

Elderlaw & Estate Planning Update

Gift Giving Made ~~Easy~~ *Complicated*

Leave it to the government to make something as simple as giving gifts seem scary.

At least two government agencies monitor gifts, each of them for different reasons and with different rules.

The Medicaid Divestment Rules: No gift too big—no gift too small

For people who think they might need to apply for Medicaid benefits in the next five year period, be aware that the Medicaid rules might penalize you for making simple gifts.

During those intervening decades, Edith raised her two children in Jackson, and they have now given her 7 grandchildren, 2 step-grandchildren, and 5 great-grandchildren. Besides being a wonderful mother/grandmother/great-grandmother, she is a role model for her family. When you apply for some types of Medicaid benefits, you will be required to report all of the gifts you've made in the five years prior to applying. Depending on several factors, including who the gift was given to and whether, at the time you made the gift, you should have known that you might be needing assistance with your care, you may face a Medicaid penalty period. A Medicaid penalty period will mean a period of time, after you have otherwise met the eligibility requirements for Medicaid benefits, that Medicaid will not pay for some of your care costs. The length of the penalty period is based on the total value of the gifts made during the five year period. These so-called Medicaid "divestment" rules are very complicated and can be unreasonably harsh. For instance, the divestment rules make no exception for holidays presents, or even donations to religious organizations.



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The IRS "Gift Tax" Rules

The other government agency that watches what we give away is... you guessed it, the Internal Revenue Service.

People frequently misunderstand the IRS gifting rules, and many people worry about them who don't have to.

The rule many people hear, but get confused about, is the rule that says you can give away up to \$12,000 to any individual in a single year, without any tax consequences (the so-called "annual exclusion amount", which is going up to \$13,000 in 2009). Two things to remember about this rule:

First, it has nothing to do with the Medicaid rules. Just because you give away less than the annual exclusion amount doesn't mean that you aren't going to get penalized if you apply for Medicaid benefits.

Second, for people who have estates of less than a million dollars, this rule is really only a reporting requirement. Until someone gives away more than a million dollars in their lifetime, they won't have to pay any gift tax. So, for instance, if during my working life I have accumulated an estate that is now worth \$500,000 and I give \$400,000 to a child (or anyone else for that matter), I will have to report this gift to the IRS, but I will not owe any gift tax on the money, and the person who I gave it to will not owe any gift tax either. Now, two big qualifications on that statement: (1) depending on the type of property transferred, there may be other tax consequences as a result of the gift, and (2) just because you can give something away, doesn't mean you should (see free advice below).

Just Because You Can, Doesn't Mean You Should

Now here's some free advice:

Too many older folks are quick to want to give their assets to their children, mistakenly believing that they are somehow protecting their estates. In many cases, just the opposite is true. In most situations, senior citizens should be careful to preserve what they have worked for so that those funds are available to pay for their care needs as those needs arise. Seniors should have estate plans that direct where they want their property to go when they pass away, but until that time, as we like to say, "assets are options." That means the more you have saved, the more choices you will have when and if you need help with your care.