LEGAL EASE

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Is hiding money from nursing home by giving it to children a good idea?

A very common situation that elder law attorneys encounter is parents who give assets, including their home, to their children to "protect it if I ever need Medicaid." Additionally, sometimes a parent or parents will add one or more children to financial accounts for convenience. However, giving children access to your money or giving them real estate is usually a bad idea for many reasons, not the least among them is that such a gift could disqualify you from Medicaid for your long term care costs. Since obtaining Medicaid coverage is usually the goal for "hiding" the money, all of the illusory protection is lost. Also if you are successful in riding out the five year "look back," or never need nursing home, you could lose your assets to your child's creditors' claims.

A recent case, *In re Woodworth,* in the US Bankruptcy Court for the Eastern District of Virginia (February 6, 2013), mother transferred her brokerage account to her daughter in 2002. Mother later testified that she intended to take the majority of her assets out of her name so that she could qualify for Medicaid when she might need it. In 2010, daughter moved the money in the account to a complicated trust as an investment vehicle, for which she paid over $18,000, to protect the money from creditors. Estate Street Partners, LLC advertised the trust as "…learn how to Hide Your Assets despite what your lawyer told you…" In the meantime, daughter was in trouble with her own investments, and eventually declared personal bankruptcy. Since the investment account was in daughter's sole name, it was swept up to satisfy daughter's creditors. The bankruptcy judge stated that mother cannot have it both ways…"she cannot part with title for purposes of Medicaid eligibility, and at the same time claim that she retained an equitable title to the asset. To allow this kind of secret reservation of equitable title would be to sanction Medicaid fraud."

There are other ways that parents can lose assets when trying to protect them from the "nursing home." Joint bank accounts can be claimed by the child's creditors in situations other than bankruptcy. If mother and daughter have a joint financial account and daughter dies first, mother will need to pay inheritance tax on her own money. A parent or parents could lose assets in a divorce settlement of the child's. Child can take all of the parents' assets since the joint owner has equal access to the accounts.

Adding children's names to a house title has additional ramifications. The real estate is not the children's primary residence; therefore, the capital gains tax exemption does not apply. The children would assume the parents' basis (essentially the amount that the parents paid for the house in most cases) by transferring real estate during lifetime, potentially resulting in a large capital gains tax bill upon sale. Parents lose the benefit of retaining a large asset, one that can be used to pay for other types of care, or the ability to obtain a reverse mortgage to potentially pay for care at home, and/or for any claim to property tax rebates.

Adding adult children to financial accounts, giving adult children assets to protect them from the "nursing home," and giving real estate interests to adult children are matters that require careful thought, and consultation with an attorney who is versed in elder law matters.