

Utah Spirit

March 2001

Elder Law: Medicaid and Life Estates

Seniors often attempt to protect their assets from Medicaid for the benefit of their children. A home is usually the major asset, and most of us want our children to have it rather than have it pass to Medicaid.

In protecting your home, you could simply convey your house by quit claim deed to a child or to your children. Or, you could add a child's name to the deed, thereby giving half of the house to that child. However there are risks and disadvantages of doing so.

You may recall an earlier Elder Law column, "The Costs of Adding a Child on a Deed" (December 1999). That column discussed some dangers and tax issues of adding a child's name to your deed. Of greater concern is a complete transfer of your home to your child. Such a transfer could protect your home from Medicaid in the event you enter a long-term care facility and you need to apply for Medicaid.

However, transferring your home to a child may create undue risks. You may have an arrangement with your child whereby you can live in the home for as long as you want. Notwithstanding such an agreement, your child could unilaterally sell your home. Or, the home could be taken by a third party in a foreclosure action against your child. The home could also pass to someone other your child by will or by intestate in the event your child predeceases you. Either way, you could lose the right to live in your home.

To avoid this risk, you could transfer your home to your child but retain a "life estate" in the home. This life estate gives you the right to possess and occupy the home for as long as you live. This right is protected even if your child should lose the home through foreclosure or if the home passes by your child's will to another person. That is, a life estate represents your interest in the home, and such interest runs with the land, so to speak. In effect, by reserving a life estate when conveying your home to a child or to your children, you will have full use of the home for the remainder of your life, although you cannot sell your home or gift it to any other child or to anyone else.

But your life estate has value. It is the right to live in your home without having to pay the owner (your child) any rent. The value of your life estate depends on your age and possibly your health and medical condition. If you are 60 years of age, the value of your life estate will be substantially greater than if you are 90 years of age. The expected benefit of possession without rent is obviously greater the younger you are.

Since your life estate has value, it is an asset that Medicaid will count in determining your eligibility for Medicaid benefits. In arriving at the value of the your life estate, Medicaid uses a

Table of factors that are applied to the market value of the home (without consideration of the life estate).

An example should help illustrate how this works. Suppose that your home has a fair market value of \$150,000 and that you are 75 years of age when you need Medicaid benefits for long-term care. From the Medicaid Table, a factor of 0.52149 is used to multiply by \$150,000. The resultant value of your life estate is deemed to be \$78,223.

Although Medicaid does not routinely examine your health, you are entitled to present medical evidence that your life expectancy is substantially shorter than Medicaid's Table would indicate. Therefore, if your physician testifies that your life expectancy is less than a year, the value of your life estate would be substantially diminished.

In reality, however, you can only have \$2,000 in countable assets to qualify for Medicaid's long-term care benefits. Your life estate would likely be far greater than that amount. Alternatively, you could choose to convey your life estate to the same child who owns the home. While this removes the life estate from your countable assets, it would likely represent a nonexempt transfer that could also result in a denial of Medicaid benefits.

But, such a conveyance could enable your eligibility if done far enough in advance of your application for Medicaid benefits. Any transfers more than three years prior to applying for Medicaid do not count. Within three years they count but they may not cause Medicaid to deny your application.

Before conveying your home and reserving a life estate, it is best to contact an Elder Law Attorney.