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Opinion: A newly widowed 60-year-old wants to let his assets pass directly to his adult kids — but he may be making unforeseen mistakes

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By CD Moriarty

Giving children an early inheritance may seem like the right thing to do, but the decision is wrought with complexity.



(Photo by Ian Waldie/Getty Images)

Dear Ms. MoneyPeace:

My 62-year-old wife passed away suddenly March 8. She handled the nancial stuff in our marriage, so I feel confused. Our assets are mostly joint, including the cars and our home, which has a large mortgage. Luckily, we had a will from that leaves everything, such as our cash accounts and contents of the home, to me. We have two adult children.

She also had life insurance and a 401(k) from work. Do I pay off the \$200,000 mortgage with it? I am 60 years old and suffering with amyotrophic lateral sclerosis (ALS), or Lou Gehrig's disease. So if I want anything to be left to my kids, I may have to give it to them now. Someone suggested if they are the secondary beneficiaries, I could say I do not want the money. Then the kids would get it. Can I do that?

I'm working now but do not know for how much longer.

In addition, the last two paychecks from her place of employment have arrived and they made out the checks to "the estate of" instead of just her name.

I do not know how to cash them.

Thanks for your help.

Weepy Widower

Dear WW:

My sympathies on your loss. After a loved one's death, there are many decisions and so much paperwork to handle that it is understandable that you are overwhelmed. Thinking about your children, even when they are adults, is a natural response for a widower or widow, but that may not be the best thing for you.

You can indeed *not* take an inheritance, but that must be done carefully.

"A beneficiary ... can renounce — disclaim — their property interest," said estate lawyer Ellen Glickman-Simon in Sudbury, Mass. "Certain legal formalities must be followed" to be valid under state and federal laws.

She added that, in that scenario, "the asset will pass as though the person disclaiming died prior to the decedent."

Procedure rules and deadlines apply, typically nine months after death, though every state is different. Covered are life insurance, retirement investments and joint assets.

Because your children are adults, this is the time to think of yourself, your health and your income needs. Your doctors may not be able to predict your outcome, so don't make decisions that put you in a bind.

On the other hand, if you were to give the money away — essentially, that is what you would be doing by disclaiming your inheritance — you may jeopardize Medicaid benefits. There is a five-year look-back in which the government reviews your assets. (The tax-free \$15,000-a-year gift falls under the Medicaid look-back period.)

An elder-care lawyer can help you understand the finer points of state and federal laws around Medicaid. You are not there yet.

Some parents “gift” money to children with the promise of getting it back later if needed. But you might open a can of financial worms. Anything in their name is their money. Legally, they can do whatever they want with it. More importantly, their creditors can go after that money. A lawsuit or divorce would put that money at risk.

Besides, you could be leaving your children with a tax issue. If you were to disclaim the inheritance, your children would have to claim the money within 10 years because of recent changes in the Secure Act. As a spousal beneficiary, the IRAs and 401(k) money can be taken over your lifetime.

Rather than jump ahead to what could happen, stay in the present. You need to hire a lawyer or go back to the one who wrote the original will. He or she will help with the paperwork and probate court.

Be sure to have them create an estate plan for you now, as your children are grown. Most important are legal documents for your health-care directive and financial power of attorney. The lawyer may have suggestions on how to leave money for your children that follow state law. He or she may have ideas for a trust that could give you income and help your children.

When grieving, the best advice around money is to wait one year to make big decisions. Do what needs to be done — get new legal documents, file the appropriate paperwork, and take care of yourself and your grieving. You do not have to do everything at once. This includes investment decisions. Keeping cash in the bank is OK for now.

Decide later about paying off your mortgage. Consider hiring a financial planner for the next financial stages. Paying off your mortgage may, or may not, be the best decision.

As to those checks for the final salary of your wife, her employer titled them correctly. A separate checking account must be opened in the name of the “estate of your wife’s name.” That money must be kept separate for probate information. Because she had a valid will, this court process is something your lawyer can help with.

Finally, at this time of loss, be open to receive all the support you need beyond the financial and legal details. Taking care of your mental, emotional and physical health will be the best gift to your children. Many Visiting Nurses Associations and other nonprofits offer group talks for grieving spouses, as well as ASL support groups. There are online resources, and you can start with this — a grief counselor who lost her husband suddenly.

Create a check list for the nancial details to handle so you will be organized.

Taking care of your yourself and all these details may be the best way to take care of adult children at this time. Peace to you and your family.

CD Moriarty is a Certi ed Financial Planner, a columnist for MarketWatch and a personal- nance speaker. She blogs at MoneyPeace.

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