post-gazette.com
Pittsburgh Post-Gazette

Elder Law: The other side of shale gas planning

September 23, 2012 12:22 am
By Julian Gray and Frank Petrich /

It seems like anywhere you go in Pennsylvania, someone is talking about shale gas drilling. Many of our clients have been fortunate enough to own shale land and have received "bonus" payments for signing leases. Others already are enjoying the royalties generated by operating wells. If the scientists are correct, and Pennsylvania truly does hold significant quantities of shale gas beneath us, there are numerous issues and opportunities.

For some landowners, this may mean a dramatic change in wealth that could occur immediately and continue over many years as royalty payments roll in. While there are significant issues to investigate when negotiating a gas lease, securing the monetary proceeds of the lease is only half the story. The landowner should, of necessity, consult with legal and tax counsel to understand the effects of this windfall and plan for the future.

In the context of elder-care planning, we see many families who have land that is or could be the subject of a lucrative gas lease agreement. As these clients age and they look toward protecting this valuable asset, there are special aspects of planning that they should consider.

As we've discussed numerous times in this column before, the high costs of long-term care at home or in a facility can destroy the best laid financial plans and investments. (Nursing home care costs alone now approach $100,000 a year.)

Therefore, seniors (and nonseniors) owning land that could be leased should consider protecting what may become their most valuable asset. After the honeymoon of securing a lease agreement, the landowner should consider these issues:

1. Valuation -- What really is the value of the speculative future royalty payments on the gas lease?

2. If I need long-term care, will my gas lease be subject to "spend down" to pay for my care?

3. If I receive Medicaid, will the state attach my property at my death for repayment of my care costs?

4. What is my overall planning for succession of my land and the gas rights to the beneficiaries of my estate?

5. What types of taxes am I subject to during my lifetime and after death?

It is preferable to deal with these issues prior to signing a gas lease, but normally this, just as a practical matter, doesn't happen. While this list is not exhaustive, it is important to realize that statistically, half of us will need nursing home care at some point in our lives. Therefore, it would be a shame to squander the good fortune of this financial windfall by failing to address the costs of long-term care.

Fortunately, there are many options to consider. Unfortunately, many people fail to investigate the options until a crisis occurs -- and then it may be too late. It is difficult to estimate the future value of a gas well, especially when shale gas drilling is relatively new here and prices are fluctuating. However, it is possible to assemble a plan to protect the land and corresponding gas interests, regardless of whether they produce the "mother lode".

One issue is that if the gas lease is part of the primary residence's land, this land and homestead are exempt from being countable for qualifying for Medicaid long-term care coverage. However, the result is that the state will attempt to collect against the landowner's estate after death, thereby causing the value of the land (and the lease) to be used to repay the state.

The existence of the gas well boom is just another factor to incorporate into a well-balanced plan that addresses not only the usual issues in estate planning, but also considers the extremely high costs of long-term care and the "long arm" of the state.

Julian Gray and Frank Petrich are Certified Elder Law Attorneys with over 55 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, and visit their website at www.grayelderlaw.com.

First Published September 23, 2012 12:00 am