

ELDER LAW TODAY

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Can We Protect a Small Business, Farm or Ranch and Still Qualify For Medicaid?

This quarterly newsletter will focus on how we can protect a small business, farm or ranch when long term care is needed by one of the spouses. This provision is not very well known, but it can be extremely beneficial in the appropriate fact situation. Let's look at a hypothetical situation:

Mr. and Mrs. Shannon have lived in Texas their entire lives. For the past twenty-five years they have owned a hardware store and poured their heart and soul into it. They had planned on selling the store in a few years and retiring. That was before Mr. Shannon had a stroke.

For the last few weeks, he's been hospitalized and it's now become apparent that Mrs. Shannon won't be able to care for him at home. They have found a nursing home where they believe Mr. Shannon will get good care. Now the Shannons' concerns have turned to finances. Mrs. Shannon has spoken to several of her friends and most knew of someone in a similar situation. They all told her that chances are she would end up spending most of their assets to care for Mr. Shannon. Certainly there is no way she would be able to keep the family business... or is there?

First, let's review the Shannons' assets. Their store and the building it's in and the land it's on has a total value of about \$250,000. In addition, it takes about \$20,000 a month to run the shop and the Shannons have about \$50,000 in the business bank account. Virtually all of their assets are in the business. In addition to the store, they have their residence and \$10,000 in a CD and \$10,000 in their personal checking account.

I have good news for them. I would tell them that the resource limitations for people needing to qualify for Medicaid favor small business owners, farmers and ranchers. An amendment to the Social Security Act allows the exemption of all income-producing property which is used in a trade or business. What this means is that the entire \$250,000 value of the Shannons' business will not be counted for Medicaid purposes. It is totally exempt.

In addition, there is also an unlimited exemption for liquid resources used in a trade or business. What this means is the \$50,000 which the Shannons have in the business checking account is also an exempt asset for Medicaid purposes. So, in other words, the total value of the business plus the cash in the business is exempt!

We noted earlier that the Shannons have, in addition to the business property, their residence (which is exempt), and only about \$20,000 in their own bank accounts. Since, as a couple, they are entitled to approximately \$20,000 in assets without having to spend down, then the bottom line is that Mr. Shannon will qualify for Medicaid immediately. In other words, Mrs. Shannon will be able to keep the business and liquid business funds valued at \$300,000 plus their personal cash valued at \$20,000 plus their residence... and still qualify Mr. Shannon with no "spend down" whatsoever.

Needless to say, the Shannons would be very relieved that the security they have spent a lifetime building will not be jeopardized by Mr. Shannon's illness.

At this time of the year, I reflect on how blessed I am to have a law practice that is able to help clients who need help during a most difficult time in their lives. I also feel very fortunate to have wonderful employees helping accomplish this mission: Cindy Lamb, my legal assistant of some 25 years; Emily Rodriguez, our legal secretary; Hope Gonzales, our receptionist and Kubis Brown, our marketing representative. They all work very hard throughout the year to provide the best service we can to you, our client. We thank you for allowing us to be of service.

And we all join in wishing you and yours a very Merry Christmas and a Happy New Year!!

P.S. Recently we recorded a DVD pertaining to the "Medicaid planning" portion of the practice. This DVD consists of Cindy and me talking about our Medicaid practice followed by an interview with Larry Sharp, M.D. where he talks about issues that Alzheimer's and Parkinson's patients and their families have to deal with. If any of you would like a DVD, call our office and we will send you one with our compliments. (This was just recorded a few days ago and won't be available until sometime in January).