

The Estate Planning Advisor

Purchasing A Life Estate In A Child's Home

By Richard J. Shapiro, J.D.

Since the enactment of the Deficit Reduction Act ("DRA") almost a year ago, we have discussed in this column the planning challenges created by that legislation, as well as a number of planning opportunities that are available notwithstanding the DRA.

Ordinarily, a gift of assets from a parent to a child will cause a period of ineligibility for nursing home Medicaid benefits (e.g., the "penalty period"). As estate and elder law planners, we always look for opportunities to assist our clients with asset transfers that do *not* create a penalty period. The purchase of a life estate interest in a person's home (usually a child) presents just such an opportunity.

Here's a typical scenario how this strategy can work: assume a 78-year-old widow's health begins to fail. She lives alone in a Florida condo worth \$320,000. The woman doesn't need nursing home care, but she cannot continue living on her own. The woman's daughter convinces her mother to sell the condo and move in with the daughter and her family in the daughter's home in Monroe. The daughter's home is valued at \$675,000.

If mom were to simply sell the condo and give the \$320,000 sale proceeds to the daughter, the transfer would create a Medicaid penalty period of just over 36 months. Thus, if mom were to require long-term care anytime within five-years of making this gift, mom would be ineligible for Medicaid coverage for at least three years from the date she submits a Medicaid application.

As an alternative, assume mom pays \$317,000 (a figure derived from mom's life expectancy in the Federal Government's life expectancy table) to the daughter to purchase a life estate interest in the daughter's home. So long as mom lives in the home for a *continuous period* of at least one year from the date she purchases the life estate, the \$317,000 transferred to the daughter will *not* be counted against the mother if she were to apply for Medicaid *anytime* in the future.

What are the downsides of this strategy? First, there is a question of what "continuous" occupancy means; will a "snow bird" who purchases a life estate fail to meet the occupancy requirement if he or she spends the month of January in Florida? How about if they stay in Florida for two months? Because there is no established precedent, no one yet knows how this issue will play out.

Also, be aware that this strategy may reduce or even eliminate the capital gains tax exemption available upon a subsequent sale of the child's home. At best, the child will only be able to claim as an exemption from capital gains tax the child's remainder

interest in the home (i.e., the total value of the home less the life estate value purchased by the parent); the parent may be able to claim an exemption on the life estate portion, so long as the parent has lived in the home for at least the two years preceding the sale. In addition, some commentators believe that the entire exemption might be deemed forfeited if the parent's purchase of the life estate interest is deemed a "sale" under the applicable provision of the tax code that limits the exemption for capital gains for a residence to one time per owner. Under this theory, the sale of the life estate to the parent would constitute the single permitted transfer that is exempt from capital gains tax; any future sale would subject the entire gain to capital gains tax.

While the life estate purchase may have some appeal in particular cases, anyone interested in using this strategy should consult with an experienced attorney and accountant before taking the plunge.

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