Newsday
LONG ISLAND
★★★★ SPORTS FINAL
50¢ SATURDAY, FEB. 9, 2008 | LONG ISLAND EDITION NEWSDAY.COM

ASK THE EXPERT

Try to delay Dad's home sale

The problem: My father transferred his home to me four years ago and retained a life estate. Dad wanted to downsize to a smaller place with less maintenance. Can we sell the house?

The expert: Joseph A. Bollhofer, elder law and estate planning attorney, Joseph A. Bollhofer P.C., St. James.

The rules: If you sell, you'll likely face significant capital-gains tax and there are potential implications for Medicaid eligibility. Dad can apply for the $250,000 exclusion ($500,000 for a couple) from capital-gains tax if the house has been his principal residence for at least two of the past five years, but you'll be taxed on your portion of the gain (the "remainder" value) and you won't get a capital-gains exclusion unless the house was also your primary residence.

For Medicaid purposes, the value of the life estate (a percentage of the whole house determined by the holder's age and actuarial tables) will be attributed to your father if you sell, and he will be ineligible for nursing home Medicaid benefits, should he need them, until that money is spent on his care.

The strategy: It's best not to sell while your father is alive. You can sell the house after he dies, and you won't owe Medicaid anything (assuming he needs benefits eventually) because he transferred the remainder four years ago, when the Medicaid look-back period was three years. (The transfer rules have since changed dramatically.) Also, it's likely you'll then owe nothing in capital-gains tax. However, even if you sell before your dad dies, some of his share can be saved.

PHOTO BY ELIZABETH SAGARIN

Estate attorney Joseph Bollhofer

How it works: If you must sell now and your father needs nursing home care, he can gift about half of his proceeds to you and loan you the other half to be paid back monthly to help cover the cost of care. The gift and loan must be structured carefully before filing for Medicaid, however, to ensure his eligibility.

The results: Get professional advice on your complicated situation. Since the Medicaid transfer look-back period increased to five years in February 2006, I've recommended that clients transfer their houses to irrevocable "grantor" trusts and retain the equivalent of a life estate.

— KAREN E. KLEIN

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