

Ask the ElderCare Lawyer



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Ask the ElderCare Lawyer is a regular feature of Quality Lifestyle Magazine. Each issue will address your questions in areas relating to estate, probate, elder law, Medicaid, Medicare, and ElderCare legal advocacy and counseling. If you wish to have your questions answered, please send them to Sanford J. Mall, 31000 Northwestern Highway, Suite 220, Farmington Hills, MI 48334. The questions below came from recent meetings at the law offices of Mall, Hamilton & Associates, P.C.

Thank you for your many letters, questions and thoughtful feedback. Your kindness and support continues to be a precious gift. For those of you who have not called or written, I hope this column and the question and answer format has provided you with valuable and useful information. This month I have included three (3) of the most frequently asked questions of 2004 as well as two (2) questions I received in the last month that have unexpected answers about little known benefits that are invaluable for those who qualify.

All of us at Mall Hamilton - The ElderCare Law Firm - wish you the very best of health, happiness and good fortune throughout this holiday season and in the year to come.

Is the State passing a new law that will let them take my house?

No, your house will not be taken by the State - at least not while you are alive. However, if you are or will be receiving Medicaid the equity in your home- stead may be at risk. The law you are asking about is called "estate recovery." So far, Michigan still does not have such a law and no such law has been proposed as of the time this is being written. Accordingly, what the new law will say and how it may affect you and your estate is unknown at this time. However, it is likely that a new law enabling the State to "recover" against a person's estate who has received Medicaid will be passed in the near

future. If you believe that such a law may affect you and your planning, you should consult with an ElderCare Attorney for specific advice.

My mother has a Power of Attorney, are there any reasons she may need a new one?

Everything may be just fine as is and your mother's current Power of Attorney may do everything she needs it to do. However, there could be some very good reasons for her to consider updating her planning. If her existing Power of Attorney was drafted and signed more than a couple of years ago, many things have changed. For example, new medical and financial privacy laws provide us all with better protection but may make it more difficult for your mother's chosen agent to act on her behalf when needed. Additionally, her wishes may have changed and new legal planning options exist today. Most importantly, the existing Power of Attorney needs to be reviewed to make sure it is up-to-date and contains all the necessary powers to meet your mother's current needs and carryout your mother's present wishes. Your mother should consult with an ElderCare Attorney to review her current circumstances and her existing legal documents.

One or more of my children are on my bank accounts, CD's, and the deed to my house. Why would I need any other planning?

The "plan" you have in place leaves you, your children and your estate at risk. Joint ownership is a common and simple plan many people use to arrange to have someone "pay the bills" and avoid probate court. However, this simple plan is not without potentially complicated risks. In addition to giving up control, your assets could be lost if a joint owner is sued, gets divorced, or has tax problems. Further, the list of possible risks also includes: exposure to creditors, unexpected taxes, Medicaid divestment penalties, unintended heirs, and unintended disinheritance.

The joint ownership plan also may not avoid probate court if you become incapacitated. Even with joint ownership, probate may still be necessary to transfer or sell assets (Conservatorship) or to empower someone to make medical / care decisions on your behalf (Guardianship). With more thorough planning all of the above problems can be avoided.