



## What's In The Middle?

**F**or the past 15 years we've used the image of a pyramid to illustrate our asset protection planning options. We use the bottom third of the pyramid to show that when we take a pre-planning approach, planning five years or more before long-term care is needed, we can shelter 100% of the client's assets we plan with. We use the top third of the pyramid to show that in crisis, even at the last minute during a client's current need for long-term care services at home or in a nursing facility, we can shelter a minimum of 50-60% of the client's assets we plan with. Can you envision it?

What's in the middle? Intermediate planning. There are several occasions when clients sit at our conference room table and say that they don't currently need care in their home or care in a nursing facility, but their gut tells them they probably don't have five years before those needs arise. Now what?

Many people have heard of the five-year look-back period, but they mistake it for meaning that if planning isn't done five years in advance of care, then there are no other options for protecting assets. Before paying benefits for someone, the program is trying to learn if they've given away assets (classified as "gifts"), without following policy, in an effort to become eligible for Medicaid sooner.

There are three intermediate strategies to consider. The first is what's called a Caregiver Agreement; it's a binding, valid contract that is signed by both the person receiving care and the person providing care. Let's use an aging Mom and her adult daughter as an example – this agreement would allow Mom to pay daughter for the caregiving services she's performing. We recognize

that a lot of adult children are caring for their parents without asking for payment. They provide care out of love, affection, and a sense of responsibility. Consider though that our goal is to ensure a client's savings are protected from being depleted on the high costs of in-home care or nursing home care. The compensation to the child for caregiving services legally transfers money from Mom to daughter, the transaction cannot be perceived as a gift, and will not jeopardize the parent's ability to qualify for long-term care Medicaid.

There are rules related to this strategy. Daughter should report the compensation on her income tax return and pay the tax liability owed. Remember that's still a good trade off, to pay a little to the IRS to protect what's transferred under the agreement from the future cost of care; we're getting it out of the parent's name and legally into the child's name. Another rule is that Mom must pay the child concurrent with the services being provided, making it key to get advice early. If a child reports caring for their parent for the past three years, we can't retroactively compensate for that care.

We recommend that all caregivers under a Caregiver Agreement keep a very simple log as additional evidence that we can present to Medicaid to say the care reported is legitimate. Daughter might keep a simple notebook and list the date of service, time of services, and short description of each. It's notable that a Caregiver

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Agreement can be created between parties of any relation – a familial relationship is not required.

With these rules followed, if a Medicaid Long-Term Care application is completed in the future, then when it asks if any gifts have been made in the last five years we can check “No.” The payments to the child were under a valid, binding, legal contract, and the child has been filing that as taxable income for the services provided.

The other two strategies deal strictly with where the aging adult is residing and provide huge protection when the facts and circumstances fit.

Let’s discuss the caregiver child exemption, continued with our aging Mom and adult caregiver daughter example. When daughter is providing care to Mom and is able to move into Mom’s home for at least two years before needing to apply to Medicaid for in-home care or nursing home care, then the Medicaid Long-Term Care program allows the home to be transferred to the caregiver daughter without penalty. We like to think of this rule from a policy perspective, considering what the lawmakers might have been thinking when they allowed it. It’s like a bonus to the daughter, because if she hadn’t moved in with her mom then it’s likely Mom would have needed in-home or nursing home care much sooner. It’s an incentive for Mom to safely stay home, and an incentive for daughter to move in with her Mom and provide more support. Just like in the first strategy, when the Medicaid Long-Term Care application is complete, the home and value of it is no longer Mom’s asset and the transfer to the daughter is not considered a gift.

Be confident that there are other planning considerations when this strategy is used, like whether

there are other adult children, if there is a mortgage on the home, and the tax consequences of making the real estate transfer during Mom’s lifetime. Additionally, it’s limited to children only – not grandchildren, in-laws, etc. Still, it’s an incredible tactic that only requires a two-year planning window to protect what is usually one of the largest assets Mom owns.

Similarly, the third intermediate strategy is called purchasing a life estate interest in the home of another. Maybe daughter can welcome her Mom to move into her home. Mom could then purchase a life estate in daughter’s home to pay for lifetime living rights in her residence. That transfer from Mom to daughter is not considered a gift for Medicaid purposes as long as Mom lives there a year or more before needing to apply to Medicaid Long-Term Care. Our team has even used this strategy for clients knowing that they would just barely make the one-year mark.

This strategy doesn’t require a parent to child relationship, so the options are broader. The process involves having the home formally appraised, and examining the life expectancy tables to determine the life expectancy of the senior. Together, those allow the purchase price of the life estate to be calculated. The transfer is done as a formal arm’s length transaction with a real estate attorney and a traditional settlement statement.

Under the right circumstances, and when families engage in planning early enough, these strategies provide good solutions to sheltering some assets a couple years before transitioning to the solutions we depend on in the top of the pyramid.

### ***A note from the attorneys...***

We want to leap ahead to Mother’s Day because we usually aren’t in print that time of year. Being a mother is the very most important job we have. If we aren’t strong mothers, we aren’t strong leaders. Outside of the office we are planting seeds for our children to grow into individuals with solid values and hearts for giving back. In the words of Anne Frank, “No one has ever become poor by giving.”

*Michele B. Owen*

## TIME OUT — STAFF PROFILE

*Jalene K. Green*  
*Estate Planning Coordinator*



**ON THE CLOCK:** Jalene Green is new to Delaware and moved here from Minnesota in the fall of 2023. She has an Associates Degree in Graphic Design, and has almost 10 years of experience as a barista along with managing two coffee shops in Minneapolis. In 2020, she pivoted to project managing at a mortgage company, which eventually led to coordinating the non-profit sector of their company, including organizing fundraising events and volunteer efforts. We're excited to welcome Jalene to our team. Her time will be spent supporting our estate planning clients in our Lewes office.

**OFF THE CLOCK:** In her free time, Jalene enjoys biking in the Cape Henlopen State Park, spending time with her husband, Will, and dog, Theo, and drinking copious amounts of coffee.

## UPCOMING EVENTS

- 9 Apr Elder Law Workshop  
5:30 - 7:00 p.m.  
CAMP Rehoboth Community Center
- 27 May Offices Closed  
Memorial Day
- 7 Jun CARES Exclusive: Off the Clock  
9:00 a.m.  
via GoToWebinar

## LEGAL MUMBO JUMBO

*Legal Language in Layman's Terms*

### FIVE-YEAR LOOK-BACK PERIOD

Applicants to the Medicaid Long-Term Care program are asked to disclose all financial transactions in the five years before application.

### BENEFICIAL OWNERSHIP INFORMATION (BOI) REPORTING



Keep an eye on the developing Corporate Transparency Act news if you have a legal entity that would otherwise be required to report BOI.

## BELLA'S BRIEF

*The Office from a Dog's Perspective*



Although my heart rate does occasionally ramp up to an intensive level of bpm for no apparent reason, it's the political climate that is causing me to have bouts of angina. How is anyone supposed to have a positive and calm outlook when we are being shouted out, lied to, manipulated, and impoverished? It's no wonder we are all running to one side or another; it's how we find comfort and rationalization for craziness. That tact is only causing more heartache. I have a theory that if we lean into one another instead of away, we might experience slight

discomfort, but we will survive and come out better for it. Leaning in requires the courage of a lion and the patience of a black mamba. Yes, I know black mambas are aggressive, deadly vermin when they feel threatened. That's my point, when we don't feel at risk, we are willing to take risks. In my heart of hearts, I think we are like Tom & Jerry; we don't just like each other, we need each other.

*XOXO, Bella*

# PWW FRIDGE-WORTHY

## Red Bird Legacy Foundation

Justin Woodland, husband to Amber B. Woodland, Esq., graduated from Clemson University where he forged decades-long relationships with some of the most influential people in his life. Prominent among them is Ashley Thomasson and her family. Here's a peek at what Amber and her family have been up to, off the clock.



In early 2019, Ashley was diagnosed with metastatic cholangiocarcinoma (bile duct cancer). She immediately sought treatments focused on reducing her symptoms and improving her quality of life. Making joyful memories with her husband, Patrick, and young daughters, Ellie and Reese, and preserving her legacy of hope, faith, selflessness, and love became a priority.

Specifically, motherhood was a privilege Ashley never took for granted. Ashley's biggest task amidst exhausting and emotional consultations, trips, surgeries, and treatments: preserving her memory for Ellie and Reese. Thanks to the guidance and resources provided by a nonprofit in Greenville, SC – Let There Be Mom – Ashley focused on creating countless keepsakes for her daughters to receive at important milestones in their lives like their high school graduation, wedding days, baby showers, and more.

Before Ashley passed away, she told Ellie and Reese to think of her every time they see a red bird. This would be her way of visiting them. On the day of Ashley's funeral, a red bird flew in and perched on the feeder hanging outside their kitchen window. Reese exclaimed "mama" and that moment will forever be cemented in Justin and Amber's hearts. Clay red birds were gifted to Ellie and Reese that day so that they can always carry their "mama" with them.

When Justin and Amber returned home from Ashley's funeral, they hung a birdfeeder in their own backyard. They see a red bird daily and think of Ashley every time. Fast forward to June 2023 when several signs, including a red bird in the middle of a rainstorm, inspired them to form Red Bird Legacy Foundation.

Red Bird Legacy Foundation restores hope to and touches the hearts of parents with life-threatening illnesses by facilitating the creation of personalized and professionally produced photographs and videos, projects, keepsakes, and experiences so that their legacies are preserved, and their minor children carry their memory forward.

The Foundation is excited to share news of their kickoff event: professional surfer Bethany Hamilton is scheduled to make a motivational presentation on May 5<sup>th</sup> at Crossroad Community Church!

The free services offered by Red Bird Legacy Foundation are available to any parent who has received a life-threatening diagnosis (does not need to be terminal); has at least 1 minor child; and resides in Delaware or Maryland. If you are, or know of, someone who is eligible, please consider learning more about the Foundation. There are also opportunities to get involved as an ambassador, event sponsor, or volunteer.

[www.redbirdlegacyfoundation.org](http://www.redbirdlegacyfoundation.org)



Ashley's grateful "get to" attitude and generous approach to life is a powerful legacy that continues to touch the Woodlands and many others. They will forever be #allinforAshley.

# OFF THE CLOCK

We would like to thank our featured referrer of the month:



GRISWOLD HOME CARE  
18335 Coastal Highway, 200A  
Lewes, DE 19958  
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