

post-gazette.COM BUSINESS / PERSONAL BUSINESS
Pittsburgh Post-Gazette

Elder law: Can I save my home for my daughter?

Sunday, April 25, 2010

By Julian Gray and Frank Petrich

Three years ago, Mrs. Jones' daughter, Susan, one of her three children, gave up her job in California and moved back to Pittsburgh to care for both of her parents. Mrs. Jones had fractured her hip, which never healed properly, and Mr. Jones had dementia. Mr. Jones died two years ago, and Mrs. Jones' physical condition has deteriorated to the point that she cannot leave her house by herself.

Her mother's intent is to name Susan in her will as recipient of Mrs. Jones' house to repay Susan for the sacrifices she has made in returning home to care for her parents. The plan was for Mrs. Jones and Susan to both live in the home until Mrs. Jones' death.

However, it is becoming clear that Mrs. Jones may have to go to a nursing facility because of her deteriorating physical condition. The question Mrs. Jones wants answered is what she can do to help ensure that Susan can own and live in the family home after Mrs. Jones no longer resides there, either due to her admission to a nursing facility or death.

We have found that, in the Pittsburgh area, with its high concentration of elderly residents and strong family ties, it is not uncommon for a child, particularly a single adult child, to give up an out-of-town job to return to Pittsburgh to take care of ill and elderly parents. In these situations, parents generally want to preserve the family home for that child, whom we call a "caregiver child."

Yes, parents can leave their home to a child by naming that child as a recipient of the house in the parents' will. However, if Mrs. Jones were to do so and prior to her death needed to enter a nursing facility and have all or a portion of that nursing care paid for by Pennsylvania's Medical Assistance program, the state would make a claim (called "Estate Recovery") against those assets in Mrs. Jones' estate being distributed under her will (Mrs. Jones' probate estate).

That claim would be for those payments made by Medical Assistance on Mrs. Jones' behalf, which could total thousands of dollars each month. Depending on what remained in Mrs. Jones' probate estate, the house might have to be sold to satisfy the Medical Assistance claim with the house not then being available to Susan as both her parents wanted.

Similarly, Mrs. Jones could transfer the house to Susan now. If she did transfer the house now and never entered a nursing facility, no problem. Susan gets the house as her parents wished and all live happily ever after. However, if Mrs. Jones has to enter a nursing facility, and apply for Medical Assistance, especially within the next five years, a "transfer penalty" based upon the value of the transferred house could be imposed on Mrs. Jones' eligibility for Medical Assistance at the rate of \$247.16 a day. The five year "look-back period" imposed by the federal Deficit Reduction Act of 2005 generally begins on the day Mrs. Jones enters the nursing facility and makes application for Medical Assistance.

But, most importantly, in Mrs. Jones' case, federal law recognizes the unique situation which arises because of a "caregiver child." The law creates an exception to the imposition of a transfer penalty on the transfer of the house known as the "caregiver child" exception.

This exception will apply if the child has lived with the parent for at least two years immediately prior to the parent entering a nursing facility and, but for that care, the parent would have had to enter a nursing facility. There has to be adequate supporting evidence to justify this exception, best prepared with the assistance of an elder law attorney, including a physician's affidavit citing how Susan's activities on behalf of her mother kept Mrs. Jones out of a nursing facility as long as they did.

In Susan's case, the documents were prepared to support the "caregiver" child exception and the house was transferred to Susan before her mother's death, thus eliminating an estate recovery claim as to the house.

Nonetheless, caution has to be the byword on any parent's asset transfers to a child, no matter how helpful and loved the child may be. The child could get married or divorced, have creditors, have addiction problems or other issues, including death, which could put the transferred asset, in this case Mrs. Jones' house, at risk.

Thus, a thorough review of all the facts, the relationship between the parents and child and the potential risks of a transfer needs to be done by the parent in order to make such a decision.

Julian Gray and Frank Petrich are both Certified Elder Law Attorneys with more than 50 years of combined elder law experience who practice in the Pittsburgh area at Gray Elder Law. Send questions for consideration in this column to elderlawguys@grayelderlaw.com.

"Money Q&A" and "Company Town" are featured exclusively at [PG+](#), a members-only web site of the Pittsburgh Post-Gazette. Our [introduction to PG+](#) gives you all the details.



First published on April 25, 2010 at 12:00 am