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## *Elder Law Minute*

### Homeplace Gift to Care-Giving Child

I represent a divorced gentleman who is residing in a nursing home in Barrow County. His only significant asset is his homeplace which is comprised of 60 acres more or less. On the land are several house trailers and a race track for cars which operates a few months a year and produces a small amount of net income.

My client's daughter moved into one of the trailers in 1994. She cared for her father for 14 years immediately prior to his entering a nursing home in 2008. Prior to applying for Medicaid, my client gifted the homeplace property to this care-giving child.

The transfer penalty does not apply if the homeplace was transferred to a son or daughter of the A/R who has been living in the home for at least two years immediately prior to the A/R entering the nursing home and the son or daughter was providing such care to the A/R as to permit the A/R to continue to reside at home rather than to enter the nursing home. MEDICAID MANUAL § 2342-3.

We have successfully convinced DFCS that all elements of this safe harbor were present in this case except for one. DFCS contends that the daughter was not living in A/R's *home* since she lived in one trailer and he lived in an adjacent one.

A homeplace consists of the shelter in which the A/R lives; the land on which the shelter is located; all land which adjoins the home plot if the adjoining land is not completely separated from the home plot by land in which the A/R has no ownership interest; and all other buildings located on the homeplace property. I can find no separate definition of *home* in the manual. Rather, it appears that home is used interchangeably with homeplace in Sections 2316 (the homeplace exclusion) and 2318 (dealing with home replacement funds).

If that is the case, then it should not matter that my client lived in a separate trailer from his care-giving daughter. She lived in the homeplace and cared for him for over two years so she should be entitled to the property.

Next week, I will develop this case further.

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