

MEDICAID PLANNING - PART II

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Last month I began a discussion on ways of protecting the home for folks going into a nursing home. The first method was to do a gift deed and totally get the property out of your name. Now we will look at another way to accomplish the transfer.

A gift deed reserving a life estate transfers the property to the grantees (again, usually your children - or the responsible ones anyway!) but retains for the grantors "life time rights". "Life time rights" means that you as grantor have the right to the possession of the property for as long as you live. The grantees have what is called a "remainder interest" and the value of these different interests is based on the age and life expectancy of the grantor based on the life expectancy table issued by the Social Security Administration. The life tenant, the one who has life time rights, is responsible for paying the taxes and maintaining the property whether or not they actually live there. If the property is sold while the grantor is living the grantor will be entitled to a portion of the proceeds, again based on their life expectancy at the time of the sale, and the remainder interest holders, also known as remaindermen (sorry about the sexist term), are entitled to the balance of the sales proceeds.

If the property is not sold while the grantor is living then it automatically passes full ownership to the grantees upon the death of the grantor. The grantees then obtain what is called a "step up in basis" which means they receive a date of death valuation of the property so when they sell the property the capital gains tax will be zero or based only on the increase in value from the grantor's date of death until the sale date. The property is also not part of grantor's estate and so is not subject to estate recovery if Medicaid has paid and is not subject to any other debts of grantor's estate. WIN-WIN!

In order to transfer the property ALL parties who have an interest must sign the deed as well as any spouses (remember my discussion from last month). The reason I mention this is because on several occasions I have had clients deed their property using a gift deed reserving a life estate to all of their children and then later decide for some economic or emotional reason they don't want a certain child to have it. Guess what? The grantor cannot re-convey without the signature of the remainderman.

This type of conveyance is subject to the Medicaid five year look back. (Remember if a person is in long term care and applies for Medicaid there is a look back period to determine if any property has been gifted and if so a transfer will usually affect Medicaid eligibility for a certain period of time based on the value of the transfer.) Again, this type of transfer comes with warnings about the grantees possibly having financial issues or spousal issues which could mean the property couldn't be deeded back if that was necessary. Nonetheless, this is a pretty inexpensive and often used method of protecting the home.

My apologies if this is a little "dry" but I am trying to give you ideas and facts about asset protection for long term care. Besides, it's kind of like going back to school and speaking of...
HAPPY FALL!

