

Risky Gifts

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We often talk to elderly people who are living in homes that are too big and burdensome for their current lifestyle or health condition. But those homes are sometimes the elder's major asset and they want to leave it as an inheritance for their children. They are stuck between a rock and a hard place; keep it as a legacy for their children or sell it and move. Many consider giving the house to their children while they're still alive so they can downsize, or they consider selling it and giving some of the proceeds to their children while using the balance to purchase something more manageable.

The problem is, unless one has enough money to privately pay for residential or nursing home care for at least 5 years after making such a gift, the results could be disastrous. If the elderly person's health declines they may end up needing long term care. The average cost for this care in Maine is \$8,476 per month, and Medicare and supplemental health insurance policies generally do not cover this expense. Unless the elder can pay out of pocket (or has sufficient long term care insurance, which is relatively rare), they will probably need to rely on MaineCare coverage. This is the State of Maine's Medicaid program and it is needs-based, meaning there are strict asset limits and strict rules about making gifts. Many elderly Mainers depend on this program to pay for their long term care needs.

Here's the rub. Except for some very limited exceptions, any gift of assets within 5 years of applying for MaineCare creates a penalty, which is a period of ineligibility. This can be catastrophic for elders who need care but who have inadvertently made themselves ineligible for MaineCare for a period of time due to giving away assets during the 5-year "look back" period. The penalty is only imposed when someone needs the care and has no funds left to pay for care. So, at that point, a period of ineligibility can mean going without needed care.

If you or a loved one are considering making a major gift, it is advisable to seek assistance from a qualified elder law attorney before doing so. Such an attorney can also help you plan ahead to provide for your family while also accounting for your future care needs.

About the author: Attorney Mia Poliquin Pross, Esq. focuses on helping families plan for long term care needs and transitions, navigating Medicaid (MaineCare) eligibility and applications, estate planning and probate estate administration. She practices at the Elder Law Offices of Kathleen Kienitz in Lewiston, Maine. The firm provides a broad range of legal services to senior citizens and their families and is sensitive to the difficulties facing the older generation, particularly as the health care system becomes more complicated. Using the most up-to-date information, well-trained elder law staff help the elderly and their families make informed choices. For more information, please visit www.elderlawmaine.com or call 207-783-8500.

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