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Protecting Home From Medicaid - Add Children to the Deed?

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It is common for parents to want to deed their home to their children for a variety of reasons. Specific to Pennsylvania is the desire to avoid probate, probate fees and inheritance tax (even though probate in Pennsylvania is a relatively simple process).

This has often been a strategy **erroneously** employed to qualify for benefits for long-term care or getting approved for Medical Assistance / Medicaid.

While this strategy is appealing on its face, there are risks involved.

- **Transfer is Subject to Medicaid Look-Back.** As discussed in other articles, Medicaid looks at the previous five years of transfers to determine financial eligibility. It is popular for parents to deed the home for the nominal sum of one dollar. For Medicaid purposes, any transfer that is not for a fair market value is considered a gift. Therefore, if a parent transfers a $120,000 interest in their residence to a child for $1, the transfer creates just over 9 months of an ineligibility period ($120,000/12,869.59 = 9.32). Also, inability to pay the nursing home during an ineligibility period could incur liability for your children under Pennsylvania's filial support law. (Note: the divisor of $12,869.59 is accurate for 2023 in Pennsylvania).
- **Property is Exposed to Child's Creditors.** If your child or children have creditors or are involved in an accident that they have insufficient insurance for, the home could be subject to a claim or lien. If a child predeceases and is an owner or the sole owner of the home, the home's ownership passes to the child's estate beneficiaries. In a divorce settlement, the home ownership could be included or affect the overall equitable distribution.
- **Tax Gain Issues.** A gift of property will result in the donee receiving the donor's tax basis. If the home has been owned by the parent for many years, the property's value will likely have appreciated greatly. If a child sells a gifted property for $250,000 and the parents originally paid $50,000, the child will be responsible for the capital gains between the basis ($50,000) and the sales price ($250,000). This results in a $200,000 reportable gain. Also, the child will not get a step-up in basis when the parent passes.

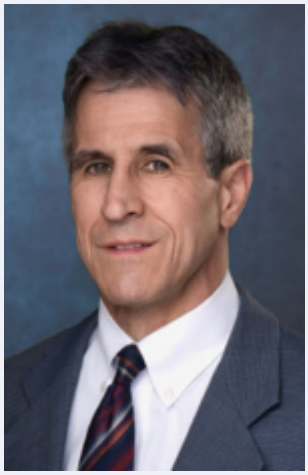
We highly recommend you talk to a qualified elder law attorney when facing these decisions and options.

If you have questions about Medicaid eligibility or have other Elder Law or Estate Planning concerns, please contact one of our Elder Law Attorneys or call 814-459-2800.

See also: What is Medicaid?,How Do I Qualify for Medicaid?, What Is the 5-Year Look-Back Period for Medicaid? and Is Medicaid Going to Take My Home?

A more detailed discussion on Medicaid can be found here: Demystifying Medicaid Planning

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