicit protections against discrimination based upon Part 2 records or information about the patient disclosed under Part 2—either inadvertently or intentionally. Specifically, no entity may discriminate against a patient about whom the Part 2 records relate in:

- Admission, access to, or treatment for health care
- Hiring, firing, or terms of employment, or receipt of worker's compensation
- Sale, rental, or continued rental of housing
- Access to Federal, State, or local courts
- Access to, approval of, or maintenance of social services and benefits provided or funded by Federal, State, or local governments

Furthermore, no recipient of Federal funds may discriminate against the patient based upon the Part 2 records in affording access to the services provided with such funds.

The HIPAA Breach Notification Rule is now directly applicable to Part 2 programs, regardless of whether they are considered

Covered Entities.

Part 2 has historically been enforced criminally by the U.S. Attorney. The legislation modifies the penalties, moving the penalties from Title 18 of the U.S. Code to sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5 and 42 U.S.C. 1320d-6), which are the penalties imposed for HIPAA violations.

The legislation includes “the sense of Congress”, aspirational goals, rules of construction, and interpretive guidance for the regulations which will need to be issued by the Substance Abuse and Mental Health Services Administration (“SAMHSA”).

Among the Congressional intent indicated is:

- No limit upon a patient's right, under HIPAA, to request a restriction on the use or disclosure of a record (45 C.F.R. § 164.522)
- No restriction on a Covered Entity's right, under HIPAA, to utilize the patient consent process (45 C.F.R. § 164.506)
- A simplified Notice of Privacy Practices
- The encouragement of Part 2 programs to access State Prescription Drug Monitoring Programs when clinically appropriate
- Incentives for Part 2 programs to explain the consent process and its benefits

These substantial modifications should allow for greater flow of information among and between health care providers and payors and further the goal of integrated care across behavioral health and medical health. Data exchange for reimbursement, Health Information Exchanges (“HIEs”), Accountable Care Organizations (“ACOs”), and similar care models should benefit. The addition of clear protections in criminal, civil, administrative, and legislative proceedings should be lauded by privacy advocates, along with brand new anti-discrimination protections. Further, the ability of the patient to revoke consent to the flow of Part 2 records at any time grants unprecedented control to patients over their health information. However, care must be taken to identify the unique distinctions that remain between Part 2 and HIPAA, and

professionals should carefully review the legislation and any proposed regulations in addition to State mental health and substance use disorder laws to ensure proper uses and disclosures of all health information.■

---

*Gerald (Jud) E. DeLoss, J.D., is the chief executive officer for the Illinois Association for Behavioral Health. He may be contacted at [jud@ilabh.org](mailto:jud@ilabh.org).*

# Updates & Resources

## Public Charge Rule Changes

The public charge rule is part of the regulations promulgated by the Department of Homeland Security (DHS). It is part of the admissibility testing that comes into play in considering whether a person will be denied a “green card,” an extension of a visa, or admission into the United States. Such a determination is based on the “totality of circumstances,” including the person’s age, health, family status, financial status, education or skills, and other options for support. See 8 U.S.C. 1182(a)(4).

Historically, guidance on this issue indicated that anyone who is “primarily dependent” governmental support could be considered a public charge. Examples of such support include receipt of public cash assistance (Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and any state or local equivalents) and institutionalization for long-term care at government expense. Last year, an update was issued requiring consideration of whether receipt of non-cash benefits (e.g., food stamps and Medicaid) might predict use of future cash benefits use. See 9 FAM 302.8 at <https://fam.state.gov/fam/09fam/09fam030208.html>.

Litigation initially blocked implementation until February 24, 2020. Another round of lawsuits resulted in additional injunctions on July 29, 2020, and the Second Circuit Court of Appeals subsequently limited application to cases in Connecticut, New York, and Vermont through September 11, 2020. Thereafter, on November 3, 2020, following another unfavorable ruling in a different federal district (see box below), the Seventh Circuit Court of Appeals stayed the underlying order and allowed continued implementation pending further appeal. See [https://www.ilrc.org/sites/default/files/resources/2020.11.04\\_public\\_charge\\_timeline-final.pdf](https://www.ilrc.org/sites/default/files/resources/2020.11.04_public_charge_timeline-final.pdf).

For more information, see:

<https://www.govinfo.gov/content/pkg/FR->

[2019-08-14/pdf/2019-17142.pdf](https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/inadmissibility-on-public-charge-grounds-final-rule-litigation) (Final Rule) <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/inadmissibility-on-public-charge-grounds-final-rule-litigation> (Public Charge Injunction Webpage)

<https://www.uscis.gov/news/public-charge-fact-sheet> (Fact Sheet)

<https://www.kff.org/racial-equity-and-health-policy/fact-sheet/public-charge-policies-for-immigrants-implications-for-health-coverage/>

On November 2, 2020, the district court in *Cook County, Illinois, et al. v. Wolf et al.*, (19-cv-6334), granted Plaintiffs’ motion for summary judgment and found that DHS’s Public Charge Rule, 84 Fed. Reg. 41,292 (Aug. 14, 2019) violated the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.* because the rule (1) exceeds DHS’s authority under the public charge provision of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(4)(A); (2) is not in accordance with law; and (3) is arbitrary and capricious.

## 2021 Social Security Cost-of-living Increase

Approximately 70 million Americans, including almost 18 percent of Illinoisans, receive Social Security and Supplemental Security Income (SSI) benefits in the United States. See [https://www.ssa.gov/policy/docs/statcomps/oasdi\\_sc/index.html](https://www.ssa.gov/policy/docs/statcomps/oasdi_sc/index.html).

For 2021, beneficiaries will see a 1.3 percent increase to account for the annual cost-of-living adjustment (COLA). This adjustment is made to help benefits keep pace with inflation. Its calculation is determined by the Bureau of Labor Statistics at the Department of Labor based on the increase (if any) in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), comparing the third quarter averages for the current and last year in which a COLA became effective.

For more information, see:

Social Security: <https://www.ssa.gov/cola/>  
SSI: <https://www.ssa.gov/oact/cola/SSI.html>

Notices are typically be sent by mail starting in early December and individuals who have activated a personal account *my* Social Security online can view this information at [www.socialsecurity.gov/myaccount](http://www.socialsecurity.gov/myaccount).

**Note:** Adjusted benefit amounts cannot be computed until the 2021 premiums are known for beneficiaries receiving Medicare.

## Recent Rulemaking Activity

### Housing

The Illinois Housing Development Authority adopted the following two new Parts by emergency rulemaking on October 16, 2020: Emergency Mortgage Assistance (EMA) Program (47 Ill. Adm. Code 301; 44 Ill. Reg. 17458) and Emergency Rental Assistance (ERA) Program (47 Ill. Adm. Code 379; 44 Ill. Reg. 17474). These emergency rules establish programs that disburse funds from the State’s Coronavirus Urgent Remediation Emergency (CURE) fund (which received federal funds via the CARES Act) to persons in need of housing payment assistance as a result of the COVID-19 public health emergency. Emergency rules remain in effect for a maximum of 150 days.

The EMA program provides grants of up to \$15,000 to mortgage servicers to cover one or more past due mortgage payments of an eligible borrower. Borrowers may qualify for this program if: (1) their pre-pandemic income (prior to March 1, 2020) was no higher than 120% of their area’s median income; (2) they experienced COVID-19 related income loss during the eligibility period (March 1 through December 31, 2020); and (3) their mortgage payments were current through February 2020. Also, mortgage servicers must agree not to foreclose on a mortgage for which a

borrower has received assistance.

The ERA program provides grants of up to \$5,000 to landlords to cover missed rent payments. Tenants may qualify for this program if: (1) their pre-pandemic income (prior to March 1, 2020) no higher than 80% of their area's median income; (2) they experienced COVID-19 related income loss during the eligibility period (march 1 through December 31, 2020); and (23 they incurred an unpaid rent balance incurred during that period. Also, landlords must agree not to terminate the lease of an eligible tenant, during the program eligibility period.

Applicants for these programs cannot receive or apply for any other local, State or federal COVID-19 related mortgage or rental assistance. Both programs will also award grants to community outreach and assistance agencies to provide support to prospective applicants.

### Long-term Care

On October 2, 2020, the Department of Public Health has adopted emergency amendments to the Parts titled Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300; 44 Ill. Reg. 16894); Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350; 44 Ill. Reg. 16908); and Medically Complex for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 390; 44 Ill. Reg. 16920). These emergency amendments continue the provisions of COVID-19 Executive Orders and previous emergency rules that prohibited nursing homes and other types of care facilities from discharging or involuntarily transferring residents with developmental disabilities due to late payment or nonpayment.

### Nutrition

On October 1, 2020, the Department of Human Services adopted preemptory amendments to the Part titled Supplemental Nutrition Assistance Program (SNAP) (89 Ill. Adm. Code 121; 44 Ill. Reg. 16551). This rule updates both gross and net income eligibility standards to reflect cost of living adjustments for 2021. It also updates standard income deductions and deductions for utility, housing and medical expenses.

Maximum Monthly Benefits: \$10 increase to \$60 per month

Gross Monthly Income Standards: \$27 increase to \$115 per month (depending on

household size)

Net Monthly Income Standards: \$23 increase to \$57 per month (depending on household size)

### Temporary Assistance

On October 1, 2020, the Department of Human Service adopted an emergency amendment to the Part titled Temporary Assistance for Needy Families (TANF) (89 Ill. Adm. Code 112; 44 Ill. Reg. 16513). (An identical proposed amendment appears at 44 Ill. Reg. 16400.) These amendments implement Public Act 101-0103, which requires monthly benefits to be equal to at least 30% of the most recent Federal Poverty Level income guidelines for the applicable household size.

Minimum TANF Grant (Child-Only): \$239 (previously \$234) per month for one child

Minimum TANF Grant (Single Child and Caretaker Relative: \$431 (previously \$423) per month

### New Resource

The Centers for Medicare and Medicaid Services (CMS) recently launched a new online platform: the Nursing Home Resource Center. Content is geared to residents, caregivers, facilities, and other partners of CMS so users can easily navigate through information to find up-to-date information, guidance, data, and other resources during the ongoing COVID-19 Public Health Emergency. It is available at the following link: <https://www.cms.gov/nursing-homes>.

### Illinois Supreme Court Announcements

The Illinois Supreme Court entered the following orders:

- An order amending Rule 280.1, Definitions for Credit Card or Debt Buyer Collection Action, and Rule 280.2, Complaint in Credit Card or Debt Buyer Collection Actions, on November 4, 2020. For more information, see: <https://courts.illinois.gov/SupremeCourt/Rules/Amend/2020/110420.pdf>.
- An order on remote jury selection in civil matters that expands recent changes made to Rule 45, Participation in Civil or Criminal Proceedings by Telephone or Video Conference, and Rule 241, Use of Video Conference Technology in

Civil Trials and Evidentiary Hearings on October 27, 2020. For more information, see:

- <https://courts.illinois.gov/SupremeCourt/Announce/2020/102720-1.pdf>
- [http://illinoiscourts.gov/CircuitCourt/Remote\\_Jury\\_Information.asp](http://illinoiscourts.gov/CircuitCourt/Remote_Jury_Information.asp) (Related Guidelines and Other Supporting Documents)
- An order on remote service of protective orders on October 27, 2020. In proceedings arising under the Illinois Domestic Violence Act (750 ILCS 60), the Code of Criminal Procedure (725 ILCS 5/112A), the Civil No Contact Order Act (740 ILCS 22), or the Stalking No Contact Order Act (740 ILCS 21), when a respondent appears by telephone or video conference and providing that the operative terms of the protective order have been read in open court during that proceeding, then (1) the respondent shall be considered “present in court when the order was issued” and (2) no further service of process or personal service of the order is required. For more information, see: <https://courts.illinois.gov/SupremeCourt/Announce/2020/102720-2.pdf>.
- An order amending Rule 415, Regulation of Discovery, on October 23, 2020. It now allows attorneys to provide a copy of discovery to a defendant unless good cause is shown why such discovery should not be so furnished. Materials must be held until court ruling in cases where a motion for protective order has been filed. Also, provided materials may not contain any (1) contact information or personal identifiers of any witnesses or (2) photographs or videos of victims of sexual assault, sexual abuse, or child pornography. For more information, see: <https://courts.illinois.gov/SupremeCourt/Rules/Amend/2020/102320.pdf>. ■

# Mark Your Calendars...

December 2020:

**First Week: National Handwashing Awareness Week**

**National Influenza Vaccination Week**

1: Giving Tuesday | World AIDS Day  
3: International Day of Persons with Disabilities

5: International Volunteer Day  
7: Medicare Open Enrollment Period Ends  
10: Human Rights Day | Nobel Prize Day  
10-11: Joint Midyear Meetings  
• Illinois State Bar Association  
• Illinois Judges Association  
See <https://www.isba.org/jointmeeting>.  
11: Hanukkah begins

15: Bill of Rights Day  
21: Winter Solstice [the shortest day of the year]  
23: Festivus  
25: Christmas Day  
31: New Year's Eve ■

## Call for Articles






Interested in submitting an article for the newsletter? Everything you need to know about the publication process is posted at <https://www.isba.org/publications/sectionnewsletters>. Please submit your draft **and** signed a release form to us via email **by December 5, 2020**:

- Karen Kloppe - [Karen.Kloppe@Illinois.gov](mailto:Karen.Kloppe@Illinois.gov)

Let us know if there are any topics you would like to see covered in the future. ■



# DON'T PRACTICE WITHOUT US

 <b>Free On-Demand CLE</b>	 <b>E-Clips</b>	 <b>Fastcase</b>
 <b>ISBA Central Communities</b>	 <b>Illinois Lawyer Finder</b>	

[isba.org/membership-benefits](https://isba.org/membership-benefits)

[memberservices@isba.org](mailto:memberservices@isba.org) | (800) 252-8908