

SMART PLANNER

Useful Tips for a Better Tomorrow

Fall 2018

Being Your Parent's Healthcare Advocate: How to Get Started



As Bette Davis once said, "Getting old is not for sissies."

It's also not something that anyone should have to do alone, especially when it comes to navigating the exhaustingly complex and sometimes downright intimidating territory of personal healthcare.

If you have ever been in the position of providing even just informal support

to an aging parent as he or she dealt with healthcare issues, you have probably experienced feelings of confusion, frustration, and helplessness.

It's easy to get lost in our medical system, to feel shuffled aside and left without answers to even your most basic questions. And on top of that, you also probably had to manage feelings of anxiety, worry, and the stress of accountability.

Taking on the role of being a parent's healthcare advocate is a big deal. It comes with many responsibilities, and those responsibilities typically grow over time. It's important for your well-being as well as your parent's to make the right preparations. This article will help you not only to handle things with greater ease, but also help you adapt more gracefully as your role evolves.

Laying the Groundwork: A Crucial Step

- 1 The first step to being an effective healthcare advocate is listening. You cannot advocate well for someone without an in-depth understanding of their fears, beliefs, and preferences about everything from routine doctor visits to emergency care to end-of-life situations. So, **your first responsibility is to have an open and honest conversation with your parent.**
- 2 It's important not only to listen, but to also be wary of taking things at face value. **Be on the lookout for non-verbal clues about your parent's feelings.** Sometimes shame or embarrassment can keep a person from saying what they really want or need.
- 3 Finally, **practice separating what you think your parent needs from what your parent wants.** There are cases, of course, where you will need to make decisions for your parent (that's part of being a healthcare advocate); but it's so critical to **be consistently aware of your parent's perceptions and feelings** about a situation and to resist imposing your own experience on them.

Making healthcare plans is never something you should do "to" your parent or even "for" your parent. Instead, it needs to be something you do *with* your parent, as a supportive and respectful partner. ■

Serving Adults with Disabilities

Sharon and Colleen will be presenting on October 26th at the annual **Conference on Serving Adults with Disabilities**. Learn about the many public benefit programs available and how you can protect your money and maintain benefit eligibility. Water's Edge Resort, Westbrook

ATTENTION Home-Based Businesses...



Your homeowners and renters insurance doesn't cover – and specifically excludes – most home-based business activities. If you don't have a home-business endorsement on your homeowners and other basic coverage, your business equipment and other assets are unprotected.



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It's Time. Plan Today for Your Tomorrow.

Capital Gains and Protecting Your Home – What You Need to Know

Most people are aware that there are steps you should consider to protect your assets from being liquidated to pay for long-term care. Another concern is protecting your heirs from the burden of heavy estate taxes upon your passing. However, **are you aware of the related risks associated with the capital gains tax?**

What is the capital gains tax?

The capital gains tax is levied on the profit you earn from the sale of an investment or property—referred to as a *capital asset*. When you sell an asset that has appreciated, the capital gain is defined as the difference between the *cost basis* (what it cost you to acquire the asset) and the selling price.

For example, if you purchase a home for \$400,000 and later sell it for \$550,000, the \$150,000 difference is a *realized gain* and is taxable as income. This is, of course, an over-simplified example, and there are many variables and exceptions to consider in a real-world case. For instance:

Any capital improvements (a structural change that adds value) you make to real estate increases the cost basis and the higher figure is then used when calculating the realized gain.

The *personal residence exclusion* allows homeowners who have owned and occupied a home for at least 2 of the 5 years leading up to a sale to exclude up to \$250,000 of the capital gain from the sale. And, in some cases in which spouses file jointly, that amount may increase to \$500,000. There are also variances in which tax rate applies; it's usually lower than the rate for ordinary income.

However, the basic idea is that if you liquidate an asset that has appreciated in value, you will pay capital gains tax on your profits.

How does the capital gains tax come into play in estate planning?

One of the most common estate planning scenarios involving capital gains is when a parent owns real estate — usually a home — that they

- Don't want to lose in the course of paying for long-term care, and/or
- Think should be transferred to the children to reduce the size of the estate and the corresponding estate tax.

When considering the options, you need to understand another capital gains tax term: *carry over basis*.

If you gift or transfer a capital asset to someone (either real estate or some other valuable such as stocks), and the recipient of the gift sells it, *your* original cost basis applies in determining the capital gains tax.

For instance, if you purchase stock for \$100,000, gift it to your children after it has appreciated to \$200,000, and then your children sell it for \$200,000 — they would have to pay a capital gains tax on the \$100,000 difference between your original basis and the sales price.

On the other hand, if one of your children inherits the stock upon your death, they may be able to avoid most or all of the capital gains tax because of something called a *step up* in cost basis. So if your children inherit a capital asset (rather than receiving it as a gift), the cost basis *steps up* from what the decedent originally paid for it to the value of the asset at the time of death. The children would only pay a capital gains tax when they sell the stock on the appreciation from the date-of-death value.

What's the best way to protect assets and mitigate capital gains tax?

Having read about the two approaches above, you might be asking yourself whether it's wiser to transfer ownership of an asset, typically a home, or leave it to your heirs in your Will. The answer is usually neither.

Transferring a home to your children may seem like a simple solution, but if you purchased your home years ago, they will likely have to pay a substantial capital gains tax if they choose to sell it.

Gifts of your home can also create unnecessary risks. If you gift the house to your children, one of them could pass away, leaving the property to a spouse. Or maybe your child is sued, subjecting the home to attachment by your child's creditors. There is also the risk of Medicaid ineligibility if you enter a nursing home within five years of the date of the gift (referred to as the "look back period"), forcing your children to return the home to you. On the other

hand, holding on to your home would save your children capital gains taxes (because of the stepped-up cost basis), but if you need long-term care, you may be forced to sell the house anyway.

Your best option

While there are clearly some tax benefits to each option, there is a smarter way to both protect your assets from going to a nursing home and help your children avoid undue estate and capital gains taxes.

The best way to do this is through a specialized **irrevocable trust**. By transferring your home or other assets into a carefully-designed irrevocable trust, you can ensure that those assets are not counted as part of your estate. This will protect the assets from liquidation to pay for long-term care because the trust won't be considered part of your estate, and it will relieve your heirs of the capital gains tax because of the stepped-up cost basis that will apply upon your death.

Because the 5-year **look back period** will apply to any such trust, it is important to work with a qualified **estate planning attorney** to make your plans well in advance of any potential crisis that may arise. By looking ahead proactively and working with an expert in estate planning law, you will be able to ensure that you get the most out of your assets, protect them, and create the best possible financial outcome for your heirs. ■



9 Ways to RECYCLE YOUR PUMPKINS After Halloween



Come November pumpkins suddenly clutter up porches, hallways and kitchens. Don't just toss these orange beauties into the trash. They hide a whole world of hidden benefits inside.

1. Eat the seeds

Toss the rinsed seeds with a little olive oil, sprinkle some salt on top and roast for about 30 minutes in an oven at 300 degrees.

2. Make pumpkin puree

Cut your pumpkin in half, scoop out the guts and seeds, then place face side down on a sheet tray. Add a cup of water and bake for 90 minutes. Scoop out the inside and puree in a food processor. Voila!

3. Warm up with pumpkin soup

Combine four cups of your puree with six cups of chicken stock, salt, pepper, onion, garlic, parsley and cream and you have a bistro-worthy meal.

4. Make some all-purpose veggie stock

Plop the insides into a stock recipe that includes carrots, onions, mushrooms, garlic and fennel.

5. Decorate for Thanksgiving

Place them on a table, surrounding them with dried corn, scented candles and Thanksgiving-themed items.

6. Create a pumpkin spa treatment

Remember that silky pumpkin puree you made? Turn it into a facial with a little honey, coconut oil or whole milk for a quick, rejuvenating break.

7. Make pumpkin skin chips

Peel off the pumpkin skin and crisp them up in a dehydrator with a sprinkling of paprika and sea salt.

8. Make a real pumpkin spice latte

Whip up some pumpkin puree, vanilla, pumpkin pie spice, milk, a touch of sugar and espresso for a decadent pumpkin latte at home.

9. Bake up some bread

Pumpkin bread makes perfect presents for co-workers and family. It also makes anyone's house smell like a Thanksgiving dream. ■

CAREGIVER ALERT!

Many family members contribute to the care of their loved ones, providing crucial and indispensable care services to keep their family members at home and living as comfortably as possible. To these family members, we often recommend a caregiver contract which allows the caregiver to be paid for his or her services and also documents that these services are not "gifts" for Medicaid planning purposes.

Recently we have seen an increased scrutiny by the state in its review of these caregiver contracts. As a result, we recommend that families who are utilizing a caregiver contract contact our office to review the terms and determine if any changes should be made to avoid issues with gifting.



My husband and I have 3 young children and we want to make Wills but we disagree over who should have custody of our children if something happens to us. How can we solve this problem?



Many people put off making Wills or updating documents because there are such difficult decisions to make. But the harder the decisions are for you to make, the more important it is for you to do so.

If you can't decide who will raise your children if something happens to you, what would happen if the need arises? Will your families be in court fighting over custody and letting a judge who has no personal connection to your family make the most crucial decision for your children? You and your husband need to realize that no one will raise your children exactly as you would do but you at least know the people involved in your family's life and you are in a better position to make that decision than a judge who knows no one in your family. Remember, too, that the choice is not irrevocable.

You may feel comfortable with one person now but in 5 years, the situation could change and you would prefer someone else. If you are thinking of choosing a parent, please consider the impact on your parent's life and the practicalities of raising young children at an advanced age. ■



To see our Adult Education schedule, visit www.ctseniorlaw.com and go to SEMINARS

- 10/17 — [Building a Strong Estate Plan](#) – VNA Community Healthcare, Guilford
- 10/18 — [Planning for Long-Term Care](#) – Residence at Brookside, Avon
- 10/18 — [Senior Financial Abuse](#) – Brandywine Assisted Living, Litchfield
- 10/20 — [Planning for Long-Term Care](#) – Seniorhood Fair, Vernon Middle School
- 10/23 — [Estate Planning Basics](#) – Canton Library, Canton
- 10/23 — [Advanced Planning](#) – New Milford Senior Center
- 10/25 — [Estate Planning](#) – Masonicare, Chester
- 10/26 — [Pathways to Services, Conference on serving adults with disabilities](#), Water's Edge, Westbrook
- 11/01 — [Estate Settlement](#) – Canton Library, Canton
- 11/15 — [Estate Planning](#) – Alzheimer's Association, Wilton Library
- 11/19 — [Pooled Trusts and Medicaid](#) – Ridgefield Commission on Aging, Ridgefield Town Hall



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(860) 236-7673 | www.ctseniorlaw.com | Email: info@ctseniorlaw.com

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15 Massitio Drive, Berlin, CT 06037

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Annual Inflation Adjustments for 2019

Wolters Kluwer came out with their annual inflation adjustment projections which reflect several increased thresholds and ceilings you should be aware of. The IRS is expected to release the official amount later this year.

Of particular note:

- 1) The trust and estate maximum income tax bracket (37%) increased to \$12,750, up from \$12,500.
- 2) The federal estate and gift tax exemption amounts increase to \$11.4 million, up from \$11.18 million.

Income tax brackets

For estates and trusts:

- taxable incomes up to \$2,600: the 10% bracket applies
- taxable incomes over \$2,600 and up to \$9,300: the 24% bracket applies
- taxable incomes over \$9,300 and up to \$12,750: the 35% bracket applies
- taxable incomes over \$12,750: 37% bracket applies

Estate and Gift Tax

The following amounts related to transfer taxes are projected for 2019:

- The gift tax annual exemption will be \$15,000 in 2019.

- The estate and gift tax applicable exclusion will be \$11,400,000 for decedents dying in 2019, up from \$11,180,000 for 2018.
- The exclusion for gifts made in 2019 to a spouse who is not a U.S. citizen will be \$155,000 for 2019.
- For 2019, the allowed Roth IRA contribution amount is projected to phase out for married taxpayers filing jointly with income between \$193,000 and \$203,000. For heads of household and unmarried filers, the projected phase out range is between \$122,000 to \$137,000.
- The maximum amount of deductible contributions that can be made to an IRA is \$6,000 for 2019. The increased contribution amount for taxpayers age 50 and over will, therefore, be \$7,000.
- The above-the-line deduction for traditional IRA contributions is projected to begin to phase out for married joint filers whose income is greater than \$103,000 if both spouses are covered by a retirement plan at work. If only one spouse is covered by a retirement plan at work, the phase out is projected to begin when modified adjusted gross income reaches \$193,000. For heads of household and unmarried filers who are covered by a retirement plan at work, the 2019 income phase out range for deductible IRA contributions is projected to begin at \$64,000. ■

Mother's Transfer of House to Daughter is Proper Medicaid Planning

A New Jersey appeals court holds that a mother's transfer of her house to her daughter was appropriate as part of Medicaid planning and not a result of undue influence, but that the daughter is not entitled to attorney's fees. Estate of Guglielmelli (N.J. Super. Ct., App. Div., No. A-0375-17T1, Sept. 6, 2018).

Geraldine M. Guglielmelli lived with her daughter, Donna Mulford, who was her agent under a power of attorney. When Ms. Mulford could no longer care for her mother, Ms. Guglielmelli entered an assisted living facility. Ms. Mulford consulted an attorney about Medicaid planning, and on the attorney's advice Ms. Guglielmelli transferred her interest in her house to Ms. Mulford.

Ms. Guglielmelli's other daughter, Denise Green, removed her from assisted living, and Ms. Guglielmelli hired another attorney to demand that Ms. Mulford produce accountings.

After Ms. Mulford produced the accountings, Ms. Guglielmelli filed exceptions, and the court held a hearing. The probate judge concluded that Ms. Guglielmelli voluntarily transferred her interest in her house to Ms. Mulford as part of Medicaid planning and awarded Ms. Mulford attorney's fees. Ms. Guglielmelli appealed.

The New Jersey Superior Court, Appellate Division, affirms in part, holding that the evidence supports the probate judge's decision regarding the transfer of the house. However, the court reverses the award of fees to Ms. Mulford, holding that there is no provision in state law for an award of fees in an accounting action. ■

(elderlawanswers.com)

VA Establishes Asset Limits and Transfer Penalties for Needs-Based Benefits

The Department of Veterans Affairs (VA) has finalized new rules that establish an asset limit, a look-back period, and asset transfer penalties for claimants applying for VA needs-based benefits. This is a change from current regulations, which do not contain a prohibition on transferring assets prior to applying for benefits such as Aid and Attendance.

As ElderLawAnswers previously reported, the VA proposed the new regulations in January 2015. Three years later, after receiving more than 850 comments, the VA has finally published the final regulations, which are similar, with a couple of exceptions, to the proposed regulations.

In order to qualify for benefits under the new VA regulations, which go into effect October 18, 2018, an applicant for needs-based benefits must have a net worth equal to or less than the prevailing maximum community spouse resource allowance (CSRA) for Medicaid (\$123,600 in 2018). Net worth includes the applicant's assets and income. For example, if an applicant's assets total \$117,000 and annual income is \$9,000, the applicant's net worth is \$126,000. The net worth limit will be increased every year by the same percentage that Social Security is increased. The veteran's primary residence (even if the veteran lives in a nursing home) and the veteran's personal effects are not considered assets under the new regulations. If the veteran's residence is sold, the proceeds are considered assets unless a new residence is purchased within the same calendar year.

The VA has also established a 36-month look-back period and a penalty period of up to 5 years for those who transfer assets for less than market value to qualify for a VA pension. The look-back period means the 36-month period immediately before the date on which the VA receives either an original pension claim or a new pension claim after a period of non-entitlement. There is an exception for transfers made as the result of fraud, misrepresentation, or unfair business practices and transfers to a trust for a child who is not able to self-support.

The penalty period will be calculated based on the total assets transferred during the look-back period if those assets would have put the applicant over the net worth limit. For example, assume the net worth limit is \$123,600 and an applicant has a net worth of \$115,000. The applicant transferred \$30,000 to a friend during the look-back period. If the applicant had not transferred the \$30,000, his net worth would have been \$145,000, which exceeds the net worth limit. The penalty period will be calculated based on \$21,400, the amount the applicant transferred that put his assets over the net worth limit (145,000-123,600).

Any penalty period would begin the first day of the month that follows the last asset transfer, and the divisor would be the applicable maximum annual pension rate for a veteran in need

UPCOMING EVENTS:

11/1: **Adults with Disabilities Roundtable** for the CT Bar Foundation, The Hartford Club – Sharon Pope

11/9: **Protecting the Community Spouse: Fair Hearings for Higher CSPA** for CTNAELA, Four Points by Sheraton, Meriden – Carmine Perri

NEW APPOINTMENT

Carmine has been appointed to the CBA Unauthorized Practice of Law (UPL) Task Force, where he will be part of a group that, among other things, generates proposals and suggested solutions regarding UPL issues throughout the State of Connecticut.



of aid and attendance with one dependent that is in effect as of the date of the pension claim. The penalty period cannot exceed five years, a change from the 10-year maximum in the proposed regulations.

The rules also define and clarify what the VA considers to be a deductible medical expense for all of its needs-based benefits. Medical expenses are defined as payments for items or services that are medically necessary; that improve a disabled individual's functioning; or that prevent, slow, or ease an individual's functional decline. Examples of medical expenses include: care by a health care provider, medications and medical equipment, adaptive equipment, transportation expenses, health insurance premiums, products to help quit smoking, and institutional forms of care. ■

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