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Supporting Your Parents – Is it Your Duty?

By Gina M. Barry, Esq.

Recently, there have been many news stories about the duty of an adult child to provide support for an aging parent. This support may be in the form of providing personal care or financial support. An adult child could become liable for supporting a parent in several ways, including (1) voluntarily; (2) contractually; (3) being required to return gifts made by the parent to the child, and (4) statutorily.

A voluntary duty to provide care for a parent requires that the adult child take action of their own free will. In most cases, a child voluntarily assumes care of their parent because they believe it is the right thing to do and because they have the means to provide such support. Often, the parent has concerns regarding their privacy or safety, and the only caregiver they will trust is their child. In order to ensure that their parent is well cared for, the child willingly takes on the responsibility of caring for their parent.

Contractual liability also arises from voluntary action on the part of an adult child, although it may occur unwittingly. An adult child may sign hospital admission papers for the parent without noticing the provision where the child agrees to pay the bill. Another example where contractual liability may arise is when an adult child is acting under a parent's Durable Power of Attorney,

but signs an agreement without disclosing that they are acting only as an agent of the parent.

More commonly, a contractual duty arises in the form of a caregiver agreement. Such an agreement is typically entered into when the parent and child live together, and the child provides care similar to that provided by a facility. Here, it is common for the parent's home or other assets to be transferred to the child as compensation. As such, it is best to establish a care agreement, which is a contract between the parent and the child in which the parent agrees to pay the child or to finance an improvement to the child's home, and the child agrees to care for the parent until the parent either passes away or has care needs that are too great to be met at home.

An adult child may also be forced to return assets that the parent gave to the child. When applying for Medicaid, which is the program that provides benefits for nursing home costs for qualified recipients, the rules allow for a look back of five years from the date of application for benefits. If a gift is found within five years prior to the application date, the applicant is penalized and will not be able to receive benefits for a period of time, the length of which depends upon when the gift was made and how much was given. If the parent does not have the ability

to pay for their own care, they may be evicted from the nursing home. In order to prevent this eviction, an adult child often must return the gifted assets in order to eliminate the penalty period.

Further, some states have implemented statutes that make adult children liable for the care of their parents. Such a statute creates an affirmative duty requiring adult children to provide care or financial support for their parents when needed. To date, Massachusetts has not enacted any such statute. Nonetheless, as the number of people receiving state benefits to pay for their care continues to increase, and as the state continues to seek ways to reduce its costs, it is certainly plausible that the legislature may enact such a statute in Massachusetts in the future.

At the present time, the only duty to provide support for parents in Massachusetts comes from voluntary action, although it may also be as the result of a contract. Given the ramifications of voluntary action, gifting or of a future statute, it is best for parents and adult children to receive proper legal advice when addressing the care needs of the aging parent. It is also best that this advice be obtained prior to when the actual care is needed as the best options are available only when planning is done several years in advance of the need.

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