HOW TO PROTECT YOUR HOME, YOUR ASSETS & YOUR FAMILY

Presented by:
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Our clients will frequently own a home when confronted with the need for long-term care. The client will frequently want to remain in their home. The client expects a plan to protect it.
The home is a non-countable resource for Medicaid eligibility until it ceases to be the individual’s principal place of residence.

Six Month Rule

Exceptions to General Rule.
Planning for the protection of the home requires the Elder Law attorney to develop a comprehensive skill set:

- Public Benefits
- Trust Law
- Real Property
- Tax
- Insurance
1. Will there be a transfer penalty?
2. Will the donee receive carryover basis?
3. Will the donee receive a step up in basis at the client’s death?
4. Will the 121 Exclusion apply to gain on sale?
5. How will Medicaid treat sales proceeds if the home is sold?
6. Will the client lose his or her real estate tax relief?
7. Will the transfer be subject to gift tax?
8. Will the transfer be subject to estate tax?
9. Will the client lose control and who is responsible for payment of maintenance expenses?
10. Is the property encumbered?
11. Will the home be subject to estate recovery?
A Medicaid transfer penalty will generally be imposed when an individual disposes of any asset for less than the *fair market value* on or after the lookback date.

There are exceptions to the Medicaid transfer penalty.

The VA does not *currently* impose a transfer penalty.
EXCEPTIONS TO TRANSFER PENALTY

Reason Exclusive of Medicaid Eligibility
Transfer to Spouse, Minor Child or Disabled Child
Transfer to Sibling
Transfer to Caretaker Child
Transfer to Certain Trusts

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Consideration should be given to whether the asset, when transferred, will carryover the basis from the donor to the donee.
3 - **STEP UP IN BASIS**

- When assets are a part of a decedent's estate for federal estate tax purposes, the property will receive a "step up" in basis. Thus, the donee’s new basis in the asset will be the value of the asset at the date of the decedent's death.
Consideration should be given to whether the Internal Revenue Code Section 121 Exclusion will be lost.
While owning a home may not render the client ineligible for Medicaid or VA Benefits, the proceeds received from a sale of the home often will.
Consideration should be given to whether a real estate tax relief would be lost as a result of the transfer.
Will the transfer be subject to federal or state gift tax?

- In 2014, there is a federal annual exclusion of $14,000 or less, per person, per year. Gifts made in excess of this amount will require that a gift tax return be filed.

- Additionally in 2014, there is a federal lifetime exclusion in the amount of $5,340,000/individual and $10,680,000/married couple, and no tax will be due for gifts that do not exceed this amount.

- Virginia does not have a gift tax.
Will the transfer will be subject to federal or state estate tax?

- For 2014, an estate with combined gross assets and prior taxable gifts that does not exceed $5,340,000/individual and $10,680,000/married couple will not have to file a federal estate tax return.

- Moreover, "beginning January 1, 2011, estates of decedents survived by a spouse may elect to pass any of the decedent’s unused federal exemption to the surviving spouse."

- In 2006, the Virginia General Assembly enacted House Bill 5018 which repealed the estate tax for the estates of decedents whose date of death occurred on or after July 1, 2007.
Consideration should be given to:

• whether the transfer would result in the grantor losing full control, and
• who will be responsible for the payment of maintenance.
Is the home encumbered by a lien or mortgage?

- If yes, some transfers may trigger the mortgage's due-on-sale clause.
Protecting the home from Medicaid estate recovery is an important consideration.

However, with a broad definition of "estate,” Virginia Medicaid is permitted to recover some or all assets that bypass probate, which may include assets that pass to an heir or survivor through joint tenancy, rights of survivorship, life estates, annuity remainder payments, or life insurance payouts.
Property Casualty & Flood Insurance
- The homeowner's liability insurance, flood insurance, and any termite policies, etc., will need to be updated to reflect the new ownership.
- Consideration should also be given to whether any premiums may change as a result of the new ownership.

Owners Title Insurance
- Title Insurance is typically soon forgotten after the initial purchase.
- However, if transferring any real property, the transfer will often affect the policy. Thus, it is wise, and often required, to contact the title insurance agency to request an endorsement to extend coverage of the original policy to the new owner.
**Transfer Strategies to Consider**

- **Exempt Transfers:**
  - Transfer to a community spouse;
  - Transfer home to a child who is under 21, blind, or disabled;
  - Transfer to a caregiver child;
  - Transfer to a qualified sibling.

- **Non-Exempt Transfers:**
  - Transfer to a child outright;
  - Transfer to a child and retain a life estate;
  - Transfer to a child and reserve a right to use & occupy;
  - Transfer to a grantor trust (i.e., Income Only Trust or Children’s Trust);
  - Transfer to a Grantor Trust and retain a life estate;
  - Transfer to a Grantor Trust and retain a right to use & occupy;
CASE STUDY
FACTS

Husband:
- Age 86
- U.S. Citizen
- Community Spouse with terminal illness
- One child by prior marriage
- Home owned T by E
- POA with gift authority
- Simple will giving entire estate to spouse, if living, with “their children” as contingent beneficiaries

Wife:
- Age 85
- U.S. Citizen
- Institutionalized in nursing home
- Two children by prior marriage
- Home owned T by E
- POA with gift authority
- Simple will giving entire estate to spouse, if living, with “their children” as contingent beneficiaries
Husband:
- Execute new last will and testament
  - directing sale of home
  - 1/3 to TP SNT for Wife, if she survives
  - Residuary to the three children
- Marital Agreement relating to waiver of augmented rights and residual beneficiaries

Wife:
- Transfer her ½ interest in the home to husband
- Marital Agreement relating to waiver of augmented rights and residual beneficiaries
1. Transfer Penalty
   - The transfer would not incur a penalty.

2. Carryover Basis
   - The husband’s basis would be a carryover.

3. Step-up In Basis
   - If the home is not sold during the husband’s lifetime, the home would receive a step up in basis at the husband’s death.

4. 121 Exclusion
   - The Husband would retain the 121 Exclusion.

5. Medicaid Treatment of Sales Proceeds
   - If the property is sold during the lifetime of husband, the wife is still eligible for Medicaid.

6. Real Estate Tax Relief
   - The husband will retain available real estate tax relief.
7. Encumbrances
   - The transfer is exempt under the Garn-St. Germain Act.

8. Federal Gift Tax
   - No gift tax return would be required.

9. Federal Estate Tax
   - The home would be included in the husband’s estate for estate tax.

10. Control and Payment of Maintenance Expenses
    - Wife loses some control, but husband is required to pay maintenance expenses.

11. Estate Recovery
    - Estate recovery is not made until the death of the institutionalized spouse.
1. Transfer Penalty
   - The transfer may incur a penalty based on augmented estate rights.

2. Carryover Basis
   - The estate’s basis would be a step up.

3. Step-up In Basis
   - If the home is not sold during the husband’s lifetime, the home would receive a step-up in basis at the husband’s death.

4. 121 Exclusion
   - The 121 exclusion is not needed.

5. Medicaid Treatment of Sales Proceeds
   - The wife will not receive the sales proceeds.

6. Real Estate Tax Relief
   - Real estate tax relief is not needed.
7. Encumbrances
   - The transfer is exempt under the Garn-St.Germain Act.

8. Federal Gift Tax
   - No gift tax return would be required.

9. Federal Estate Tax
   - The home would be included in the husband’s estate for estate tax.

10. Control and Payment of Maintenance Expenses
    - Wife loses some control.

11. Estate Recovery
    - Estate recovery is not made until the death of the institutionalized spouse but nothing is included in wife’s estate.
• Estate Planning
• Asset Protection Planning
• Long-term Care Planning
• Life Care Planning
• Veterans Benefits
• Financial Planning & Advice regarding Investments, Insurance, Annuities & Reverse Mortgages

• Tax Planning
• Guardianships & Conservatorships
• Estate & Trust Administration
• Special Needs Planning
• Care Management Services
• Business Planning & Succession Planning