

# Chicago Elder Law Newsletter

By: Michael J. Cornfield



## Developing A Life Care Plan

Unfortunately, as an elder law practitioner, many meetings with the family of loved ones are made on an emergency basis because of a sudden medical crisis. The family has to quickly try to assess numerous concerns regarding the affairs of a family member and try to make critical decisions with little or no previous planning or at best digging up planning documents made decades earlier when financial and family situations were substantially different.

It is also not uncommon to receive a call from a client from a hospital bed, asking to please come see them as they have some changes they want to have done to their estate plan, whether it is agents under powers of attorney or named beneficiaries on trust documents. The hospital setting to discuss critical business is inappropriate at best, where medical condition issues abound.

“I’m so afraid of outliving my money.”

Other critical meetings with family members occur when a medical condition causes a myriad of issues to be addressed and clients frequently are in a state of panic as they “don’t want the state and the nursing home to take all of our assets that we have worked so hard to obtain.” It’s a genuine concern that the client will outlive their money.

It is these fears that we try to address on a daily basis. Many of our clients, however, when facing similar issues, have made the mature decision to address these issues, and review them periodically, before the crisis occurs. According to Shay Jacobson and Ben Neiburger at the IICLE, this is called Life Care Planning. As a baby boomer myself, I understand that we don’t like to address the frailties of life. We may never consider ourselves old, but we can still develop a plan to make sure our affairs are handled as we would want them to be in an economically prudent way.

“Be proactive, and have a Life Care Plan”

A life care plan is so much more than making sure that “The nursing home doesn’t take my house” It is comprehensive legal and financial planning that addresses any unforeseen contingency as we move through different stages of our life. It should continually be reviewed and addressed to confirm it will meet our every need. Life care planning addresses the following concerns:

- Are you concerned with outliving your savings?
- Do you have a plan if you or your significant other has a catastrophic medical condition?
- Do you know your options regarding long term care in the area and how you will pay for it?
- Would you have a feeling of loss of control if faced with a medical crisis?

Let us help you develop a plan so that you can maturely address the twists and turns that life has in store for you. One of the great joys in practicing in this area is working through these issues with families like yours and having the client say “Boy am I glad I did this, I wish I had done this sooner, it feels great!”

## It's Official: New Medicaid Transfer Rules Enacted

In 2011, after nearly six years of waiting, an Illinois legislative committee has finally approved the Deficit Reduction Act of 2005, which among other provisions places several new restrictions on the ability of the elderly to transfer assets before qualifying for Medicaid coverage of nursing home care.

The law extends Medicaid's "look back" period for all asset transfers from three to five years and changes the start of the penalty period for transferred assets from the date of transfer to the date when the individual transferring the assets enters a nursing home and would otherwise be eligible for Medicaid coverage. In other words, the penalty period does not begin until the nursing home resident is out of funds, meaning he/she cannot afford to pay the nursing home.

The law also makes an individual with home equity above \$750,000 ineligible for Medicaid nursing home care. The new federal law applies to all transfers made on or after the date of enactment.

## New Real Property Transfer On Death Instrument Act

Illinois has a new law called the Illinois Residential Real Property Transfer On Death Instrument Act. This Act introduces a new document called a "transfer on death instrument," which authorizes an owner to transfer residential real estate to one or more beneficiaries on the owner's death.

There are three requirements for a transfer on death instrument:

1. It must contain the essential elements and formalities of a properly recordable deed
2. It must state that the transfer to the beneficiary is to occur at the owner's death
3. It must be recorded before the owner's death in the public records in the office of the recorder of the county in which any part of the residential real estate is located.

The transfer on death instrument must be signed by the owner, attested in writing by two or more credible witnesses, and notarized. The witnesses must attest that the owner executed the transfer on death instrument in their presence, that the owner signed on his own free will, and that he was of sound mind and memory.

The Act "does not affect any method of transferring residential real estate otherwise permitted" by Illinois law. Notice, delivery, or consideration is not required for a transfer on death instrument to be effective. A transfer on death instrument is revocable and non-testamentary. In order to make or revoke a transfer on death instrument, an owner must have the same capacity required to make a will. An agent must have express authority to act by the owner under a power of attorney or similar instrument in order to make or revoke a transfer on death instrument on behalf of the owner.

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