Elder Law Today

FACER LAW OFFICE—"YOUR ELDER CARE & ESTATE PLANNING CENTER"

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GIVING ASSETS TO ADULT CHILDREN

After her 73-year-old husband, Harold, suffers a paralyzing stroke, Mildred and her daughter, Joan, came to see me. Dark circles have formed under Mildred's eyes. Her hair is disheveled. Joan holds her hand.

"The doctor says Harold needs long-term care in a nursing home," Mildred says. "I have some money in savings, but not enough. I don't want to lose my house and all our hard-earned money. I don't know what to do."

Joan has heard about Medicaid benefits for nursing homes, but doesn't want her mother left destitute in order for her father, Harold, to qualify for them. Joan wants to ensure that her father's medical needs are met, but she also wants to preserve Mildred's assets.

"Can't Mom just give her money to me as a gift?" she asks. "Can't she give away $14,000 a year? I could keep the money for her so she doesn't lose it when Dad applies for Medicaid."

Joan has confused general estate and tax laws with the issue of *asset transfers and Medicaid eligibility.* A "gift" to a child in this case is actually a transfer, and Medicaid has very specific rules about transfers.

At the time Harold applies for Medicaid, the state will "look back" 5 years to see if any gifts have been made. The state won't let you just give away your money or your property to qualify for Medicaid. Any gifts or *transfers for less than fair market value* which are uncovered in the look-back period will cause a delay in Harold's eligibility for Medicaid.

In Illinois, for example, every approximately $6,000 (number is the exact cost of one month in a particular nursing home) given away during the 5 years prior to a Medicaid application creates a 30-day period of ineligibility. So if Harold and Mildred give their daughter $14,000, Harold will be ineligible for Medicaid benefits for about two and one-half months.

So what can Harold and Mildred do? There are a number of steps they can take, ranging from proper gifting strategies to personal care contracts (i.e. paying the children for care received), to spend-down strategies, to raising the Community Spouse Asset Allowance. All these strategies and more are discussed at my seminars, and we use these strategies every day for my clients.

Remember also that putting a child's name on the deed to your house is the same as making a gift even though money does not exchange hands. It is still a transfer for less than fair market value and will cause a penalty to be assessed. Can the house be protected? Absolutely but it requires Family Protection Planning™.

Vocabulary Primer:

Five-year look-back – the period prior to Medicaid application that financial gifts affect Medicaid eligibility.

Community spouse – the healthy spouse who remains at home ("in the community") when an ailing spouse enters a nursing home.

Nursing home spouse – the ill spouse who requires long-term care in the nursing home.

Transfer (that may affect eligibility) – A gift, payment, exchange, sale or transfer that is for less than fair market value.

Our next seminar is **February 15 at 1:30 PM** at the I-Hotel & Conference Center. The title is *The Seven Secrets You Need to Know to Protect Your Home, Your Assets and Your Family from the Cost of Long-Term Care*. Call (217) 337-1111 to make your reservation.