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The Elder Law Voice

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What You Need to Know About Capital Gains Tax

The Internal Revenue Code provides an exclusion for gain on the sale of a principal residence under Section 121. The exclusion amount is as much as \$250,000 of gain for a single taxpayer, and \$500,000 for a married taxpayer, if the seller meets three tests.

The first two tests are the ownership test and the use test. The ownership and use tests are met if during the five-year period ending on the date of sale the individual has owned the home for at least two years and has lived in the home as the main home for at least two years. The third test is met if the individual, or one of the individuals if married, did not use this exclusion in the prior two years.

These rules are often difficult to apply when you do not meet those tests. The following questions are intended to help you identify if you may qualify for the Section 121 exclusion, even if you do not meet the three tests above:

“What if I have to go into the nursing home before the end of the two year period?”

A sale or exchange by reason of health allows for the taxpayer to prorate the gain exclusion under Section 121, if the sale is to obtain for the taxpayer medical or personal care. For example, if you lived in your home one year and six months prior to moving into the nursing home, and you did not use the Section 121 exclusion in the prior two years, you would be able to exclude gain on the sale of your home up to \$187,500 ($\$250,000 * 18 \text{ months}/24 \text{ months}$).

“What if I move in with my child for care and do not meet the ownership and use tests above?”

This also qualifies for the medical exception above, just as if you moved to the nursing home. This exception also applies in the reverse for your child if they were to move in with you and sell their principal residence. If they do not meet the ownership and use tests, they would be able to prorate the exclusion amount for moving in with you to provide care.

“What if my doctor recommends I move to a new climate before I have owned by home for two years?”

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A move recommended by a physician to a different climate for medical reasons also falls under the medical exception, just as if you move into a nursing home. Remember, you would have to meet the third test of not having used the exclusion within the prior two years to qualify for prorated gain treatment.

“What if I only own a partial interest or life estate in my home?”

According to Internal Revenue Service Regulations, “a taxpayer may apply the section 121 exclusion to gain from the sale or exchange of an interest in the taxpayer’s principal residence that is less than the taxpayer’s entire interest if the interest sold or exchanged includes an interest in the dwelling unit.” Therefore, if

you meet the above tests, you would be able to exclude the gain on the sale of the life estate or partial interest under Section 121.

“What if I do not meet the three tests above, and no exception applies to my situation?”

If you do not meet the tests, and an exception does not apply to your situation, you will have to report the sale on your individual income tax return on Schedule D, Capital Gains and Losses.

Since there are other exceptions to Section 121, we encourage you to consult your Certified Public Accountant or tax advisor to ensure proper reporting of such a transaction and for final determination whether an exception applies to your situation.

~ Beverly Eckard

DRASTIC MEDICAID CHANGES - THE BASICS

The Deficit Reduction Act of 2005, which was signed into law by President Bush on February 8, 2006, makes several drastic changes in the rules relating to Medicaid benefits for long-term care in a skilled nursing facility. A lot of confusion still remains about the Act because the U.S. Senate and House of Representatives actually voted on different versions of the bill that the President signed. There are a number of lawsuits pending to declare the Act unconstitutional, including one filed by members of Congress. The confusion is increased by the fact that Medicaid officials in North Carolina have not yet issued the revised rules and regulations to implement the law here. However, if/when the implementing rules go into effect, these are some basic changes we can expect:

- **Lookback**

The lookback period will increase from three years to five years. This means that when a Medicaid application is filed, the Department of Social Services (“DSS”) will look back into the applicant’s financial history for a period of five years to determine whether any gifts of funds, property or other assets have been made which will cause sanction

penalties of Medicaid ineligibility. Gift transfers made more than five years before the application will not be considered, but all gifts within that five-year period will come under scrutiny.

- **Sanction Changes**

When sanctions for gifts begin to be counted is the most drastic change of all. Under current law, sanctions of Medicaid ineligibility begin to run when the total amount of gifts made equals or exceeds \$4,800. For example, a gift of \$12,000 in February of 2006 would create 2.5 months of Medicaid ineligibility. Under current rules, Medicaid rounds down, and the sanction for each month expires after the last day of the month, regardless of whether the gift was made early or late in the month. Assuming that no other gifts are made, the two-month sanction of Medicaid ineligibility for the February gift will have expired at the end of March. Under the new law, Medicaid does not round down. A fractional month’s sanction will be calculated into additional days of ineligibility.

However, the most revolutionary change in the Act is that sanctions will no longer be assessed as of the date that the transfer occurs. Rather, the DSS will add up all gift transfers that have been made during the five-year period preceding the Medicaid application. They will then assess sanctions (currently at the rate of one month of ineligibility for ev-

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ery \$4,800 transferred), which will apply to eliminate future benefits. For example, if an elderly widow had a health care crisis requiring nursing home care and had less than \$2,000 of countable assets, she might immediately apply for Medicaid benefits. In the five-year period preceding her application and after the effective date of the new rules, she may have made a gift of \$12,000 to her grandchild. Under the new rules, instead of the sanctions on that gift already having expired, she would not be eligible for Medicaid assistance for two and a half months, beginning when she

annuities must be immediate, irrevocable and actuarially sound meaning they pay back the amount invested within the life expectancy of the person receiving the income stream as set out in Medicaid mortality tables. Furthermore, the income must be paid in substantially equal payments with no deferred or balloon payments, and the annuities must be issued by a commercial company in the annuity business rather than by private individuals. Another drastic change is that the new law requires that the State be named as the remainder beneficiary of a Medicaid exempt annuity. However, the State can be a contingent beneficiary if the Medicaid applicant has a spouse or a minor or disabled child not also living in a nursing home.

- **Life Estates**

The new law requires that any person who purchases a life estate interest in the home of another must have lived in the home for at least one year after the date of purchase for that real property interest to be considered an exempt resource.

- **Residential Facility Entrance Fee**

Under certain circumstances, fees that have been paid for admission into a continuing care retirement community may be considered as an available resource, which would bar Medicaid eligibility.

- **Legal Guidance**

There are other changes that could adversely impact Medicaid eligibility on a case-by-case basis; however, these are the main ones that will affect most people. There is absolutely no doubt that the restrictions to qualify for Medicaid assistance benefits are tightening. For those who are confronted with the possibility or probability of nursing home care or who are wisely thinking ahead, the need for careful legal guidance through the maze of Medicaid eligibility is increasingly important.

~ Jack Harrington



applied. Then she or her family would somehow have to cover the cost of her care as a private pay resident in the meantime until the sanction expired.

- **Home Equity Limits**

No longer will home equity be fully exempt from Medicaid spend down requirements. The new law exempts home equity up to \$500,000 (which states can choose to increase to \$750,000). We do not know whether our State will adopt the higher limits.

- **Annuities**

The new rules recognize that certain annuity investments will continue to be exempt from Medicaid spend down requirements. These an-

Ronni King - Cheerleader for Booth Harrington and Johns

It isn't hard to imagine Ronni King was a cheerleader at Northeast High School in McLeansville. Her energy and enthusiasm are personal attributes that work as well for cheerleading as they do for our law firm.

Ronni, one of our Elder Law Paralegals, came to us in January of 2002.

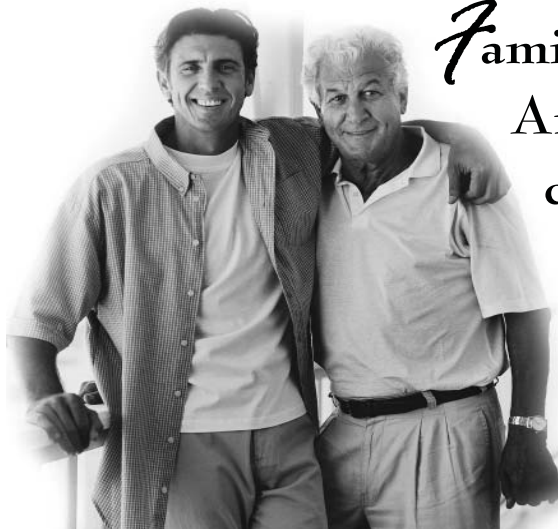
In her position as a paralegal, she works closely with elder law clients – consulting with a compassion and professionalism that reflects well on us all. Ronni specializes in maintaining close client contact through count-



less phone conversations, office consultations and home visits. Working hand in hand with the attorneys at Booth Harrington and Johns, she is a moving force behind the creative problem solving for many of our elder law clients.

Her commitment to the field of law is further amplified by the fact that she is working towards her Bachelor's Degree in Criminal Justice and Psychology at Guilford College. Juggling, in addition to cheerleading, is one of the other skills Ronni possesses. As a single mom with three children – twins Ashley and Andy, age 10 and Joey, age 12 – Ronni is in a constant state of motion.

In her "off" hours, Ronni is always "on". She is a talented seamstress, writer of short stories and one of our favorite raconteurs at law firm parties. Ronni is also known for her generosity as well as her ability to find a good bargain.



Family, home, health, happiness. The American Dream. Don't let long-term care costs steal your dreams or those for your children.

Join us for a workshop on the new rules and regulations regarding Medicaid qualifications. We can help you keep your family legacy safe and protected.

Where: GTCC, High Point Campus - 901 S. Main St., Bldg. H4, Rm. 203

When: Tues., June 6th - Two Sessions: 3:30 or 6 PM

Reservations: Call today. 336-275-9567 or 877-503-5337

Refreshments: After each session. Questions and answers