

Protecting the Home: Transfer to a “Caregiver Child”

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There are certain questions I am asked from time to time regarding long-term care planning and Medicaid. I will be sharing answers to some of these common questions, as these may be of interest to many of our readers.

Q: “After I had a stroke last year, my daughter moved in with me to help out and to take care of things around the house. To thank her for everything she has been doing, I want to change my Will to make sure that she gets my house after I die. What do I need to do?”

A: Children regularly provide care for an aging parent, and most of that work goes uncompensated. The Alzheimer’s Association reported that in 2013, caregivers in Pennsylvania provided over \$17.7 billion worth of unpaid care for people with Alzheimer’s disease or other forms of dementia.¹ Many people want to find a way to acknowledge the care they have been receiving, and we get calls from people who want to change their Wills or transfer property during their lifetimes to these caregiver relatives. Changing a Will is usually a fairly simple procedure, and it is certainly possible to specify in your Will that a certain piece of property go to a particular person.

However, if a person over age 55 needs long-term care paid for by Medicaid, either at home or in a nursing facility, the Pennsylvania Medicaid Agency (DPW) will have a claim against that person’s probate estate (that is, whatever was titled in his or her name alone at death) for the full amount of long-term care Medicaid paid out on that person’s behalf. If the house is in the probate estate, it will likely have to be sold to pay back DPW and therefore would not pass to the person named in the Will.

Transferring title to the house during a person’s lifetime will avoid estate recovery, but if nursing home care is needed within the next five years, the transfer usually results in a period of ineligibility for Medicaid. This means that the parent (or other family member) will have to pay the nursing home privately for an additional period of time. The length of the ineligibility period depends upon the value of house that was transferred, and in Pennsylvania this year every additional day of ineligibility represents on average \$288 of additional cost. So minimizing the ineligibility period is important.

In our office, we very rarely advise clients to transfer their entire interest in their home to a child (or anyone else). This is because there are almost always better ways to protect the home. For example, we often advise clients who want to

¹ http://www.alz.org/downloads/facts_figures_2014.pdf (see page 30).

protect their home by transferring it to their children to transfer, instead, a “remainder interest.” That is, they transfer the house but, right in the deed, they reserve to themselves a “life estate,” and so what ends up going to the children is what “remains” after the life estate is taken out – that is, the “remainder interest.” By keeping a life estate, the clients essentially get to “have their cake and eat it, too.” That is, they have protected their house from having to be sold to pay off a Medicaid “estate recovery” claim after their death while at the same time, for all practical purposes, the house remains theirs. They have the exclusive right to live in the house for the rest of their lives, as well as the security of knowing they will always have a place to live no matter what might happen to any of their children – creditor problems, divorce (since a divorcing spouse is one kind of creditor), bankruptcy, drug or alcohol problems, death. In addition, by retaining a life estate, the clients have not transferred the entire value of the house, which results in a shorter period of ineligibility for Medicaid purposes than if they had transferred the entire house outright. (Again, at an average cost of \$288 a day, reducing the potential ineligibility period can mean a big financial savings.) Finally, in many cases retaining a life estate will result in less overall tax the children will have to pay in the long run than if the entire interest in the house had been transferred to them.²

However, there are a few situations in which transferring a house will not create any period of ineligibility. One that applies to the situation described in the question above is known as the “caretaker child” exception. If a child has *lived with* a parent in the parent’s home for *at least two years* immediately prior to the parent going into a nursing home, and during that time the child has provided care that allowed the parent to remain at home rather than go into a nursing home, then the house can be transferred to the child without a Medicaid transfer penalty.

There are some other situations in which the home can be transferred without creating a Medicaid penalty, and these will be discussed in future articles. And there are a number of other factors to consider when transferring property to a child, depending upon your individual situation; a qualified elder law attorney will be able to advise you.

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*The content herein is for general informational purposes only and does not constitute legal advice. For specific questions you should consult a qualified elder law attorney.*

\* Certified as an Elder Law Attorney by the National Elder Law Foundation as authorized by the Pennsylvania Supreme Court.

**Note:** *After the changes in the Medicaid law a few years ago, it is more true than ever that “time works against you” when planning for long-term care. It is important that families*

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<sup>2</sup> This is because, for real estate or other appreciated property passing to children or other lineal heirs, the Pennsylvania inheritance tax rate is 4.5%, but by paying the inheritance tax all of the built-in capital gain in this property (typically taxed at 15%) is eliminated.

*who have a spouse, parent or other loved one needing long-term nursing care contact a knowledgeable and experienced elder law attorney for advice as soon as possible. While ideally this should be done prior to admission to a nursing home, families need to realize that even after the 2006 changes to the Medicaid law, there remain opportunities for seniors to protect a significant portion of their life savings, even when facing an immediate crisis, with no advance planning. But since every day of delay in a crisis can result in \$250 of irretrievable loss, don't delay in seeking advice.*

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