

THE HOUSE...*What about the house?*

– An Elder Law Survival Guide

By **Frank J. Dana III, Dana Law Firm**

“Should I give the house to the kids?” Mary’s voice rose a bit as she finished her question, and before I could answer, out came a torrent of troubles: “I just can’t deal with it anymore! I haven’t mowed the yard for years, and I’m certainly not going to paint or anything like that. And when that storm last month came through, it was really the last straw! It flooded the playroom and knocked over our beautiful oak tree in the front. I had to deal with insurance adjusters and all of those workmen, and you know the insurance didn’t take care of everything. What’s more, I think I might need a new roof.”

On she went: “And that’s not all! When the children were small, Bob and I liked all of these steps. The children were upstairs; we were down. But now, with my knees, I’m not sure about a house on several levels.”

I felt her pain. It was, after all, the first question many clients ask an elder law attorney.

It wasn’t the first question Mary had asked me, though. I had known Mary a long time, and a few years ago, I had helped her when her husband, Bob, had died.

Despite all of this, Mary was about as healthy for her age as anyone I knew, but she knew that could change.

Mary went on: “I could always go to Myrtle Downs. It’s such a nice place and a lot of my friends are there, but I hate to leave home. I’m just not sure what I should do.”

Whether to stay at home is often a troublesome issue. Mary’s dilemma was certainly not uncommon, and there are a lot of different approaches. For some people, it’s simply prudent planning to realize that they need more help with daily living and fewer homeowner’s responsibilities. For these people, making a move to a condominium or a retirement living arrangement (where no care is provided), is a welcome relief from the responsibilities and expenses of maintaining a home. As well, many people join their friends or make new ones in retirement or assisted living, and find relief from the loneliness of staying at home. A few are forced to move when the practical difficulties of providing care at home or paying for it become overwhelming. Recognizing earlier, rather than later, that a move is necessary often makes the process easier and often gives older people the opportunity to make the decision and plan the move themselves.

So I asked her, “If you did move, would you keep the house?”

Dealing with the house is a common issue for people who make a change in their living arrangements, whether to enter a long term care facility or move to some type of retirement living arrangement as they grow older. It’s hard enough to decide to move, but for many people, like Mary, what to do with the old place is an even harder decision.

When she hesitated, I gave Mary a litany of questions:

“How will the expenses of taxes, maintenance, and insurance on the home be paid if you don’t sell it? How are you going to maintain a vacant home? Can you rent the house or would a family member like to live there? Beyond all of this, why would you want to keep your home if you aren’t going to live there?”

I explained to Mary that if she decided to move, there were really a lot of advantages to selling the house. Among other things, she would have more money to pay for her new residence, whether it



was a condominium or a nursing home, and she would save a lot of the expenses she had to maintain and insure the house.

Mary interjected: “But Bob and I worked very hard to pay for our home, and I don’t want it all to go to pay for a nursing home. I have my children to think about, too, and I don’t want them not to have an inheritance.”

So I asked her, “If you move, will you need the money you’d get by selling the house?” My concern was whether she could afford to give the

house away. For most older people, a good look at their budget in the retirement living apartment, assisted living facility, or even the nursing home, is important.

Mary assured me that their savings, and a long term care policy that she and Bob had fortunately bought years ago, would take care of her financial needs, at least until she was in a nursing home, and then she really might have to spend all she had.

I advised Mary that simply “giving the house to the kids” was something done from the early days of the Medicaid program to save the house from having to be sold to pay for the nursing home. While an outright gift of the house would accomplish this, it did have some disadvantages, such as disqualifying her from Medicaid for a lengthy period of time.

On the other hand, a gift of the house with a retained life estate usually involves a shorter Medicaid disqualification period and also avoids Medicaid estate recovery.

I explained to Mary that there really were few disadvantages for most people to this method of transferring their home, other than the disqualification period, and concluded, “If you’re not going to a nursing home in the near future, this might be an answer. You could stay at home as long as you like, and when you do decide to move, you can feel confident the children will eventually receive the house.”

“Well, I’m still not sure whether I want to move,” she responded, and with a relieved smile, added, “but I do feel better about what will happen to my house, if I do.”

The Dana Law Firm focuses its practice on elder law, concentrating on the legal needs of senior and disabled Americans, including Medicaid planning and applications, special needs trusts, guardianships and conservatorships, long-term care planning, planning for disability and incapacity, including powers of attorney and health care advance directives, estate administration, probate proceedings of all types, and wills and estate planning.

A native of Columbia, South Carolina, Frank J. Dana III graduated from Davidson College in 1972 and from Duke University Law School in 1975. He has been in private law practice in Greenville from 1975 to 1982 and 1986 to present, and was Vice President and Trust Officer in the C&S Bank Trust Department from 1982 to 1986. Mr. Dana is a member of the South Carolina Bar Association, National Academy of Elder Law Attorneys, American Bar Association, and Greenville Estate Planning Council. He and his wife Susan, have a daughter, Caroline.

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