

REVERSE MORTGAGE HYPOTHETICAL

HAPPY DAYS?

Joanie and Richie stop by your office for some legal advice regarding their elderly mother, Mrs. Cunningham. You represented Richie last year in connection with a real estate acquisition and he was pleased with the result. Mrs. C. is 75 years old and is now a widow following the recent death of Mr. C. She has a modest pension and still lives in the family home where Richie and Joanie grew up. Mr. and Mrs. C. finished paying for the house in 2003 and it has an estimated value of \$250,000.00. Mrs. C. fell and broke her hip last year and is having mobility problems. In addition, she has just been diagnosed with a terminal illness. The doctors do not expect her to live more than 2-4 years. Joanie and Richie are worried about their mother's mounting health care expenses as well as her ability to continue to live in a two-story home alone. Richie, who owns several multi-family apartment buildings would like his mother to move into one of his vacant units. He plans to rent out the whole house to Fonzie and his girlfriend who still live in the garage apartment. Richie explains that the Cunninghams' neighborhood is experiencing an "urban renewal" and lots of young professionals are moving into the area and renovating homes. Based on recent trends, Richie estimates that the family home will appreciate 15% to 20% in the next two years, after which time Richie would like to sell the house. Joanie and Richie ask if you, as an experienced senior housing lawyer, would be willing to meet with Mrs. C. later that day to discuss the housing options available to her and to try to "talk some sense into her." You agree.

Later that day, Joanie and Richie bring Mrs. C. to your office. Mrs. C. asks if she can speak with you privately. Joanie and Richie leave the conference room. Mrs. C. explains that she has just read an article about this wonderful financing option that would allow her to use her home's value to pay her health care expenses and to install an elevator so that she can regain some of her mobility. She thinks it is called a "reverse mortgage." Remembering that your wife, a loan officer at ABC Bank & Trust, has not fulfilled her monthly loan quota, you immediately begin extolling the benefits of the reverse mortgage and how it would be perfect for Mrs. C. You are already calculating the fee you will earn on the loan closing. You offer to arrange an appointment for Mrs. C. at ABC that very afternoon.

DISCUSSION ISSUES

Substantive Legal Issues:

- 1. What is a Reverse Mortgage?**
- 2. Use of Funds**
 - a. Home Improvement**
 - b. Healthcare**
 - c. Supplemental Income**
- 3. Cost Considerations:**
 - a. Interest Rate**
 - b. Up-Front Charges and Fees**
 - c. Mortgage Insurance Premium**
- 4. Who Qualifies?**
 - a. Age**
 - b. Single Family v. Multi Family**
 - c. Existing Mortgage Debt/Liens**
- 5. Who Would Not Want a Reverse Mortgage?**
 - a. Older v. Younger Seniors**
 - b. Health Considerations related to Longevity**
 - c. Wealthy Seniors**
 - d. Estate Issues and Heirs**
- 6. Appreciation in Value of a Home**
 - a. Who Benefits?**

Legal Ethics Issues:

- 1. Who Is the Client?**
 - a. Client Relationship Inferred from Conduct/Expectation**
 - b. Separate Representation**
 - c. Liability to Non-Clients**
 - d. Be Sensitive**
- 2. Defining the Scope of the Representation**
 - a. Use of the Engagement Letter**
 - b. Reasonable Expectations**
 - c. Conflicts Issues**
 - d. Simultaneous Representation**

- 3. Ethical Taint and Malpractice**
 - a. Lawyers with a Financial Interest**
 - b. Dishonest Conduct**