Planning for your future

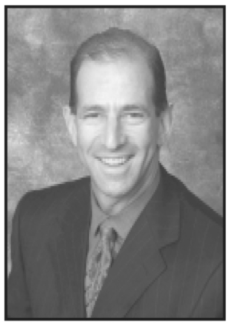
How Parents Can Provide for a Caregiver Child

By Bernard A. Krooks, Certified Elder Law Attorney

Taking care of a parent can be a full-time job. Children may have to give up paying jobs in order to provide care to aging parents. While care-giving is often done out of love and affection, parents may wish to compensate a child who takes on the burden of care-giving. There are a number of ways to do this depending on your own particular circumstances.

Caregiver Agreements. Caregiver agreements are an increasingly popular way to ensure a caregiver child is compensated for the child's work. A caregiver agreement (also called a personal care contract) is a written contract between a parent and a child (or other family member) in which the parent agrees to reimburse the child for caring for the parent. The payments to the child must be based on fair market value for these services in your community. These agreements have many benefits. They provide a way to reward the family member doing the work. They can help alleviate tension between family members by making sure care-giving is fairly compensated. In addition, they can be a key part of Medicaid planning, helping to spend down savings so that the parent might be able to qualify for Medicaid long-term care coverage, if necessary. When entering into a caregiver agreement, it is important to consider all the relevant tax considerations. For example, the payments received by the caregiver will be subject to income tax. Moreover, the payments made by the parent will be subject to IRS withholding and other taxes.

Estate Plan. A parent can leave a caregiver child an additional amount in the parent's will or trust. One concern with going this route is that it can lead to conflict between siblings or other family members. If a parent chooses this option, it is important that the parent explain his or her reasoning to any other children or family members that might be upset. Communication between the family members can prevent problems later. In addition, to avoid any appearance of undue influence, the parent should not involve the caregiver child in drafting the estate plan.



House. If a parent doesn't have cash to compensate a child, the parent may transfer the parent's house to the caregiver child. The parent can transfer the house outright and retain a life estate for himself or the parent could make the child a co-owner of the house. If the caregiver child has lived with the parent for at least two years, transferring a house can have Medicaid planning advantages as well. However, transferring a house can have serious tax and other consequences, so before taking this step it is important to consult with an elder law attorney knowledgeable in tax matters.

Life Insurance Policy. Another option for compensating a caregiver child is to take out a life insurance policy and name the caregiver child as the beneficiary. The proceeds of the insurance policy will go directly to the child, avoiding probate, on your death. If you choose this option, you should consider an irrevocable life insurance trust, which would remove the value of the death benefit proceeds from your taxable estate.

It is important to remember that one size does not fit all. Each individual situation is unique and the proper method to compensate a caregiver child really does depend upon your individual circumstances.

Bernard A. Krooks, J.D., CPA, LL.M (in taxation), CELA, is a founding partner of the law firm Littman Krooks LLP with offices in Fishkill, White Plains and New York City. Mr. Krooks is past President of the National Academy of Elder Law Attorneys (NAELA), past President, and a founding member, of the NY NAELA Chapter, and is past Chair of the Elder Law Section of the New York State Bar Association. He is the president of the Special Needs Alliance (www.specialneedsalliance.org), a national not-for-profit organization dedicated to special needs planning. Mr. Krooks may be reached at (845) 896-1106, or visit the firm's website at www.littmankrooks.com.