



# TO TRANSFER OR NOT TO TRANSFER (ASSETS)

By Attorney Michael Hooker, Esq.

How do you protect your assets from catastrophic health care costs so that your savings can be inherited by your children? Two avenues are outside your control: death and having children care for you so you never require admission to a facility. The third option is long term care insurance. It can be expensive, but may be worthwhile. The fourth avenue, and one which many of my clients take, is to transfer assets out of their name to trigger the so-called Medicaid 5 year ineligibility period. It should be noted that transferring assets to a revocable, aka living trust, does not protect assets; only an irrevocable trust has the ability to protect assets. However, even these types of trusts have recently been

challenged (often successfully) by Masshealth/Medicaid, the funding agency for long term nursing home care. This area of Medicaid law is extremely unsettled and is ripe for an appellate challenge which will bring greater clarity to this matter.

One reason to use an irrevocable trust rather than gift directly to one or more of your children is so your grandchild's college financial aid is not adversely impacted by the fact that his or her parent is "holding" grandma's money. If you are not concerned about that, then you might consider transferring assets directly to one or more stable, trusted children in long term marriages. If you are admitted long term to a nursing home 6 years from the date of the transfer, you would be past the 5 year look back and should Masshealth eligible. It is

my guess that the 5 year look back will at some point be lengthened given health care governmental pressures.

There are many things that can go wrong when transferring assets out of your name. Your child may get divorced, become estranged or be sued. In short, there is no magic answer. You can hold onto your assets and hope that a bad fate doesn't befall you, transfer your assets to an irrevocable trust that may later be challenged, or transfer assets directly to a child or two. It is impossible to protect your assets under the transfer strategy without relinquishing control over them. Who and/or what you transfer assets to and when, takes serious consideration, analysis and a careful weighing of the pros and cons, including tax issues.

## ELDER LAW, ESTATE PLANNING AND ASSET PROTECTION



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"Attorney Hooker and his staff exceeded our expectations in their knowledge and experience in elder law and finance. They put my wife and I at ease as they worked in tandem with our accountant, investment adviser and bank."

**Don Levitan and Cynthia Nyary**  
Lathrop Community

"Attorney Michael Hooker's professionalism and extensive knowledge of elder law, asset protection and financing long term care are second to none. He and his capable, caring team light the way for families in crisis."

**Lisa Snook-Mohan, Snook and Mohan**  
Insurance Agency, Northampton

"Mike and his compassionate team hit a grand slam home run for my parents, rescuing their life's savings when expensive, long-term medical care became a necessity."

**Roger Salloom, Musician**  
Northampton