LEGAL EASE

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Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

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Before transferring property to children, consider consequences

I am frequently approached with the following question: "Should parents transfer the title of their home to their child or children to avoid having the nursing home get the house?" My short answer is generally "no." Although each person's situation is unique to them, and there may be some instances where a transfer of the house title to the children is warranted, most of the time it is an ill advised move. The long answer will attempt to explain this more fully.

Nursing homes do not "get" the house in any event, as they are not in the business of acquiring real estate. However, the value of the home can become an available asset when one is applying for Medical Assistance. If there is a husband and wife, and one spouse needs to enter the nursing home, the primary residence is protected for the spouse who remains at home. However, this protection can be destroyed by transferring the home into a revocable living trust, or by transferring the home to a child or children, because the couple then no longer owns the house. The value of the house becomes available, and will be used to pay for the institutionalized spouse's care either during his or her lifetime, or be subject to a claim for estate recovery after his or her death.

Another issue which arises when the house is transferred to a child or children occurs when an occupant of the home requires long term nursing home care within five years following the transfer of the title of the home to someone other than a spouse. Such a transfer, when not supported by fair consideration (i.e. when no actual money changes hands), is deemed a gift, and results in a period of ineligibility for Medical Assistance. For instance, mom and dad deed the house to daughter for $1.00 in 2006. Dad has a major stroke, and requires long term nursing home care in 2008. Mom continues to live in the house but no longer owns it. The value of the house is considered a gift to daughter. If we consider the value of the house to be $200,000, then dad is ineligible for Medical Assistance for 2.47 years, during which he must pay privately for his care.

Sometimes the reason parents want to give the house to their children is to avoid inheritance taxes at their deaths. It is true that if there is no federal estate, and if the gift was made more than one year before death, there are no PA inheritance taxes due, at the rate of 4.5 percent for direct descendents. However, transfer of real estate during one's lifetime can create a capital gains tax issue. For instance, mom and dad purchased their home many years ago for $5,000. The home is now worth $200,000. If mom and dad transfer the title of the house to son, who does not reside in the home as his primary residence, then son assumes mom and dad's basis of approximately $5,000. Son, when he later sells the house, must pay capital gains tax (currently 15 percent) on the difference between $5,000 and $200,000. If parents gave son the house in their Wills as part of their estate, then he receives a "step up" in basis, or the value as of the date of death of the surviving parent.

There are other reasons not to transfer one's primary residence to one's children, including the issue of potentially being evicted by one's children, or the child's creditors; losing the equity in one's home which could help pay for care; and losing the ability to apply for property tax rebates. It is important to consult a knowledgeable attorney who understands the Medical Assistance implications before undertaking any steps to transfer property, based upon advice from well-meaning friends and associates.