

WILL THEY TAKE OUR HOME AWAY?

Concern about homeplace property often tops the list of worries for those facing long term care needs. As elder law attorneys we are often asked, "What will happen to our homeplace (the family home or farm) if my (husband, wife, mom, dad) receives assistance benefits to cover the cost of nursing home care?"

Under current law, a person may receive long-term care assistance even if the homeplace remains in their name. If a spouse remains in the homeplace, then it will be exempt from the maximum countable assets that Medicaid rules allow the recipient to keep. Additionally, if the person in care does not have a spouse at home, then they, or their agent, may sign a statement declaring their intent to return home. Under the current rules, this statement of intent to return home will be honored even if there is no medical possibility that the person will ever actually be able to return home. In other words, Medicaid rules for nursing home care and Special Assistance rules for assisted living care do not force frail nursing home and assisted living residents to sell their homeplace before they can receive benefits assistance.

However, further planning may be required because the State may place a lien against the homeplace after the recipient's death to recover what has been paid for their care.

The key to fully protecting the homeplace is proper planning through an elder law attorney who understands what is legal and proper under North Carolina law. For example, a widowed father, concerned about possible long-term care needs in a nursing home, may



be advised to deed a remainder interest in the family farm to his two children and retain a life estate, which is exempt under current Medicaid rules. Knowing that the family farm will not have to be sold when he needs long-term care assistance benefits is a huge relief

and brings peace of mind.

Setting up plans to protect the homeplace must be carefully done. There may be other options available under current North Carolina law that would have been more appropriate for the widowed father than the simple scenario described above. In another situation, for example, a child has lived with him for years until he cannot safely live at home any longer and when he goes into care, his doctor confirms that the child's caregiving and residence with the dad kept him from having to go into care two years earlier. Then transferring the entire property to the child will not cause a Medicaid sanction penalty and may be the best course to take. Furthermore, there are many potential pitfalls that must be considered. The remainder interest gift will likely cause a sanction that will prevent eligibility for some period of time. Furthermore, the gift may have N.C. gift tax consequences if the value transferred is over the State lifetime exclusion of \$100,000 for gifts to children. (The Federal lifetime gift tax exclusion is currently \$1 million, so Federal gift taxes are seldom a problem in this kind of planning.)

In every case, the advantages and disadvantages of transferring assets must be carefully weighed against all possible tax consequences and the temporary loss of eligibility for benefits. Any plan for transferring assets must factor in the legal consequences associated with the transfers.

The good news is that with proper planning the family home or farm often can be protected. An experienced elder law attorney can help you develop a transfer plan and avoid the traps (that might otherwise catch the unwary) associated with protecting your homeplace.

Caregiving from a Distance

The realities of twenty-first century life may place attentive children a continent away from aging parents who need care and wise counsel. Although that distance might create a logistical challenge to having as many "in person" visits as you would like, it doesn't mean that you can't be proactive and involved in caring for your parents from a distance .

The most important step in addressing concerns you may have for your parents is communication. Talk, write, email, communicate, communicate!! Discuss with your parents or loved one what is important to them, what they may be worried about and how they can continue to maintain their independence for as long as possible. Planning ahead when you have the gift of time gives your parents far more options than ignoring the issues until a crisis situation occurs.

Initiating the "Talk" may be tough, but it needs to happen, and often it is not nearly as difficult as we dread it will be. Parents are often relieved that the elephant in the room is no longer being ignored. Communicating openly and honestly is a must. Helping to coordinate your loved one's personal, financial, legal and medical service providers will allow you to feel confident that you are doing all possible to assist them in maintaining their independence and quality of life.

A geriatric care manager can make discussing difficult medical issues less challenging. Geriatric care managers assist older adults in assessing current medical, cognitive, and home situations to assure that their current setting best serves their needs. These professionals have a bachelor's degree or substantial equivalent training in gerontology, social work, nursing, counseling, psychology or a related field.

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Consulting with an attorney who understands the countless issues you may face in caring for an aging parent gives you an effective resource that can make efficient and effective use of your time and your loved one's resources. Elder law attorneys focus on the specific needs of seniors and their families, and assist them in dealing with life planning and estate planning to focus on those needs. Elder law attorneys are familiar with the resources that you will need to tap into to best serve your loved one both now and as they age.



Once you know what issues you're dealing with, then you can access appropriate resources to serve your loved one's needs. Putting together a care team to help your parents live and age where they are will create a support system to address all areas of their lives. Friends and other relatives who are nearby can keep in closer contact with your loved one and let you know of any changes or challenges they might be facing. There are many community services that help with caregiving. These may include home care aides to perform household chores, delivered meal services, companion and telephone reassurance services, and home observation programs. Many Triad communities have senior centers, transportation services, and adult day cares.

The elder law attorneys of Booth Harrington & Johns can help you coordinate the resources your loved ones may need. An appropriate estate plan will accomplish your parents' goals for what happens to their assets after their death. An appropriate asset preservation plan can allow your family to retain assets to continue to support and provide the quality of life your parents deserve. Even by long distance (with a little help), you can serve your mom and dad effectively. All it takes is planning – and communication.

Respite Options for Family Caregivers

We recently attended the 5th Biennial Long Term Care Public Policy Conference in Cary, NC. Included in the conference were presentations on three areas of concern for the future of long term care, one of which is respite care. Below is the information as it was presented at the conference.

Issue: Over 80% of the care provided to dependent older adults is provided by family members, often at extraordinary physical, emotional and financial costs to the caregiver. Support of informal care is critical and has become an essential element to our long-term care system. Family caregivers identify respite care as one of their greatest needs. Respite care offers relief for family, friends and other informal caregivers so they can take a much needed break from their daily responsibilities while knowing their loved ones are in good care. Respite care benefits both the primary caregiver and the individual with dementia. The person with dementia is provided with social stimulation and the opportunity to live in the community longer. Respite enhances quality of life, promotes better psychological health and preserves family and caregiving relationships.

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Background: North Carolina has participated in a federally funded respite demonstration program designed specifically for caregiving and Alzheimer's disease. The North Carolina Alzheimer's Demonstration Program, Project C.A.R.E. (Caregiver Alternatives to Running on Empty), uses a consumer-directed, family consultant model to provide comprehensive respite support to dementia caregivers. The goal of the program is to increase access, choice, use and quality of respite care to under-served rural and minority communities in 10 project counties. Other parts of the state are limited in what they can provide in terms of respite resources from existing funding sources. One source is the Home and Community Care Block Grant which supports both group and institutional respite care. Today the Block Grant totals \$60 million and is the primary funding source for non-Medicaid funded home and community-based services for older adults. Only 8

counties have elected this option as a part of their HCCBG budgeting.

Pending Legislation:

House Bill 96 coming from the Study Commission on Aging and sponsored by Reps Earle, Weiss, Bordsen and England appropriates \$500,000 in each year of the biennium to support the continuation of Project Care. (Senate companion bill is Senate Bill 165 sponsored by Senators Bingham, Dannelly, Dorsett, Allran, Jones and Malone.)

House Bill 98 coming from the Study Commission on Aging and sponsored by Reps. Earle, Weiss, Bordsen and Clary appropriates an additional \$5,000,000 in each year of the biennium in support of the Home and Community Care Block Grant. (Senate comparison bill is Senate Bill 59 sponsored by Senators Dorsett, Dannelly, Allran, Bingham, Forrester, Hartsell, Jones, Kinnaird, Stevens and Malone.)



Join us!

AS YOU CARE - Caregiver Workshop

presented by Senior Resources of Guilford

Tuesday, June 5th from 8:30 AM until 3:30 PM

St. Pius X Catholic Church ▪ 2210 N. Elm St., Greensboro

Keynote Speaker - Frank Johns of Booth, Harrington & Johns, LLP

Founded in 1997, Senior Resources of Guilford is a United Way agency dedicated to serving a diverse community of older adults and their families by advocating and providing supportive services that enhance independence, health and quality of life for older adults. Through the National Family Caregiver Support Program, Senior Resources of Guilford supports family caregivers. In Guilford County, Senior Resources provides information and referral services and a *Grandparents Raising Grandchildren Support Group* for area caregivers. This workshop is provided in part through the Caregiver Support Program to educated anyone working with our assisting older adults.

Registration Fee \$5 includes workshops and lunch for all attendees.

Make your reservation today! Call 336-884-4816 or 336-373-4816

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