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Your Place or Mine? – Providing Care for Aging Parents

By Gina M. Barry, Esq.

When an aging parent needs assistance to live at home, many children opt to provide the care. Often, the parent will not agree to hire professionals due to their inability to appreciate the decline in their ability to live independently. Occasionally, the parent has concerns regarding privacy, and their child is the only caregiver they will trust. Still, the caretaker child arrangement conjures up a variety of legal issues.

A caretaker child arrangement exists when the parent lives with the child, and the child provides care similar to that of a facility. Here, it is best to establish a care agreement. A care agreement is a contract in which the parent agrees to pay the child (in either a lump sum or on an ongoing basis) or to finance an improvement to the child's home, and the child agrees to care for the parent until either (1) the parent passes away or (2) is in need of nursing home level care.

When establishing a care agreement, you must value the services to be provided. You may value the services as a package as would a similar board and care facility. This approach is only feasible when the services rendered are substantially the same as those rendered by such a facility. In this situation, the average monthly cost of the facility may be used as the monthly cost of the care provided by the child.

An alternative approach involves valuing each service individually. This approach should be used when a child is performing only some of the caretaking activities. Tasks performed by the child may include, but are not limited to, grocery shopping, meal preparation, accounting services, driving to appointments, housecleaning and laundry services. When using the individual pricing method, the child must keep a record of the services performed and receive payment based on the actual amount of service provided.

There are various other provisions of the care agreement that are equally important. The agreement should set forth the exact services that the child will provide as well as the location where the services will be provided. The parent's "space," as well as any "common areas," should be detailed. Additionally, the agreement should set forth whether the parent or the child is responsible for paying monthly utility charges, as well as yearly expenses, such as property taxes and homeowner's insurance.

It is imperative that the parent and child decide under what circumstances the child is willing to care for the elder. The agreement should specifically state the terms upon which the agreement may be cancelled. In order to avoid the appearance of an illusory promise on the child's behalf, the agreement should provide that cancellation shall

only occur upon the occurrence of specified conditions, such as if it becomes unsafe to continue to provide care in the home.

The services that the child will provide with respect to housekeeping, laundry, meals and personal assistance should be as detailed as possible. The agreement should detail the schedule for the cleaning of the parent's room, describe any additional cleaning materials that will be provided to the parent, and establish parameters regarding the child transporting the parent to and from appointments. The agreement should also address any property maintenance duties the child will perform, including but not limited to, ensuring repair of the premises or its mechanical components as needed, mowing the lawn, additional landscaping and snow removal.

A formula should also be provided to determine how increased costs will be calculated. That is, if the elder pays \$50.00 per month to cover the cost of food, any increase should be tied to the annual consumer price index increase or calculated in some other definable manner so that its application is precise. Without such a provision, a disagreement may arise between the parent and the child as to an increase, which could, in turn, disrupt the ongoing performance of the agreement.

The impact of a care agreement with respect to the parent's long term care

financing options is substantial. At present, the most common options for financing long term care include obtaining long term care insurance, privately paying for care or obtaining Medicaid benefits. When applying for Medicaid benefits, the Division of Medical Assistance will ask whether the applicant has made any gifts during the applicable look back period. If gifts are found, the Division of Medical Assistance will assess a penalty upon the applicant. This penalty prevents the applicant from obtaining benefits for a certain time period based on the amount of the gift. When assets are transferred to a child as payment for care provided, it

may be possible to avoid this penalty as the money was transferred to pay for services provided and was not merely a gift.

Although there are many to address when establishing a care agreement, the benefit of such an agreement far outweighs the effort involved in establishing one. Outlining the responsibilities of each party will prevent most disagreements. Ultimately, working through the issues raised in a care agreement will lay the framework for a successful arrangement between the parent and the caretaker child.

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