

My parents want to give me their home. Is that a good idea?

There are many things to consider when deciding whether parents should give their home to their children, including the parents' risk of eviction, the loss of the home to creditors (e.g., bankruptcy or divorce), tax issues, and Medicaid eligibility. We will briefly comment on Medicaid eligibility and some tax issues to consider.

If it's likely one of your parents will need nursing home or assisted living care within the next five years and would need Medicaid to pay for such care, then your parents should not give you their home. Your parents' home is an exempt asset for Medicaid eligibility purposes, which means that owning the home will not be an asset that counts when determining if they are eligible for Medicaid. By giving you their home, however, they are required to report that gift if they apply for Medicaid within the next five years (i.e., the five-year lookback). The value of the home will cause a penalty period before Medicaid will pay for your parents' long-term care needs.

In addition to the Medicaid eligibility issues, gift tax and capital gains tax issues should be evaluated. An annual gift of more than \$14,000 (in 2017) to any one individual requires filing a gift tax return. Assuming the home is worth more than \$14,000, your parents could either pay the tax on the gift or make an election on the gift tax return to use part of their lifetime gift tax exclusion (\$5.45 million in 2016) in order to avoid paying any gift tax.

Capital gains tax is typically more of an issue when property is received as a lifetime gift compared to receiving the same gift as an inheritance. When property is sold, you pay capital gains tax on the difference between the basis (i.e., original price) and the sale price. When your parents give you the home, you receive their tax basis in the property.

For example, suppose your parents bought the house for \$75,000 and it is now worth \$200,000. If they give the house to you, your tax basis will be \$75,000. If you sell the house for \$200,000, you will have to pay capital gains taxes on \$125,000—the difference between \$75,000 and the selling price. It is

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Medicare Part D and VA Drug Coverage

A little-known fact related to VA drug coverage has surprised many veterans when they move into a nursing home outside of the VA health system. With increasing frequency, veterans are shocked when they receive significant prescription drug bills that must be paid out of their own pockets. These surprise bills are due to the VA not filling prescriptions for nursing home residents who are residing in non-VA nursing homes.

Veterans may want to consider joining a Part D plan in addition to having VA drug coverage. A serious illness or injury often leads to unexpected hospital stays and nursing home admissions. Having a Part D drug plan will reduce the financial burden of unforeseen drug costs.

Note that although you can have both Medicare Part D and VA drug coverage, the two do not work together. VA benefits only cover the drugs you get from VA pharmacies and Part D plans usually only cover drugs you obtain from pharmacies that are within the plan's network. ♦

My dad only has \$50,000 to his name and will be going to live in a nursing home soon. Does he really need to spend all but \$2,000 to qualify for Medicaid?

In order to be eligible for Medicaid, your dad must have a maximum of \$2,000 in countable assets. In order to meet that qualification, he can spend the excess money on his care, or he can purchase exempt assets (i.e., not countable). The following are examples of exempt assets: prepaying his funeral expenses, replacing his old automobile, or purchasing newer home furnishings.

You did not indicate whether your dad is married. If he is married, then his spouse is allowed to have additional assets. Your dad's spouse is called the "community spouse." The additional assets the community spouse can keep are referred to as the "community spouse's resource allowance." Currently, the community spouse can keep half of the couple's countable assets, with the minimum amount of \$50,000 and the maximum amount \$120,900. If married, your dad may not have to spend anything to qualify for Medicaid. ♦

possible to avoid capital gains tax if you use the house as your primary residence for at least two out of the five years before you sell the home. In that case, you can exclude up to \$250,000 (\$500,000 for a couple) of the capital gains from taxes.

If you inherit the house from your parents, however, your basis in the property is “stepped up” to the value of the property on the date of your parents’ death. In our example above, if you sell the house for \$200,000, and the home was worth \$200,000 on the date of death, the capital gain will be zero. If your parents die owning the home, however, it may be subject to a lien by the State if they received certain Medicaid services during their lifetimes.

As you can see, care must be taken when analyzing whether a home should be gifted.

Elder Law Services offered by Ruder Ware include:

- Nursing home and long-term care planning
- Asset protection
- Gifting and divestment planning
- Medicare and Medicaid benefits
- Social Security benefits
- Insurance analysis (including long-term care insurance)
- Residential housing and other living options
- Planning for individuals with special needs
- Tax planning
- Durable powers of attorney for property and finances
- Health care powers of attorney
- Wills
- Trusts
- Marital property agreements
- Real estate
- Guardianship
- Conservatorship
- Veterans’ benefits

Attorney Aric Burch



Planning for how you or a loved one will pay for nursing home care can be a daunting task. As an elder law attorney, Aric works with seniors and their loved ones to prepare for possible long-term care needs. His goal is to alleviate stress by helping clients develop a plan to provide for their long-term care needs, while preserving their assets to supplement their quality of life and pass to future generations. His motivation is to find solutions for clients who are preparing for future life transition and care needs or are in need of immediate qualification for medical assistance benefits.

Attorney Mark Munson, CELA



Licensed to practice law in Wisconsin, Illinois and South Dakota, Mark principally advises clients in the areas of elder law, public benefits (including special needs trusts), estate and trust planning, and taxation. Mark regularly advises clients in the areas of asset protection and medical assistance eligibility. Mark also assists clients with probate and estate administration, trust administration and guardianship.

Mark is a Certified Elder Law Attorney (CELA) by the National Elder Law Foundation, the only organization accredited by the American Bar Association for the certification of elder law attorneys in the United States. In order to become a CELA, Mark was required to have sufficient experience in various practice areas with the field of elder law, pass an all-day comprehensive examination that tests various issues and disciplines within elder law, and receive the recommendation of other elder law attorneys in Wisconsin and the United States.

Elder Law Team

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