

## PART II : CAREGIVER AGREEMENT IS A WIN-WIN!

BY BEN KINIRY, ESQ.

Author's note: This is a two part article, hence the title. I didn't want to shorten the article as a shorter version would not give you enough detail to provide you with a good sense of the topic. If you did not read Part I (March 2019), it can be found online at: thebowtimes.com (along with all my other articles on Elder Law).

For the purposes of your edification (not a word I get to use often), let me provide you with an example. Pretend we have Beth Smith, whose health has declined and she needs some level of daily assistance to get through her daily routine, but does not require long-term care (note that the amount of assistance needed will determine the cost of care under the contract, see below). Beth chooses to move in with her daughter, Debbie. Beth could hire a stranger (at some expense to Beth, likely a higher expense) to assist her, but would rather spend this part of her life with Debbie. Also, Beth has \$2,000 of monthly income and \$100,000 in investments.

No contract, lots of problems: As a starting point, I think we can agree that Beth is going to want to provide some kind of monetary compensation to Debbie. She may provide Debbie with a monthly



check to help pay for food and some of the household expenses. Also, Beth no doubt sees how much Debbie is doing for her on a daily basis, is very appreciative for the help, is well aware she would otherwise be paying a stranger for assistance and therefore provides some additional funds to Debbie. At some point, Beth needs so much of Debbie's time, that Debbie leaves her position of employment. Now Beth has increased the monthly contribution to Debbie yet again. Another issue, is that Debbie is no longer contributing to Social Security, does not have health insurance and if she is injured while assisting Beth, she does not have worker compensation.

Some questions that I would concern myself with: Are the pay-

ments to Debbie gifts? Is any of it taxable income? Reimbursement for food or for the cost of running the household? Is Debbie receiving calls from her siblings regarding how she is stealing mom's money? These questions lead to THE BIG QUESTION: What happens if Beth needs long-term care and she applies for Medicaid in a year or two? In short, they will face both a legal issue that the family is not prepared for and a denial of Medicaid benefits, at least until Debbie pays back all those gifts she received or proves they were not gifts (the chances of accomplishing this are slim to none, or just a little less than that).

Caregiver Agreement, no problems: Same basic facts as above, however, as a starting point Beth

and Debbie agreed, in writing, that \$800,000 per month would be paid to Debbie for room and board costs for Beth's proportional share of utilities, mortgage, insurance and property taxes, as well as food. These funds are not payment for services and therefore are not taxed. Also, Beth has agreed to pay Debbie \$1,500 per month for her services (compensation must be reasonable given the services provided). Also, of key importance, is that Debbie contracted with an agency specializing in these exact types of contracts and the agency has taken care of all aspects of taxation (Social Security withholding and Medicare) as well as the annual necessary filings (w-2), and guided her through

(Continued to page 18)

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### (Caregiver Agreement cont'd. from pg.8)

arranging for workers compensation insurance through her homeowners insurance, as well as taking care of the payroll so that Debbie gets paid seamlessly.

Under this scenario what happens when Beth applies for Medicaid? Well, my response is short and sweet, Beth is approved! Why the difference in the two scenarios? The law has a presumption which states that a child who is taking care of a parent is doing it out of "love and affection" for them. We all hope that this presumption is correct, however, in order to overcome this presumption in regards to any monies transferred from Beth to Debbie, you have to have evidence to the contrary.

In the second case the legal arrangement created by the Caregiver Agreement clearly shows that the parties entered into an arms-length business arrangement (employer-employee relationship), which in turn assist them in demonstrating that Beth was not making gifts and Debbie was not helping her mother solely out of "love and affection." The presumption will no doubt be overcome (unless there are other factors on the table).

**Who Doesn't Love a Win-Win:** First and foremost, Beth and Debbie were able to spend more time together, which we can all agree is pretty great all by itself. Another benefit is that Beth saved a significant amount of money by hiring Debbie to help her. It would not be necessary for Debbie to work two "jobs" in order to pay for her cost of living, as she would be receiving a paycheck from her mother and sharing the cost of running the household as well. Additionally, she would not be worrying about a visit from the Internal Revenue Service

and would still be paying into the social security system in regards to her own future retirement benefits (side bar I: years ago a client's daughter-in-law was eight credits shy of qualifying for Social Security benefits and we set up a Caregiver Agreement which provided those additional credits). Also, if Debbie were to be injured on the job, she would be covered by workers compensation to protect herself (side bar II: this came in handy for one of my Connecticut clients, who was not on board with the whole "lawyer contract thing," until she hurt her back, then she treated me like I was her best friend to include having me assist her with her estate plan. True story!). As stated above in this article, creating a Caregiver Agreement is a win-win.

**Odds and Ends** you may want to know: Given the information provided above, and the additional tidbits below, one can start to imagine scenarios that may benefit you or someone you love.

**Gifting:** In cases in which the parent has a significant amount of funds, it may be possible (if done correctly) for the parent to pay to have modification done to their child's home in order to make it a more suitable for parent to reside there.

**Transfer of Home to Caregiver Child Exception:** There is a federal law that allows for the transfer of a parent's home to a caregiver child, without a Medicaid penalty. The caregiver child must reside in their parent's home for at least two years prior to the parent's admittance to a nursing home and during that period must have provided a level of care that allowed their parent to reside in the home rather than in a nursing home.

As a practicing Attorney, I am compelled to inform you that the information provided in this article does not constitute legal advice.

## BOW MEN'S CLUB ANNUAL CHILI COOK OFF



On 25 April we will compete for the prestigious title of best Chili in the entire Men's Club. Who knows, maybe someone will finally defeat Dave Rolla. Let the smack talk begin!

Along with the Chili, we will sample the latest round of Men's Club Brew.

Right now I know of 2 entries. We are looking for at least 7 more. Please let me know if you are entering the competition.

**SOCIAL HOUR STARTS AT 6:00  
DINNER AT 7:00**

Contest open to club members only. Men from the community who are interested in seeing what the Men's club is about and potentially joining are welcome to attend.

## BOW HERITAGE COMMISSION

### REMEMBERING BOW MILLS



The Bow Mills Schoolhouse built in 1878 and abandoned in 1927. Photo courtesy of Millie White.



Charter members of Bow's all volunteer Fire Department organized in 1945. Photo courtesy of Philip Sargent.

Bow Heritage Commission announces new Thursday hours for the Baker Heritage Room. The second Thursday (April 11) will be open 3:00 to 7:00 pm to accommodate students. The 3rd Saturday (April 20) will remain 10:00 am to 2:00 pm. The Heritage Commission appreciates input regarding hours of operation, and staffing volunteers are always welcome. Contact Faye Johnson 603-228-8149.

Bow Heritage Commission Chairman Gary D. Nylen recently attended a seminar Genealogy of Scots-Irish Immigrants in New England held at the NH Historical Society.

Sue Wheeler of the Bow Heritage Commission recently attended a seminar in Manchester at the Nackey S. Loeb School of Communications: Telling Your Family Story.

Visit with Gary and Sue at the Baker Heritage Room and Discuss your families genealogy.



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For, indeed, that's all who ever have.

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