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Elder Law: Intra-family loans can spell trouble for elderly, children alike

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When one of us was in college, his father loaned him $5,000 to purchase a "newer" 7-year-old vehicle. He worked all summer long in a laborious job to pay back every dollar. The whole transaction was done on nothing more than a handshake.

While this type of agreement is fairly common among family members (and provides valuable lessons to both parties far beyond the financial risk), intra-family loans between parent and child or vice versa can have unintended consequences when a parent may need to qualify for Medical Assistance to cover necessary long-term care either in their home or a nursing facility.

From prior articles, you may recall two of the many facts of growing older: 1. Most caregiving is provided by family members at little or no cost to the parent; and 2. When outside help is eventually needed, either in a home or facility setting, Medical Assistance (the state's Medicaid program) ends up paying almost all of the care costs, which are in excess of $100,000 a year.

While this program helps thousands of people across the Commonwealth for their long-term care financial needs, strict scrutiny of all financial transactions for the applicant for the five years preceding the application for coverage can overturn seemingly harmless transactions that now become the focus of inquiry by the state Department of Human Services (DHS).

Let's consider some of the usual suspects (situations):

1. "The Family Banker": Daughter is attempting to buy a home and her parents want to help. She's having problems qualifying for a traditional mortgage loan after a contentious divorce that affected her credit. So, her parents "loan" her the funds needed to purchase the home with the understanding that she will repay the loan to her parents over time. Nothing more than a handshake.

Three years later, one parent suddenly requires expensive nursing home care and needs to apply for Medical Assistance. Unbeknownst to the parents, the eligibility rules require that any loans made to any third party within five years prior to the Medicaid application must be evidenced by a written legal instrument, subject to a variety of technical requirements. For example, the loan must require that periodic repayments are made equally and that the term of the loan fall within the "life expectancy" of the parent, just to name a few. Failure to observe these loan requirements can result in a denial of Medicaid coverage and even litigation.

2. "The Good Son": Dad is a widower and accumulated about $100,000 in savings and paid his home off decades ago, which now is worth about the same amount as his savings. When Dad's health declines, he moves to a Personal Care Home, which costs him about $4,000 a month. His income from Social Security and pension only pay about half that amount. His son, one of his three children, is fairly successful and offers to pay whatever Dad needs to make sure he is comfortable in his twilight years with the understanding that someday there may be some funds left from Dad's savings or the house could be sold and the son would be repaid. Again, nothing more than a handshake.

Unfortunately, Dad's health declines rapidly and he transitions to a skilled nursing facility where he must apply for Medicaid to pay for the care. When the house is sold either before or after Dad's death, the son is surprised to learn that since he did not properly document his "loan" to his father that he is an unsecured creditor and "behind" DHS in their estate recovery claim in terms of priority in getting repaid. DHS gets repaid before almost all other creditors. Even a relatively short nursing home stay can rack up a significant repayment obligation with the average monthly nursing home cost of $9,000.

Both of these scenarios could have had happier endings if the families would have done a little proactive planning by considering written intra-family loan transactions involving the family members.

Again, not a handshake, but in writing!

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