



## Elder Law: A sampling of frequently asked questions

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By Julian Gray and Frank Petrich

As we begin the fifth year of writing this column, we thought we'd devote this one to a few of the more frequently asked questions we have received. As many of the questions we get are very fact specific, we are taking some editorial liberty to put some of the questions in a format (along with our answers) that may be of some value to our readers.

**Q: I read your column in the Post-Gazette on "Filial Responsibility." In it you did not mention Medicaid or the five-year lookback. In my case, my mother is in a nursing facility where she has been for about seven years. She is a 90-year-old stroke victim. She is down to her last year of assets.**

**No family member has received any of her more than \$600,000 of assets she had prior to being a resident of the nursing facility. She also receives a \$1,700 Social Security payment each month.**

**I presumed that when her assets ran out she would be placed on Medicaid. Since I read your article I am confused about this. I am the only child in-state to care for her and am both her executor and trustee (I am 70 and still employed). Do you think that I could be sued by the nursing home when her assets run out?**

**A:** While there are many factors that may lead to liability under Act 43 (the Filial Responsibility statute), generally if a nursing home resident has spent down her funds without making gifts during the five-year lookback period and if the application for Medicaid is properly processed in a timely manner, there should be no gap in payment to the facility — which is usually that for which the nursing home sues the kin.

We have seen this type of case before and we would recommend you discuss the situation with a qualified elder law attorney for a variety of reasons BEFORE you spend down her remaining funds. We recently handled a similar case where a son had used several hundred thousand dollars of his mother's money to pay for her care over the past few years and then trusted the nursing home to submit the Medical Assistance application properly, which they did not do, and then they sent the son an invoice for \$37,000.

Fortunately, he came to us before the application appeal period expired and we were able to reinstate his mother's Medicaid benefits retroactively and the invoice went away. However, it didn't need to get to that point.

**Q: I enjoyed your article on "Taking care of Fido" (a column on what to do with pets after your death). However, you forgot to include a mention of whether clients need a Seamus clause that outlines the travel arrangements of their pet once they are gone; God forbid someone like Mitt Romney would inherit the dog and take it in an air-tight container on the roof of his station wagon for a 15 hour cross-border international trip. The extra clause might increase your billable hours in handling the estates.**

**A:** While we try to stay away from political comments in our column, we do appreciate the one about increasing billable hours. So, we are now considering both "Seamus" and "Garfield" clauses for clients with pets.

**Q: I am 76 years old and in good health, but, I would like to save as much of my hard earned money for my family in case I need to enter a nursing home.**

**Therefore, I want to do an internal transfer of some shares of stock into my daughter's name in the amount of \$13,000. When I file income tax in 2014 will I need to pay tax on the profit of this stock?**

**Does my daughter need to report this gift of \$13,000 on her income tax of 2014?**

**A:** You've asked numerous good questions the answers to which we will try to concisely provide:

1. One can transfer up to \$14,000 on an annual basis to as many people as they wish. Transferring more than that amount requires the filing with the IRS of a Federal Gift Tax form.

2. The person receiving the gift (your daughter) does not include the gift in her tax return as it is not considered taxable income.
3. If you're transferring stock, your daughter takes it at the same price you paid for it ("cost basis") and she may have to pay capital gains taxes when she sells it.
4. Making a gift of this amount could make you ineligible for some period of time ("penalty period) for Medical Assistance for long-term care if the gift were made within five years of your applying for such assistance.

Thus, we would strongly urge you to meet with an elder law attorney to review your entire financial situation and your goals in order to design a proper plan to address your concerns.

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And, remember the Olde Slovenian proverb; "A question not asked is a question not answered".

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