



Scales Elder Law Newsletter

“Caring for a loved one shouldn’t cost a lifetime of savings.”



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Elder Law Questions and Answers: Transfers 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. *This is especially so during the economic turn-down we're experiencing, when knowing what the law allows you to do to protect your life savings is more important than ever.*

Q: “After I had a stroke last year, my daughter moved in with me to help out and 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 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 2008, caregivers in Pennsylvania provided over \$4 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 frequently 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, the State will have a claim against that person’s probate estate when he or she dies for the total amount of long-term care Medicaid paid. If the house is in the probate estate, it will likely have to be sold to pay back the State 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 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 every additional day of ineligibility represents almost \$240 of additional cost. So minimizing the ineligibility period is important.

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http://www.alz.org/national/documents/report_alzfactfigures2009.pdf (see Table 8).

In my practice, I very rarely advise clients to transfer their entire interest in their home to their children (or anyone else). This is because there are better ways to protect the home. For example, I often have my clients transfer, instead, a “remainder interest” in the home. That is, 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.

By keeping a life estate, the clients have protected their house from later having to be sold to pay off a Medicaid “estate recovery” claim. 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 transfer penalty for Medicaid purpose, which means a shorter time they will have to pay the nursing home. And, finally, retaining a life estate often results in less income tax the children will have to pay in the long run than if the entire interest in the house had been transferred to them.

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 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 has allowed the parent to remain at home rather than go into a nursing home, then the house can be transferred to the child without any 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.

Note: *Despite the new restrictions in the Medicaid Act, families need to realize that even in a crisis, with a spouse or parent already in a nursing home, there remain planning opportunities for seniors to protect a portion of their life savings that would otherwise go to pay for nursing care. Still, every day of delay represents a potential \$220 of irretrievable loss.*

Kemp Scales, CELA,* is an Elder Law Attorney who serves clients throughout western Pennsylvania from his offices in Erie and Titusville. If you would be interested in having attorney Scales speak to your group, please contact us at toll free at (888) 827-2788 or by e-mail at Info@ScalesLawOffices.com.

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

The Colonel's Corner



Items submitted by Attorney Scales' 91-year-old father, Col. J. Shelton Scales, USMCR-Retired, who lives in a senior retirement community in southern Virginia.

A group of old buddies with birthdays close together were discussing how they should celebrate turning 50. They decided to go to the Cosmopolitan restaurant because the waitresses there were good looking and wore low-cut blouses.

Ten years later, at age 60, the group met again to discuss how to celebrate. They decided on the Cosmopolitan because the food there was known to be good and it had a well-stocked wine cellar.

At age 70 they once again decided to celebrate at the Cosmopolitan because it was all on one level, with a ramp and handicapped parking.

Ten years later, at age 80, they again met to decide where they should go. After a long discussion, they finally decided on the Cosmopolitan, since they'd never been there before.