

Long Term Care Planning 2009
Answers to Frequently Asked Questions
Provided by Ann Carrozza, Esq.

Q. My single biggest asset, other than my house, is my retirement fund. How can I be sure that it will be protected in the event that my wife or I should ever need long term care?

A. This is an example of why it is so important to seek current expert advice when you or your spouse become ill. The traditional advice for protecting one's IRA or other retirement plan was to cash it in and transfer the proceeds to the "well spouse". (Remember that there is no lookback period or transfer of assets penalty on transfers between spouses.) This option was only to be exercised in an emergency because of the income tax liability triggered by the cash out.

Recently, however, there is ample authority to support the proposition that one's IRA or other retirement account is exempt from consideration when the owner requires long term care assistance as long as several conditions are met. This is certainly desirable from a tax perspective, because upon the death of the owner of the plan, his spouse has the ability to roll the plan over into her own IRA thereby continuing the tax benefits of the retirement fund. How then can one know whether his or her retirement fund is protected from long term care claims?

Essentially, the fund must be **In Periodic Payment Status**. This is defined as the maximum income payment option available to the individual. Once the fund is in periodic payment status, the income actually received is deemed available to pay for health care expenses. The principal, however, is disregarded as a resource.

Q. My neighbor put her home in her daughter's name in order to protect it against future possible long term care claims. I am a widow and am thinking about doing this. Is it a good idea?

A. Probably not. If you were to simply transfer the home to your child, there would be several negative consequences. First, you would lose your STAR senior citizen tax exemption as well as any partial Veteran's tax discount you may be receiving. The home would be subject to your child's creditors (including spousal claims in the event of a divorce). Lastly, there would be capital gains consequences upon death. This is because the

home is a gifted asset so children take your cost basis in the house. In other words, after your death, your children will be taxed on the difference between the price that you purchased the house for and the actual sale price. Children are generally unable to use their \$250,000 exemptions to offset the tax because the home is not their primary residence. Nor would they be entitled to the step up in tax basis afforded to the assets of a decedent because you transferred away the house prior to your death.

Instead of making an outright (simple) transfer, you may consider transferring part of the home to your daughter while retaining a life estate. The purpose of transferring the residence and retaining a life estate is to protect the value of the home from future possible long term care expenses. Retaining this life estate will enable you to continue receiving your tax exemptions.

Upon death, the fair market value of the residence will be included in your estate (those with an estate of over 1.0 million need additional advice at this point) but is probably not taxable. The children would own the entire interest in the residence by operation of law. The residence would not be subject to a probate proceeding.- This may be the greatest advantage of this option.

Also, this transfer would result in a step up in basis for income tax purposes upon your demise which will minimize any income taxes on the subsequent sale of the residence.

Again, the single biggest reason, however, that people transfer property to children and retain a life estate, is to protect the value of the home from future possible long term care costs.

As you may know, Medicare will pay the first 20 days of rehabilitation following an acute illness or operation. They will then pay 80% of the next 80 days. After that, however, astronomical expenses can accrue.

The bottom line is that with good advice and proper advance planning, you can implement strategies to protect your family in the event of a long term illness.

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