



Your Home and Nursing Home Planning

-- Should you transfer the home to your children?

By Attorney Amy J. Eddy

A common concern among many clients is preserving and protecting their assets so that they can be passed along to children and grandchildren. This most often arises in the context of planning for long term care. With the monthly cost for nursing home care averaging \$6,000 - \$7,000 or more, it does not take long to quickly consume an estate in order to pay for such care.

The home is typically a major asset in the estate. Therefore, I am often asked "Should I transfer my house to my children to 'protect' it from the nursing home costs?" I always advise that any decision to transfer your home to your children should not be taken without a thorough review of all the advantages and disadvantages, and that those considering such a transfer clearly need to consult with an attorney familiar with the impact of the transfer on later qualification for Medicaid.

Transferring your home to your children prevents your home from being counted as an asset when applying for Medicaid to pay for nursing home care. It also prevents the nursing home from placing a lien against the residence once Medicaid has provided services. The transfer also has the added advantage of avoiding probate after the parents are deceased. The transfer is most often made to the children with a retained "life estate" so that the parents continue to have the right to occupy and use the property until the last of the parents' deaths. This also prevents the property from being sold by the children without the parents' consent.

Transferring your home to your children also carries several risks. The transfer is considered a gift (or "divestment") for medical assistance purposes that results in an ineligibility period for medical assistance benefits if made within five (5) years of applying for Medicaid. The number of months of ineligibility is calculated using life expectancy tables, the value of the real estate, and the average state-wide cost of nursing home care (currently \$6,216). The penalty period for making a divestment starts

when an individual is otherwise eligible for medical assistance (i.e. when the individual's assets are spent down to \$2,000, or to spousal impoverishment levels for couples). If the transfer is made more than five (5) years prior to applying for medical assistance, that divestment need not be disclosed.

If the parents retained a life estate and the real estate is sold during their lifetimes, the parents and the children must divide the proceeds of the sale based upon life expectancy tables. Since the remainder beneficiaries normally cannot claim that they are using the residence as their principal residence, the principal residence exclusion would not apply to a sale by the remainder owners, and they would have capital gains.

Finally, those considering such a transfer need to be aware that unexpected occurrences, such as the death of the child prior to the parents, can cause difficulty. Furthermore, an occurrence that financially impacts the child (bankruptcy, divorce, lawsuit) has the potential to adversely impact the property.

Any decision to transfer your home to a child should not be taken lightly or without a review of all the potential consequences. Consider speaking to an attorney experienced in these areas who can advise you as to whether a transfer of your home to the children is right for you, and if so, the potential impact of the transfer on your situation.



ATTORNEYS AT LAW
Est. 1886

1257 Main Street
Stevens Point, Wisconsin
715-344-0890
www.andlaw.com