



Elder Law: If you're playing the good Samaritan, tread lightly

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Julian Gray and Frank Petrich

With millions of caregivers around the country, many of us find ourselves in a position at some point in our lives when a family member or friend reaches out for help — and that need for help may go on for several years.

Statistically, most care is provided for free — out of love, respect, devotion or friendship.

When it's a close family member, the choice is relatively easy. However, what are the additional issues when someone needs assistance who is not a close family member?

Perhaps it's an elderly widow or a good friend whose children live out of town. Maybe a friend you know through your house of worship. Or your longtime, next-door neighbor who has no immediate family. While the caregiver's intentions are wholesome, one can quickly slip into a quagmire of legal and financial troubles when playing the role of a good Samaritan.

The assistance may start out with something as innocuous as getting the mail or helping with yardwork but may escalate into more involved tasks such as writing checks to pay bills or even acting as an agent under a legal power of attorney.

While we're not talking about actually providing medical care or physical therapy (although some caregivers may find themselves in this situation), these services must be paid for — and they're not cheap. Home and facility care costs thousands of dollars monthly.

So where does that put the good Samaritan?

If you're a caregiver engaged in writing checks — usually for care, utility bills, taxes, groceries and everything else that goes with supporting a person in his or her home — start thinking about who might ask questions about how the money was spent once the care recipient dies.

Some day, someone or some entity is going to want you to account for where all the money went. As one of our wise fathers used to say, “Where there's a will, there's relatives.”

Statistically, people with few or no family members often name charities as beneficiaries in their will or trust.

That means when the person dies that the Pennsylvania attorney general must be notified on behalf of each charity with such a beneficial interest. Whether it's the long lost nephew who now resurfaces or the state government, someone will ask the caregiver to account for what's been spent over the years.

If the relatives or the state crawling out of the woodwork is not enough, one also has to consider the income tax minefield that awaits the caregiver who is paid “under the table.”

There are potential significant issues with failure to report income as an “independent contractor,” as well as failure to adequately withhold income and Social Security taxes that can come back to bite the person in charge.

Moreover, some of the caregivers may have a reason to want to be paid under the table other than income tax — because the caregivers themselves are on disability or welfare benefits. That can quickly get the attention of the Social Security Administration or Pennsylvania Department of Human Services and put those benefits in jeopardy.

Finally, statistically speaking again, half of us will require some type of skilled nursing care in a facility during our lives. Although nobody wants to go to a nursing home, most people who do so simply do not have a choice on how to receive the care they otherwise need.

Because of the high cost of nursing facility care, be it personal care, assisted living or skilled nursing, one has to remember that the majority of nursing home residents apply for Medicaid to pay for their care costs. This application for medical assistance requires a five-year review of all financial transactions to verify whether gifts have been made to expedite impoverishment.

So, as the custodian of the checkbook, the good Samaritan once again may find himself in a precarious position of accounting for hundreds of transactions.

Remember the old Danish proverb: “No good deed goes unpunished and the punishment can be quite severe.”

The answer is quite simple: You don’t have to do this on your own. Recognize the slippery slope that is approaching when someone reaches out for assistance and find out the appropriate ways to help that person — potentially for a long time — while protecting yourself from the unintended consequences of your good deeds.

Julian Gray and Frank Petrich are certified elder law attorneys who practice in the Pittsburgh area at Gray Elder Law. Send questions to elderlawguys@grayelderlaw.com or visit www.grayelderlaw.com.