

DON'T LOSE THE FARM TO THE NURSING HOME

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Protecting the Farm: Nursing Home Costs

- Three ways to pay for long-term care:
 - *Self-Insure*
 - Very few can afford this
 - *Long-term Care Insurance*
 - Option for some
 - *Government Benefits*
 - Many rely on Medicaid
 - Some receive VA benefits

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Shielding Farm Assets

- Four techniques used to shield farm-related assets from the costs of long-term care
 - *Outright gifts*
 - *Gifts of land with a retained life estate*
 - *Transfers to irrevocable trusts*
 - *Transfers to a limited liability company (LLC) and then gifts of the interest in the LLC*

However, none of these can be easily reversed or changed

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Outright Gifts

- Good:
 - *An outright gift of real estate is completed with only a deed*
 - *An outright gift is less likely to be affected by law changes*
- Bad
 - *An outright gift takes the income with it*
 - *After an outright gift there is no right to live in the principal residence*
 - *An outright gift removes control of the asset from the donor (who can rent and on what terms)*
 - *An outright gift carries with it the donor's basis and there is no basis step up at the donor's death*

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Gifts of Land with a Retained Life Estate

- Good
 - Completed with a deed
 - After the gift, the donor:
 - Retains the income from the land
 - Retains the right to live in the home
 - Retains control of the decisions about the land
 - Those who receive the gift get a basis step-up at the donor's death
 - There is no Medicaid estate recovery on the remainder interests
- Bad
 - If the land is sold, those who received the gift are entitled to a portion of the sale proceeds (and must sign the deed)
 - If the land is used as collateral, those who received the gift must sign the mortgage (but not the promissory note)
 - Restricting subsequent transfers by those who received is not easy (their divorce can cause major problem)
 - The exemption from resource recovery is not recognized in all states

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Transfers to Irrevocable Trusts

- Good
 - The land will be owned by the trust
 - The income from the land and the right to live in the home can be retained (unless there are VA benefits)
 - If the income is retained, there can be a basis step-up
 - The trust can be used to control the succession of the farm after the donor's death
 - If the land is sold, the sale proceeds stay in the trust
 - While the land is in the trust, those who will eventually receive it cannot transfer/lose/mortgage it
- Bad
 - The settlor no longer controls the asset
 - Costs more than simple gifting options

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Transfers to a Limited Liability Company (LLC)

- Good
 - *Insulates farm assets against outside liabilities, such as accident liability or nursing home cost.*
 - *Also can be used as part of the overall farm succession plan or for death tax reduction planning*
 - *May preserve control and income for the one setting up the LLC*
- Bad
 - *LLC's can be more complicated and expensive than irrevocable trust*
 - *LLC interest of owners attachable by creditors/ex-spouse/Medicaid estate recovery*
 - *Future gifts of an LLC as part of a succession plan can create new gifts.*

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Revocable Planning Techniques

- The typical revocable living trust that is used for probate avoidance is not an effective planning technique for the protection of farm assets against the cost of long-term care (unless it was signed and farm land was transferred to it prior to May 1,2002)
- Transfer on Death arrangements also are not effective

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Long-Term Leases or Contracts

- Reduce impact of nursing home cost
- Long-term lease can preserve opportunity to farm at a reasonable rental amount
 - *But lease payments will go to nursing home*
 - *But land itself is not protected from Medicaid recovery*
- Long-term sale contract can preserve land at a reasonable purchase price
 - *But purchase price payments will go to the nursing home*
 - *But payments remaining at death are subject to estate recovery by Medicaid - IHCPPM 4650.00.00, et seq.*
 - *But the duration of the land contract must not exceed the life expectancy of the seller, or the principal will be a countable resource.*

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Self-Insuring

- What is the likely need for long-term care
 - *Have ancestors required long-term care in the past*
 - *Can family members provide long-term care*
- How much does long-term care really cost
 - *Daily costs for nursing care consistently range from \$200-\$300 per day.*
- What income and assets are available
- What will be the impact on the estate plan of spending that income or using those assets for long-term care

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Long-Term Care Insurance

- Determine the availability of long-term care insurance
 - *Many people do not qualify*
 - *For others, it is too expensive*
- Long-term care insurance is likely to be there even though today's Medicaid eligibility planning techniques may not be
- Long-term care insurance is often the best approach in second marriage situations
- May offer Asset Protection from Medicaid resource limits and estate recovery
- Hybrid policies that have a death benefit are now available

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Government Benefits

- Three types of government benefits may be involved in the payment of nursing home costs
 - *Medicare*
 - *VA*
 - *Medicaid*

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Medicare Payments

- Requires a qualifying hospital stay for Medicare rehabilitation benefits to start
- Typically are available only during the first 100 days of care and only if patient is improving or continuing care is recommended to obtain improvement
- Not all care qualifies for Medicare reimbursement

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VA Benefits

- Only veterans with service during wartime periods and their dependents qualify
- There are income and asset tests for eligibility, but the asset test is not well-defined
- Qualifying to receive Medicaid benefits may reduce VA benefits
- There currently is no look-back period for disqualifying gifts
- An irrevocable trust may be used to hold assets that would otherwise cause ineligibility but should be established by another person.
- That trust should not pay its income to the person who is applying for VA benefits
- Go to va.gov and click on Benefits tab for more information

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Medicaid

- Principal source of assistance for paying for nursing home costs
 - Available for home care and assisted living in limited situations
 - Eligibility requires satisfaction of both an income and an asset test
 - More information can be found at the States website: <http://in.gov/fssa/index.htm>
 - The Indiana Health Coverage Program Policy Manual can be found here: http://in.gov/fssa/files/Medicaid_Combined_PM.pdf

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Medicaid Situation #1

- One spouse is in nursing home and one is at home
 - Step 1 – spend down countable resources as of snapshot date (1st day in at least a 30-day stay in a health care facility) to the lesser of \$123,600 or ½ of total countable resources (but not less than \$24,720) - 405 IND. ADMIN. CODE 2-3-14(c)(3) (2016).
 - Non-countable Resources:
 - Income-producing real estate, Home, Furnishings, Vehicle, Funeral, IRA of non applicant spouse
 - Spend Down Options:
 - Funeral Home (Ind. Family & Soc. Servs. Admin. v. Culley, 769 N.E.2d 680 (Ind. Ct. App. 2002))
 - Home Repairs
 - Immediate Annuities
 - Nursing Home Costs
 - Farm Land/Equipment/Debt Reduction
 - Newer Home/Vehicle
 - Gifts made in the last 5 years before applying create a period of ineligibility
 - Step 2 – transfer assets to spouse at home
 - Step 3 – revise estate plan of spouse at home

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Medicaid Situation #2

- Surviving spouse is in the nursing home or both spouses are in the nursing home
 - *Must spend down resources to \$2,000 or less for surviving spouse or \$3,000 or less for a couple*
 - *5-yr Look-back Period*
 - Gifts made in the last 5 years before applying create a period of ineligibility
 - Length of the period relates to the amount of the gift and the cost of nursing home care (currently \$6,527/month - 405 IND. ADMIN. CODE 2-3-1.1(g) (2016).
 - Ineligibility period begins at the time of the Medicaid application, when the applicant is in the nursing home and otherwise eligible for Medicaid - 405 IND. ADMIN. CODE 2-3-1.1(c) (2016).

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Advanced Planning is Key

- When considering your options remember you are balancing:
 - *Protection*
 - *Control*
 - *Cost*

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Questions?

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