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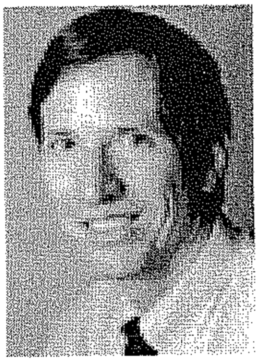

Ask Matt

Matt Krantz

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To protect an aging parent's assets, plan ahead

Q: My father may be put into a nursing home and would like to protect his investments, including his home and $250,000 in cash and stocks. Is there a way to do this?

A: What you're asking is a common question. It's more a legal question than an investing one, but since investing is about protecting your assets, I'll take a crack at it.

The rules about all this are extremely complex, constantly changing and subject to differences based on the state your father lives in. If, after reading this, you're serious about creating an estate plan, you should consult an accountant, an attorney or a financial planner who specializes in such issues in the state where your father lives.

In hindsight, the best thing to have done would have been to start planning farther ahead. Your father could have protected at least part of his estate by giving it to his kids and grandkids well before he got sick. Planning ahead makes sense because Medicaid rules generally have a five-year lookback provision. That means you can't gift money on Monday and expect to collect Medicaid on Tuesday.

But what about now? First, let's talk about the home. Some states such as California would allow your father to give away his home and not interfere with Medicaid eligibility, says Michael Gilfix of elder law specialists firm Gilfix & La Poll Associates of Palo Alto, Calif. There may be limits based on your state, though, from $500,000 to $750,000. And there's a very important clawback rule to remember. If a home was given away and a Medicaid recipient dies, a state may make a claim against the home's value. That means simply giving away a house doesn't offer much protection. Gilfix does say if there's a disabled child in your family, your father could give the home to that child and protect the home that way.

Otherwise, Gilfix suggests your father might consider trying to protect some assets by using a combination of an annuity and gifts. Let's assume the cost of a nursing home is $5,000 a month and your father's monthly income is $1,000 including Social Security. With the $250,000 cash in the estate, your father might give a gift of $125,000 to a relative. That exceeds the $13,000 annual exclusion for gifts. However, your father could avoid gift tax on the $125,000 by claiming $112,000 of his $1 million lifetime gift tax exclusion, Gilfix says. He would need to file a 709 gift tax return with the IRS.

The $125,000 gift would make your dad ineligible for Medicaid reimbursement for 22 months, Gilfix estimates. So, with the remaining $125,000 in the estate, your father could buy an annuity with a 22-month term so it pays $4,000 a month.

Your father would qualify for Medicaid, since there would be no assets in the estate. And the annuity would cover the cost of the nursing home for 22 months. After that time, your father would qualify for Medicaid. Meanwhile, the $125,000 gift would be protected, Gilfix says.

That's just one suggestion. Your father might also consider using a trust as part of a broader asset protection plan. The cost of setting up a trust can range from $2,500 to $100,000, but is usually in the $5,000 to $10,000 range.

To protect an aging parent's assets, plan ahead - Continued

Some lawyers are suggesting family partnerships to allow your dad to qualify for Medicaid. But they might not save the estate in case of nursing home claims, Gilfix says. And you might find yourself spending quite a bit on legal fees defending the partnership if it is challenged by the state, he says.

All this is complicated. But Gilfix says the worst thing to do is nothing. "Don't just roll over and take it, thinking assets will have to disappear," he says.

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