

# FEDERAL STANDARD ABSTRACT

## TITLE NEWS

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### CARING FOR THE ELDERLY WHILE PRESERVING THE FAMILY HOMESTEAD

Estate planning sounds very sophisticated but regular people do it everyday. It has become an increasing necessity that parents frequently require long-term care. Few can afford such expensive care without depleting all family assets. A primary goal, then, is to preserve the principal family asset, their home.

Walking into an attorney's office the day before a parent enters a nursing home and requesting for assistance is probably the wrong way. The right way, as revealed by experienced attorneys, is the delivery of a deed from a parent to child which reserves a "special" or "non-general" power of appointment.

A deed that simply transfers title does indeed start the clock running for the Medicaid 36-month "look back" period. Such a deed however does nothing to mitigate capital gains tax consequences for the child/grantee.

An ideal solution would be a deed transfer that reserves a power of appointment. Such a deed transfer would accomplish two important goals. It establishes the commencement of the 36 month Medicaid "look back" period and it gives the child/grantee the stepped-up basis for capital gains tax purposes.

So, what does this mean? This simply means that a deed without such a power of appointment is a gift to the child, and the child hence has the same basis as the parent. For example, if the parents purchased the home for \$60,000.00 in 1975 and the child sells it for \$540,000.00 in 2005, the gain is \$480,000.00, the result, a hefty capital gains tax to the child.

However, inserting the following language will not only start the clock running for Medicaid purposes but will also provide the child the "stepped-up" basis (market value at time of conveyance) for computation of capital gains tax:

*"AND Grantor reserves the power to appoint, in whole or in part, the property conveyed hereunder to or for the benefit of any one or more of the Grantor's issue in such proportions, outright or upon such trusts, terms and conditions as the Grantor may specify by a writing executed and acknowledged during her lifetime and recorded in the Bronx County Registry of Deeds within sixty (60) days of the date of such exercise, or by her last Will or Codicil making specific reference hereto. In the latter case, the failure to record notice or any such exercise of this power in the Bronx County Registry of Deeds within sixty (60) days of the Grantor's death shall be conclusively treated as a default in the exercise of the power. A release of the power reserved hereunder, in whole or in part, shall be effective when recorded with the Bronx County Registry of Deeds. Any exercise or release of the foregoing powers may be made by the Grantor's attorney-in-fact acting under a durable power of attorney."*

A power of appointment gives the parent the right to re-convey the property to someone else, making it an uncompleted gift. The effect is that the property still belongs to the parent. The property will be included in the parent's estate, thus the stepped-up basis and for Medicaid purposes, it is a completed transfer.

Last but not least, reserving a power of appointment preserves a strong element of control over the parent's home should feelings and situations toward the children change.

### QUESTION AND ANSWER

Q: From a title insurance perspective, how can I dispose of the question of possible unpaid New York Franchise Taxes and New York City Business Corporation Taxes?

A: Most title companies will accept any of the following:

- Status reports from the State and City showing taxes have been paid;
- Escrow money pending disposition of the tax;
- Copies of tax returns for the last three years plus copies of canceled checks showing payment;
- A letter from the Corporation's Certified Public Accountant on his/her letterhead stating that the returns have been filed and the taxes paid through the end of the most recent fiscal year.

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