

Stock and Leader
ATTORNEYS AT LAW
When Decisions Matter

**Asset Protection & Medicaid Planning
for "Ag Professionals"**

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Pennsylvania Farm Link

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The handling of legal issues depends on the unique facts of each case and applicable law.

This program is not intended to provide specific legal advice on any particular matter, but is designed to give general information which we hope will be of interest to you.

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Three Legal Documents You Should Have:

1. General Durable Power of Attorney (financial)
2. Durable Health Care Power of Attorney and Living Will (medical)
3. Last Will and Testament (perhaps a trust)

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Last Will and Testament

- Your Will does NOT:
 - Dispose of your jointly owned property;
 - Dispose of property that contains a designated beneficiary other than your estate.

Both of which are Non-Probate & therefore generally exempt from Pennsylvania MA Recovery (farm)

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Trust Agreements

- Created during lifetime (inter vivos)
- Created upon death (testamentary)
- Revocable Trusts – farm – no 5 year lookback; no nursing home protection; MA recovery
- Irrevocable Trusts – farm – 5 year lookback; nursing home protection; no MA recovery

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PA Inheritance Tax

- 0% - Spouse, charity, from children 21 and under to parents and from parents to children 21 and under
- 4.5% - Children, grandchildren, parents, grandparents
- 12% - Siblings
- 15% - All others

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Farmland Exemption

- Land only

- Land and Improvements
 - 7 year holding period
 - \$2,000 Gross income
 - Family members as transferees

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2023 Federal Estate Tax Highlights

- Every individual has a \$12,920,000 million federal estate tax exemption, and there is a 40% tax rate applied to any estate with a value greater than \$12,920,000 million.

- The federal estate tax exemption is "portable" between spouses, meaning that after the death of the first spouse, any unused portion of the first spouse's \$12,920,000 million exemption may pass to the surviving spouse's future estate.

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2023 Federal Gift Tax Highlights

- Exclusion of \$17,000 per donee for 2023

- Unlimited gifting for tuition and medical expenses under certain conditions

- \$12,920,000 million lifetime gift tax exemption

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Gift of Farm

- Loss of ownership/income
- 5-year lookback
- Loss of step-up in basis
- Reduction of federal estate tax exemption

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Medicaid vs. Medicare

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Medicaid vs. Medicare

- Medicaid: Federal welfare program administered by states to provide assistance to persons who qualify based upon financial and medical need.
 - Financial need: resources not exceeding \$2400.00
 - Medical need: requires skilled care, 24-hour care
- Pays roughly 100% of all nursing home and other medical costs for the entire length of the stay of the "needy person".
- In Pennsylvania, this program is called "Medical Assistance" (MA).

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Medicaid vs. Medicare

- Medicare: Federal insurance program for all individuals over the age of 65.
- There are no financial requirements – if over the age of 65, automatically qualified.
- Covers “some” of the first 90 – 100 days of nursing home stay IF:
 - admitted at least 3 days in the hospital prior to entering nursing home: AND
 - in nursing home for the purposes of rehabilitation (if no longer being “rehabilitated” at nursing home, no longer eligible for Medicare payments to nursing home).

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Medicaid

- Long-term care (levels), including home-based services
- Long-term care statistics
- Admission agreements
- Attorney with specialization
- Care/Rent Agreements
- Long Term Care Insurance
- Pennsylvania Long Term Care Partnership Program

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Medicaid

- **Countable assets:** everything owned by the applicant and his or her spouse that is not excluded, or is not considered to be “available.”
- PA asset limits of \$2400 or \$8000, depending upon amount of monthly income.

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Non-Countable Assets

- Assets that are not considered to be available to pay for care (excluded assets):
 - Household goods, furniture, personal clothing, jewelry, recreational equipment.
 - Real property when used as the primary residence of the applicant, the applicant's spouse or dependent relative, or a disabled child of the applicant. (intention to return)
 - One vehicle.
 - Burial plot and marker.
 - Pre-paid funeral – so long as it is irrevocable.

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Non-Countable Assets

- The community spouse's IRA or qualified retirement fund.
- Term life insurance.
- Whole life insurance with a face value of \$1500.00 or less or with a cash value of \$1000.00 or less.
- Real or personal property used in a trade or business and essential to self support. (i.e. – farm with income & equipment/livestock)
- Non-business property essential to self support.

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Asset Transfer Rules

- A period of ineligibility is imposed by the PA Department of Public Welfare for transfers (gifts) made by applicants and/or his or her spouse within 60 months.

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Asset Transfer Rules

- The period of ineligibility is the number of months during which the applicant will not be eligible for MA because of the transfers.
 - Calculated by dividing the uncompensated value of the transfer by the average cost of nursing care in the state as determined by PA Department of Welfare (DPW).
 - Period of ineligibility begins the first day of the month of the transfer.
 - Period of ineligibility can be eliminated or reduced by returning assets.

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Exempt Transfers

- Transfers to a trust for the benefit of a blind or permanently and totally disabled child.
- Transfer of any asset to the community spouse or for the sole benefit of the community spouse.
- Transfer to a supplemental special needs trust for the benefit of an individual under the age of 65 who qualifies for SSI.
- Where the DPW determines there is a hardship that would deprive the individual of necessary medical care to the extent that life would be endangered.

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Exempt Transfers

- Transfer of the home to the spouse or child under 21, or child who is blind or permanently and totally disabled.
- Transfer of the home to a sibling who had an equity interest in the home and was residing in the home for at least one year immediately before the admission to the nursing home.
- Transfer of the home to an adult child who had resided in the home for at least two years prior to the admission to the nursing home and who provided care that enabled the applicant to remain at home.

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Spousal Protection Rules

- Community Spouse Resource Allowance (CSRA): amount of resources that the community spouse is entitled to retain (usually half of total assets held by couple).
 - Minimum: \$29,724
 - Maximum: \$148,620

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Spousal Protection Rules

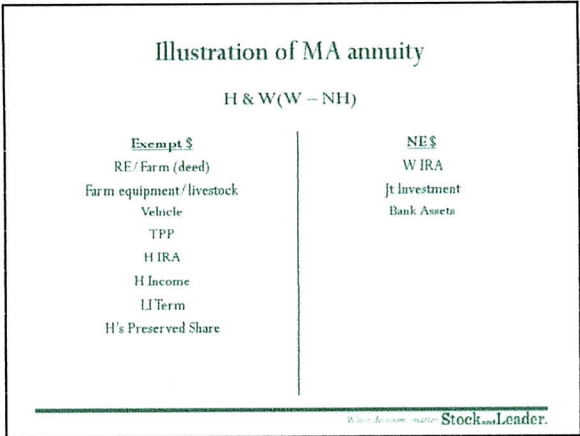
- Minimum Monthly Maintenance Needs Allowance (MMNA): income allowance for the community spouse, equal to 150% of the federal poverty level for family of two.
 - Minimum MMNA: \$2,465.00
 - Maximum MMNA: \$3,715.50

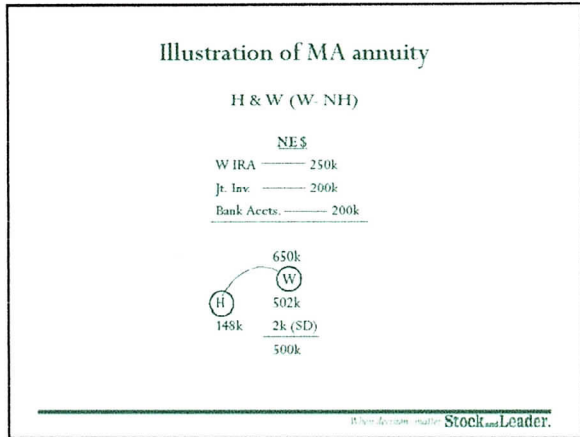
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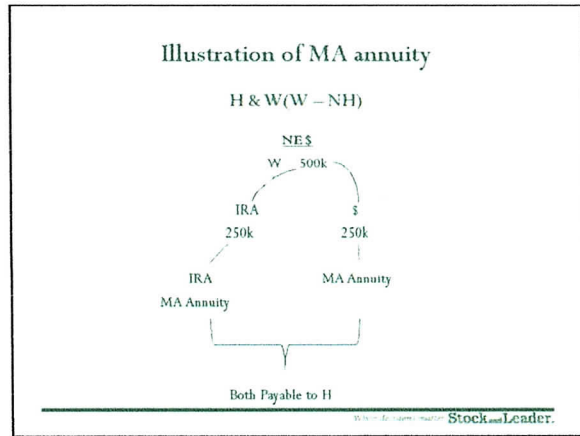
Pennsylvania's MA Estate Recovery Program

- The probate estate of any person who received Medicaid during their lifetime is subject to a recovery claim by MA. (i.e. – consider farm)

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Scenario #1

- Jane is seeking eligibility for Medicaid. Her husband, Joe, owns 200 acres of land worth \$2 Million and \$500,000 of farm machinery. Joe uses the land and machinery to conduct his farming operation.



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Scenario #2

- Jane is married to Joe. Jane goes to a nursing home and will not return to their home. Joe continues to live in their home. The home and 50 acres will be an exempt asset for as long as Joe is residing there. If the home is transferred to Joe, and Joe sells the home later, Joe is able to retain 100% of the sale proceeds. Joe should also have his estate planning documents carefully reviewed if he dies before Jane.
- The value of the home will not be counted towards Jane's \$2,000, nor Joe's \$137,400 asset limit.



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Scenario #3

- Bill owns 500 acres of farmland that he wants to protect from Long Term Care costs. He has other sources of income and does not need the income from the farmland. He establishes an irrevocable trust and transfers the 500 acres to the irrevocable trust. Bill names his daughter, Susan, as trustee of the trust. The trust states that the land shall be held in trust for Bill's life. The land may not be sold, and the trust income is to be distributed to his two children.
- Upon Bill's death, the land is to go to his two children. If a child predeceases Bill, the child's share will be distributed to their children provided they are 25 years old.



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Scenario #4

- Joe has \$50,000 of annual income and \$400,000 of savings. His only other asset is his farmland. Joe is reluctant to gift his land to his children in case they have financial difficulties and are forced to sell the land. He is also reluctant to transfer his land to an irrevocable trust because he does not want to give up ownership and control of the land and incur the costs of a trust.



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Scenario #5

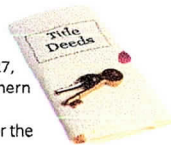
- Mike and Nadine own five farms. One farm, the Smith Farm, is farther away than the others, is a less productive farm, and only recently purchased. Mike and Nadine decide that if they need Long Term Care and do not have the income or savings to cover the cost, they will sell the Smith Farm to pay for their care.
- Mike and Nadine let their family know of their plan, so that everyone is aware that the Smith Farm is the Long Term Care insurance plan.



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Scenario #6

- Dan, Jr. (Junior), 55 years old, and his son, Joe, 27, work on their 200-acre family crop farm in northern Pennsylvania and co-own the equipment, while Dan's wife, Jane, handles all the bookkeeping for the farm.
- No longer feasible for the family to care for Senior at home, he entered a local nursing home due to dementia and increased physical needs.
- Jane called the office requesting a meeting. Junior, Jane, and Joe are concerned about how to keep the nursing home from getting the farm because the deed for the 200-acre family farm is still in Senior's name.



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Scenario #6

- Jane reported Senior has about \$70,000 in a savings account, a small house on the family farm, and a pickup he drove until his dementia set in. (His wife passed away 6 years ago.) Senior does not have long-term care insurance.
- Junior and Jane live in the larger home on the farm, while Joe and his wife live off the farm.
- All farm operations are run from the family farm. Junior, Jane, and Joe rely solely on the farm income. Their goal is to save the family farm.
- In Senior's Will, the farm transfers to Junior and Jane.



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Scenario #7

- Mary wants to save the family farm so her brother, Anthony, a 67-year-old dairy farmer, who continues to live on and farm the 145-acre dairy farm in southwest PA.
- Anthony farmed 49 years with his brother, John, who died unexpectedly from Covid in 2021. Now Anthony farms with his nephew, John's son, Rex. Rex prefers to do the crop work, but isn't interested in the cows.
- Their dad passed away 2 years ago, and the farm is solely in mom's name. However, Anthony has been caring for mom since dad's death. She may need to go into a nursing home due to depleting her savings used to pay for her caregivers.



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Scenario #7

- Mary wants to help save the farm for Anthony's sake because he's only ever farmed. Along with the farm work, he cared for his ailing father and mother. Any income made, Anthony placed back into the farm, so he doesn't have savings.
- Mary seeks to ensure Anthony can continue to farm and the farm will stay in the family; however, she doesn't have enough money to buy the farm.
- Mary is concerned that holding onto the farm may be a real challenge. When mom passes, her Will leaves the farm equally to the 5 living siblings. Mary spoke to each one. Three wish to sell the farm, while Anthony and Mary want to keep the farm in the family. Anthony wants to continue farming. Mary does not live on the farm but wants to help Anthony continue to farm.



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Scenario #8

• Ann, a 49-year-old single mother and farmer, owns a 100-acre PA fruit farm and wants to be proactive in her planning.



• She is partners with her two adult daughters, Diane, 27, and Maggie, 25. Her daughters manage all the heavy fieldwork while Ann manages the farm store and handles the bookkeeping.



• The farm deed is in Ann's name, and she owns most of the farm equipment because the girls have young families and other priorities for their money.

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Scenario #8

• While Ann is healthy, she knows she needs to plan for the unexpected and her needs as she ages while keeping the farm and equipment safe from Medicaid liens.



• She doesn't have a lot of savings, but she has been able to put away some money for emergencies, etc.



She's seeking expert advice on the best options for her and her farm.

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Scenario #9

• Ron's 80-year-old dad, Bill, entered a nursing home 3 months ago due to physical challenges at home.



• Ron is handling his dad's finances and has discovered his dad only has about \$40,000 in savings and bank CDs totaling \$13,000, which is going fast to cover the nursing home bills. Additionally, Bill receives a minimal amount from social security.

• Ron knows his dad has a coin collection and other family heirlooms going to Ron's sister, Lucy when Bill passes. However, Ron wonders if he might have to cash it in to pay for dad's nursing home expenses. Ron mentions that upon their mom's passing, Lucy received her diamonds.

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Scenario #9

- When asked about the farm and other assets, Ron shared that the farm wasn't an issue. About a year ago, Bill gifted the 300-acre preserved farm to Ron and his wife, Annie, plus a mix of used farm equipment for the livestock farm. Since Bill couldn't part with his favorite cows, he and Ron currently co-own 50 head of beef cows. The calves are raised to market weight and sold at auction, but after subtracting farm expenses, the check isn't huge, especially when split between two people.
- Ron and Annie sold their home when they moved into the farmhouse to help care for Bill.



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Scenario #10

- Aaron, 60 years old, and his wife Debbie, 58 years old, own a 500-acre crops farm. Debbie has always worked full-time at a job off the farm, but helps on the farm during harvest season and in the evenings.
- A few years ago, in excellent health, they felt it was essential to purchase long-term care insurance, which will pay 70% of nursing home expenses should they need it.
- Recently, Aaron was diagnosed with liver cancer and is currently getting treatment. He knows it's tough to beat and wants to ensure his affairs are in order. He is concerned that if something happens to him, Debbie may lose the farm because of the burden of his medical-related expenses.



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Scenario #10

- With Debbie's job, they've acquired a nice nest egg, about \$90,000 in savings. Plus, Debbie enrolled in her company's pension plan.
- Aaron will rely on Social Security and has paid into it for several years.
- They chose the best insurance just in case of a catastrophic issue, and now they are glad they did. Aaron asks how long their savings would cover nursing home care if he's required to enter a facility. Is there anything else he should do to ensure Debbie's future if something happens to him?



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Questions?

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