ELDERLAW NEWS®

Legal News For Older Americans — *July 1997*

STOP GUESSING!

Questions about protecting your assets against catastrophic illness and nursing home costs, Social Security, Medicare, Medicaid, Managed Care, Elder Injury Litigation, Grandparent Visitation conflicts, Estate Planning, Guardianships, Pension and Health Benefits or Probate?

Call or write:
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Answers in upcoming editions. Special offer for readers: No charge for initial phone consultation.

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CAREFUL PLANNING MAKES A DIFFERENCE

Medicaid Planning: What to Do (and What *Not* to Do) with Your Home.

The home is usually the most valuable and, for emotional reasons, the most important asset a family has. Some options available for protecting the home from long-term care costs include:

1. Transfer the home to your spouse.
2. Selling the home to your children.
3. Making a gift of the home.
4. Making a gift of the home with a reserved life estate.
5. Placing the home in a trust.

Each of these options will be examined below.

Transfer the Home to your Spouse

Transferring the home to your spouse has no effect upon Medicaid eligibility since the *joint* assets of the couple are considered. However, it is important for one reason: transferring the home from the institutionalized spouse to the communtiy spouse will remove the home from any potential lien which the Medicaid authorities may impose.

Selling the Home to Children

About the *worst* thing you can do when facing a nursing home admission is to sell the home to your children. If you do, the home, usually a non-countable asset, is converted to a fully countable asset (the money or promissory note you receive on the sale) which immediately disqualifies you for Medicaid. In addition, you may be liable for capital gains taxes.

Making a Gift of the Home to Children

Another bad idea. By making an outright gift, you lose the right to live in the home (since you no longer own it), and you expose yourself to the financial and personal misfortunes of the child who now owns the home. That is, if your child is sued, gets divorced or dies, the home could be attached, and even sold. In addition, the child who receives the gift may be liable for capital gains taxes on a subsequent sale.

Making a Gift of the Home with a Reserved Life Estate

The gift of the home with a reserved life estate provides legal and tax advantages. A life estate is the right to occupy and use property during your life. When you make a gift of property to your children with a reserved life estate, your children do not have any right to use or occupy the property until after your death. In effect, a life estate is a way to keep your property while giving it away.

Placing the Home in Trust

This was a good strategy prior to 1993. However, in August 1993, the federal Medicaid law was changed. Now, any transfer to a trust will most likely trigger the longer, sixty (60) month waiting period. As a result, only rarely will it be helpful to transfer your home to a trust.

Pensions: Federal Government Report Reveals that Thousands are Shortchanged by Employer Pensions.

More than 80 million Americans are enrolled in pension plans. A recent federal audit of private pension plans found that thousands of Americans don't receive their full pension benefits because of errors made by employers attempting to comply with complex pension laws and the employer's lack of incentive to insure that benefit calculations are correct. Nearly 1/3rd of those underpaid were shortchanged at least $1,000.00. "Everyone is at risk," Sen. Charles Grassley (R-Iowa), Chairman of the Senate Special Committee of Aging, said. "When it comes to your pension, you should be very pro-active. You should take charge."

Some things you can do to avoid being shortchanged on your pension benefits include:

Maintain a file of all your pension-related documents.

Before leaving the company, request, in writing, a copy of the pension plan, employee booklet and pension calculations.

After receiving benefits, contact an experienced financial planner or pension consultant to determine if the benefits are correct.

If you are considering taking a lump-sum payment, hire a benefits expert to look over your payment. The fairness of the lump-sum depends on the interest rate and longevity assumptions used.

If you are uncertain about the fairness of your employer's pension decisions, contact the federal Pension and Welfare Benefits Admin, Washington, DC, Tel: (202) 326-4000.

Workshops: Upcoming Seminars sponsored by the ElderLaw News

DATE	LOCATION	TIME	TOPIC
9/9/97	Municipal Bldg, Westfield	7:30 -9:00 p.m.	Asset Protection Strategies for Nursing Home Planning
9/25/97	Warren Library, Warren	7:30 - 9:00 p.m.	Asset Protection Strategies for Nursing Home Planning
10/7/97	Franklin Library, Somerset	7:30 - 9:00 pm	Asset Protection Strategies for Nursing Home Planning
10/9/97	Somerset Lib., Bridgewater	7:30 - 9:00 p.m.	Asset Protection Strategies for Nursing Home Planning
11/4/97	Municipal Bldg, Westfield	7:30 - 9:00 p.m.	Estate Planning for Retirement Accounts
11/13/97	Warren Library, Warren	7:30 - 9:00 p.m.	Estate Planning

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