

# Elder Law Gems

by Attorney Michael Hooker

If you only have time to read just one of my columns in your life and you want the impossible, (which is to learn everything in elder law in one brief sitting) here are some succinct gems:

Powers of Attorney (financial delegation of authority to be used while you are alive) are often more important than a Will. Always name an alternate on your Will, Health Care Proxy and Power of Attorney. Some brokerage firms require their own Power of Attorney, for example Merrill Lynch.

Probate-avoiding Revocable Trusts are much less relevant now since the simplification of the Probate process. Revocable Trusts don't protect assets if nursing home placement occurs. Irrevocable Trusts might, but they are more complicated, expensive and subject to Medicaid (aka Masshealth) scrutiny years down the road when seeking eligibility. The way to protect your assets from nursing home cost is to a) die b) transfer assets c) guarantee your kids will care for you or d) buy long term care insurance.

Long term care I often view as inheritance insurance so the spouse or kids' inheritance isn't consumed by long term care costs. \$14,000 allowable gifts under IRS and federal inheritance laws have absolutely nothing to do with Medicaid rules. Just because the IRS allows it doesn't mean Medicaid does. Moreover, these IRS gift allowances to minimize inheritance taxes are only relevant if you are over the federal taxable threshold which is now over \$5 million. How many of you have that much? Hospitals increasingly are keeping elders just for "observation" and not officially admitting them. A three day "admission" is necessary to trigger federal Medicare rehab costs. No formal "admission" means no Medicare rehab coverage. If you intend to deed your house to your kids to avoid probate and try to protect it from nursing home costs, always retain a life estate.

Don't transfer to more than 3 children. Too many people on one deed. I had one client who wanted to put 8 kids on a deed! If you do transfer to the kids make sure they have their own legal papers in order since they are now "partners" with you. Reverse mortgages to bring care into the home are very expensive and require the elder to receive counseling so that they are not exploited by the mortgage company. Prenuptial agreements are not recognized by Medicaid. If one spouse is rich and other is poor and in a nursing home, the rich spouse's assets must be used for care. Medicaid asset protection and eligibility rules are different for community services, rest homes and nursing homes. Medicaid rarely pays for assisted living facilities. If you have a disabled child establish a Trust for him or her. Formal, written, Caregiver Agreements between an elder and his/her children are becoming more common now that Medicaid gifting prohibitions (the 5 year look back) make it so hard for elders to protect their savings for their kids. A veteran can't bank on going to Holyoke Soldier's home.

Many veterans or veteran's family prefer there because it is only 8% of the cost of a private nursing home. Do your family a favor and get your estate plan in order. Accept the fact that we are all going to die yet we don't know when.