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FAMILY FINANCE

Lawyer's advice might help heirs

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Family Finance

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My husband recently died. I want to be certain that my three children will inherit my house, which my husband built himself. My will leaves them everything I own. One of my sons recommends that I see a lawyer specializing in elder law. I am 78 years old and in good health. My monthly income from my pension and Social Security is \$1,706. A one-hour and 15-minute elder-law consultation will cost me \$425, and I'm required to divulge my bank accounts, fixed annuity, IRA and whatever other assets I have. But friends have told me elder lawyers would be adding charges that could go into the thousands. Won't my will suffice? Must I get involved with elder law? V.T. via e-mail

First things first: Talking to a lawyer won't commit you to paying anything except his consultation fee. He'll tell you what additional services would cost, and you can decide if you want to proceed. Also, anything you tell him is confidential information. No experienced elder lawyer will expect you to divulge your assets in front of your children. If you take them along, you can ask them to leave the room before discussing your finances.

Here's what's wrong with your current setup: Your will leaves the house to your children. But if you ever need nursing home care, the house might have to be sold to pay for it. Your son probably hopes that an elder lawyer - an attorney who specializes in estate planning, wills, trusts and arrangements for long-term care - can suggest a way to ensure that, if necessary, Medicaid will pay for your nursing home care without requiring the sale of the house.

This is nothing to panic about. You're in good health, and you may never need nursing home care. On the other hand, is it worth \$425 to you to learn whether you can make sure, in the worst-case scenario, that your kids inherit the house your husband built? It probably is. Expert advice is expensive, but on this matter it's essential. Federal Medicaid rules are expected to change significantly this month, and New York's rules may change later this year.

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In situations like yours, the classic solution has been to transfer the house to the kids, keeping a "life estate" for yourself. This gives you the absolute legal right to live there for the rest of your life, and it preserves your property tax exemptions. The transfer also ensures that, should you ever receive Medicaid benefits, the agency can't recover those benefits by claiming the house after you die. Currently, Medicaid can't assert its claims against a "life estate."

The main drawback: The transfer delays your Medicaid eligibility.

To determine the delay, the value of what you gave away - in this case, a future interest in your house - is divided by the average monthly cost of a nursing home. Let's say the gift is worth \$200,000. The monthly cost of a nursing home on Long Island is \$9,843, says Stephen J. Silverberg, an East Meadow elder lawyer. So the delay, or penalty period, is 20 months (200,000 divided by 9,843). Under pending federal rules, you must disclose all asset transfers made within five years of applying for Medicaid benefits, says Bernard A. Krooks, a Manhattan elder law attorney. The penalty period for these transfers would start when you apply for Medicaid. But it's unclear how much longer this strategy will be viable. Proposed changes in New York law would let Medicaid claim a "life estate" after its owner's death to recoup any benefits paid during her lifetime. It's also unclear whether "life estates" predating such a change would be grandfathered.

Send questions to Family Finance, Business Desk, Newsday, 235 Pinelawn Rd., Melville, NY 11747-4250, or e-mail to Bfamfin@aol.com. Include your age, income and a list of major assets. Letters and e-mails can't be answered personally.

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