



PROTECTING YOUR ESTATE FROM THE COSTS OF LONG TERM CARE

Over the years we have had many visits from couples in there 70s, who come to our office to find out how to access medical assistance through the Pennsylvania Department of Public Welfare (DPW) to pay for their long term care and avoid losing all their assets to the exorbitant cost of long term care. Often they have waited until it is too late.

There are two types of thought when it comes to long-term care. There are those individuals who have saved their assets and plan to use these assets to pay for their long term care, and those individuals who intend to give their assets to their children and utilize medical assistance to pay for their long term care. If you have saved your assets for your children, and wish to seek medical assistance through DPW in the future, you must begin gifting away your assets while you are healthy and at least 60 months in advance of any claims for medical assistance. Below we address the two most common major assets that individuals look to protect, real estate and cash.

REAL ESTATE

There are two options often considered for the sheltering of real estate to protect it from medical assistance claims. In the first scenario, you gift your real estate to your children and retain a life estate in your deed. The life estate will generally state that you can live in the house the rest of your life, although the house is deeded to your successors. The second option is to transfer your real estate to your children and lease the house back from them. The lease generally will be for a dollar a year and it will spell out who is responsible for the ongoing maintenance, upkeep, repair, and taxes and insurance that go along with the real estate. Both options come with possible pitfalls and concerns that you must be willing to accept. With a life estate, there may be adverse inheritance tax concerns. With either option, you may have problems in the future if you change your mind, as you no longer have ownership to this major asset, and/or if something happens with your children – divorce, death, or other relationship matters. If any of these problems arise, you could be put in a very difficult position with little control.

CASH

Cash resources are even more difficult to deal with than real estate. It is very tough to give your cash away to your children and expect your children or family to return it if you need it. A common misconception is that placing the money in a standard living or revocable trust will protect your cash from long term care expenses. Placing the funds in such a trust does nothing to protect your cash or assets from the

cost of long-term care or review by the Department of Public Welfare. If you have significant cash or assets, you should speak to your attorney about other options.

LONG TERM CARE INSURANCE

Be aware. If you are able to purchase long term care insurance early enough in life when you can afford to pay for it and protect your assets from being taken, understand that this is a contract. These contracts only cover a certain term, many are only two years in length. If you use the insurance and you spend many years in a long term care environment, the contract will only cover the length of time stated. Therefore, in most cases, after two years you will end up using your own resources anyway.

What is your best option? There is no magic in estate planning. Every option has a pitfall; you must navigate through the pitfalls to find the lesser of evils for you. The key is planning to understand the law and how to use it to meet your needs.

TOP TIPS:

1. Read the contract. Whether for long-term care insurance or long term care residence, read and understand the contract terms and conditions. Don't just follow your friends or trust what you've heard.
2. Plan properly. The PA Department of Public Welfare will look to see what you did with your assets if you come to them for medical assistance. They typically review your accounts for the previous 60 months.
3. You give up a lot when the state picks and pays for your long term care facility.

PLAN FOR PEACE OF MIND... To learn more or to discuss your individual needs, schedule an appointment with Attorney Jim Sher by calling 610-683-0771 or emailing info@sherpc.com.

Disclaimer: This is a simple overview of the subject matter. Please consult an attorney for legal advice on your estate planning goals, objectives and needs.