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# Rice Elder Law

## Certified Elder Law Attorneys

*Rice Elder Law has been assisting clients with their Estate Planning and Elder Law needs since 1992. Both Nancy and Pamela have been Certified as Elder Law Attorneys (CELA) by the National Elder Law Foundation. The firm maintains offices in Atlantic County (Linwood) and Camden County (Cherry Hill). Rice Elder Law can answer your questions and concerns – just call 609-398-3447.*

Pamela A. Quattrone  
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## Should I Give My Home To My Children?

*I am often asked whether it is a good idea for elderly parents to transfer their home to their children. I always ask: “Why do you want to do this?” The most common reason is to protect the house in the event one or both of the parents need nursing home care.*

First, I want to emphasize that there is no easy answer to this question without knowing the full asset and income picture, as well as the health status of the parents. If I get all that information, the answer can be easy (for me!).

I summarize below some of the factors that go into the decision whether it is a good idea to transfer the home and, if so, what is the best way to go about it.

**Five-Year Look Back for Medicaid.** Under New Jersey Medicaid rules, if a parent transfers assets to a child/ren or even to a trust within five (5) years of applying for Medicaid, the transfer will cause a penalty, which does not begin until the Medicaid application is made!! The length of the penalty period depends upon the value of the house. Thus, any transfer of the residence must be made well in advance of the parents’ need for nursing home care (which, of course, cannot be accurately predicted).

My main concern about transferring a house to children to accomplish Medicaid eligibility is that there are many exceptions in the Medicaid rules relating to the residence. First, if both parents are living, the house is exempt as long as one of them is living in the residence. Second, transfers without penalty may be made to a “caregiver child” or a disabled child. Thus, I do not reflexively recommend transfer of a house from a married couple to children, especially if one of the parents is likely to need a nursing home level of care within the next few years.

**Capital Gains Tax.** A second issue with transferring the house is the loss of a potentially significant capital gains tax advantage. The capital gains tax rate is 15% federal and 5-8% for New Jersey (capital gain is treated as ordinary income). This tax is paid on the difference between what you paid for something and what you receive when you sell it. If the parents have owned the house for a long period of time, this tax

can be substantial. However, if the parents sell the house during their lifetime(s), they have an exemption from this tax in the amount of \$250,000 for each parent, assuming they owned and lived in the house as their principal residence for at least two out of the five years before the sale and that certain other requirements are met. This exemption can be lost if the parents give the house to a child/ren, as the house is not the principal residence of the child/ren.

If the house is not sold during lifetime, but following the death of the surviving parent, the child/ren will pay a capital gains tax because the house was gifted to them, and not inherited. If a residence (capital asset) is inherited, the “cost basis” for the child/ren becomes the value of the house at the date of death (instead of what the parents actually paid for the house). This is called “step-up in basis.” Usually, this means a zero tax if the house is sold within a year or so after the parent’s death.

**Loss Of Control And Children’s Creditors.** A third issue with transferring the house to children is the loss of ownership of the house and the risk from children’s creditors. If the parents transfer the house outright to the children, then the children own the house. The children do not have to allow the parents to live in the house and can actually sell the house and take the proceeds. If any of the children get into financial difficulty, their creditors may be able to force the sale of the house. If any of the children get divorced, their spouse may have a claim to part of the house. Finally, and of great importance to most of my clients, if the parents are receiving property tax deductions for being senior citizens or veterans, then these benefits will be lost.

Now that I have scared you half to death, I want you to know that there are ways to avoid most of these problems. I use Life Estate Deeds, Trusts, Powers of Appointment and all kinds of other mysterious gadgets, depending upon the situation. Sometimes, my best advice is to not transfer the house but to do other things. It all depends on the total picture. 

**Nancy M. Rice, Esq., CELA  
Pamela A. Quattrone, Esq., CELA  
can answer your questions and concerns.  
Call 609-398-3447.**

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