

How To Keep The Gold In The Golden Years

Is now a bad time to think about how to pay for the most expensive time of your life?

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Upcoming Webinars:
Saturday, May 21 at 10am
Thursday, June 9 at 3pm
Saturday, June 18 at 10am

GET ANSWERS TO YOUR QUESTIONS:

How do I protect my health, home, lifesavings, family and legacy?
Why is an outdated will worse than no plan at all?
How can I be sure people I trust will make medical and financial decisions for me, if I cannot?
How can I control the care I get (and do not get) in a medical emergency?
How can I protect my kids' inheritance from divorce, bankruptcy, and their own poor decisions?
How do I avoid heavy taxes from the new law on my retirement plans (like my IRA or 401k)?

Join Us
at Our Live, In-Person,
Group Workshops!

Grand Rapids

Saturday,
May 21
10am

(616) 361-8400
4965 East Beltline Ave NE
Grand Rapids, MI

Holland

Thursday,
May 19
1pm

(616) 796-9600
12330 James Suites B10
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LETTERS... WE GET LETTERS... WE GET LOTS AND LOTS OF LETTERS...

YOU NEVER CALL, YOU NEVER WRITE!

LIKE DRIVING PAST A CAR WRECK... GLAD IT DID NOT HAPPEN TO YOU (NOT EDITED FOR SPELLING OR PUNCTUATION OR ANYTHING ELSE) (WARNING: NOT LEGAL ADVICE!)

QUESTION:
Can our disabled brothers legal guardian (also a family member and remainderman) terminate disabled brothers life estate?

Disabled brother is now in nursing home and will not return to family home which he has life estate in and is also in an irrevocable trust. There are many remaindermen, (large family) and all are in agreement to sell family home including our disabled brothers guardian. Another family member/remainderman wants to buy us out and move into home, hoping that we can all just sign off of house/trust and quitclaim the property to her. Not sure if this is "allowable" or advisable. We also have concerns about potential "Medicaid recovery" if life estate is terminated while life estate holder is still alive.

Short Answer: Oh what a tangled web we weave, when first we practice elder law without a firm grounding in the fundamentals. Imagine sorting out this fact pattern after the family house was sold, money distributed, Medicaid denied, recriminations on all sides, nursing home lawsuit against disabled brother, allegations of fraudulent transfer against siblings, and a family feud ripe with recriminations echoing through eternity. In other words, the usual case.

Is it crazy to think it is not too late? Is it impossible for sweet reason and angelic actions to save the day? Must this family suffer?

Long Answer: There are several threads here that need to be disentangled. Let us begin with brother's life estate.

LIFE ESTATE

In Michigan, "life estate" means that the person can use and live on the property for their entire lifetime. A life estate is valuable. How valuable?

Back in the day, we used to have hearings with expert witnesses and do future value projections based on life expectancy and then present value regression analyses. But in today's modern world, Michigan makes it easy to figure out how much a life estate is worth. Get a copy of the Bridges Eligibility Manual 400, Exhibit II – Life Estate and Life Lease Factor Table (BPB 2022-07) (available online!). This Table lists ages from birth to 109 years old. For each age, there is a 5-digit life estate factor. You look up the factor that corresponds to the age of the person. Multiply the factor by the value of the real estate. Voila! That is the value of the person's life estate.

IMPORTANT POINT: Life Estate values have nothing to do with the actual health of the Life Estate holder. Life Estate Value is all about chronological age. Birth certificate and calendar. Healthy or on hospice? Irrelevant.

A few examples. Let us suppose the family home is worth \$100,000.

At age 2, the life estate factor is .99017. So, a two-year old's life estate is worth \$99,017. (\$100,000 X .99017)

At age 109, the life estate factor is .04545. That means that the 109-year-old's life estate is worth \$4545. (\$100,000 X .04545)

At age 70, the life estate factor is .60522. How much is a 70-year-old person's life estate worth? Correct! \$60,522. (\$100,000 X .60522)

What this means is that "if life estate is terminated while life estate holder is still alive" the life estate holder must be paid the value of the life estate as determined by the BEM 400 Life Estate Factor Table. Easy!

Let's consider the flip side... the remaindermen.

If 70-year-old disabled brother's life estate is worth \$60,522, what are all the remaindermen's interests worth, collectively? Correct again! \$39,478. (\$100,000 - \$60,522) Divided by the "many remaindermen" of a "large family." Betcha didn't see that coming!

DISABLED BROTHER'S GUARDIAN

Disabled brother has a guardian. Does that mean we are in probate court? Yes! Does that mean that any sale of the property must be approved by probate court? Yes! Does that mean that we will have to pay an attorney to help us ask the probate court for permission to sell? No! Like plumbing and electrical work on your home, probate can be a "Do-It-Yourself" adventure. Emphasis on "adventure." Can you steer your automobile with your feet? Sure! But that does not make it a good idea. Like do-it-yourself electrical work, plumbing, or probate. Jes' sayin'.

Probate is required even if disabled brother also has a conservator for management of his assets.

MEDICAID RECOVERY

Remember how disabled brother got the money from the sale of the family home? If disabled brother was already on Medicaid, getting the money will boot him off. Until the money is all "spent down." Or until the money is stashed in a Medicaid payback trust. Or a charitable pooled income fund. Or somewhere else where the other family members will not benefit.

Are there worse ideas than selling the family home before disabled brother's death? Sure! You could invade Ukraine, expecting a liberator's welcome. You could dump trillions of dollars into the economy, expecting no inflation. Spit into the wind. Tug the mask off the ole Lone Ranger. Mess around with Jim. Bad ideas.

When disabled brother dies, his life estate is over. No compensation. No estate or Medicaid recovery. The remaindermen get the remainder. All the remainder. Yay!

But in the meantime... You want to keep the family house occupied. Vacant houses have a way of burning down. Vacant house insurance is hugely expensive. Plus you still have to pay the taxes. And utilities. Mow the grass. Plow the snow. Paint it.

Why not let sister move in now, provided she pays all expenses? Subject to a written agreement? Give her a right of first refusal (not an option) so she may purchase the place after disabled brother's death?

There are other possibilities. Leasing/subleasing.

Etcetera. But do not accept the assertion that it must be sold pronto. The family has options.

IRREVOCABLE TRUST

What's going on with this?

Somehow there is an irrevocable trust blended into the mix. It is not obvious how that trust is being used, if at all. There are several possibilities. But a review of the trust would be essential to knowing what is going on.

Question: Can my father's caretaker accept his entire estate? Can she be sued for selling everything? He is still alive. My dad signed over his house to his caretaker before she put him into an assisted living home. She then quickly sold it. He has 2 living children. Do I have any recourse now?

Short Answer: No, you do not "have any recourse now". Sadly, a properly executed deed has consequences which cannot be undone. Even a deed that reverses the prior transfer has real world consequences that cannot be ignored. What consequences? [WARNING: LAWYER ANSWER TO FOLLOW] It depends.

Longer Answer: Is it possible that the caregiver may be sued or prosecuted for financial abuse of the elderly? Is it possible that Father was incapacitated or mentally incompetent at the time he signed the deed? Could those be grounds to throw it out? What if Father was coerced into signing by undue influence, would those be grounds as well? Perchance. Maybe. Possibly. Mayhap. Hmhmhm, tugs at goatie...

How can you prove that Father was consistently and continually mentally incompetent? Or coerced? Were you there the whole time? When he signed? These are difficult cases. Difficult to forget about apparent injustice. Difficult to remedy the injustice. Difficult to know if there was any injustice at all. Difficult to reconcile when the "bad actor" is a family member.

Is it crazy to think that it might just possibly be helpful to have had some professional assistance in this sort of situation? Maybe possibly a few bucks and hours now to avoid big bucks and years of woe in the future? Asking for a friend...

Father, it seems, was mentally competent and had the legal ability to sign. Adults can choose. Poorly. With disastrous consequences.

You may not believe it, but some folks with signs of developing dementia are propped up by gangs of greedy grasping gargoyles intending to gorge on ill-gotten gains. Despicable devils who deny demonstrable incoherence, impulsiveness, and inconsistency. For their own putrescent purposes. How can such evil exploiters exist? Trust the evidence of your own eyes if you doubt it.

Actions have consequences.

NO POVERTY. NO CHARITY. NO WASTE.

It is not chance. It is choice. Your choice. Get Information Now.

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