

Is an In-Law Suite Right for you?

As you age, your ability to support and maintain your own home may become increasingly difficult. Health and mobility concerns may make living at home no longer feasible. In some circumstances, an adult child may suggest that you build an in-law suite in their home. The child may think that such a move will allow them to keep watch over you, help with caregiving, and cut costs.

This type of living arrangement can be an emotional and estate planning challenge. Here are some questions to ask yourself before making such a big financial and emotional commitment.

Do you really want to live with your child?

Before you move in, it is a good idea to talk through the process of moving in and how things will work. Discuss the roles each of you will play in the home. Will you help around the house by watching your grandchildren or help with cooking dinner? Living together may create a potential for conflict that was not present when you lived in your own home.

Will your child assume a caregiving role? Can your child be paid as caregiver?

Sometimes adult children have their parents move in to avoid more expensive care in a nursing home, assisted living, or other residential setting.

Some long-term care insurance policies may cover payment to a family member who is caregiver in certain circumstances. You should review your individual policy with your insurance agent to determine if your policy allows for such payments.

Also, Medicaid (MassHealth in Massachusetts) may pay relatives for caregiving, too. It is important under such circumstances

that a care contract be created with a Geriatric Care Manager's report to avoid gifting penalties later. Also, there is a MassHealth program called the Adult Family Care program that can help seniors receive necessary daily care and supervision and also allow an adult child to be paid tax free for that care.

Have you executed the necessary documents to allow your children to make medical and financial decisions for you as you age?

Be sure that your estate planning documents are in order. Do you have a Durable Power of Attorney and a Health Care Proxy? These documents can help you avoid much costlier conservatorship and/or guardianship down the road. These are legal documents that allow another person (e.g. your child) to make decisions for you when you are not able to make them for yourself. This will allow your child to access bank accounts to pay bills, deal with insurance companies, and make medical decisions for you.

Some considerations when constructing the in-law suite.

It is also very important to consider the work and cost involved when you move in. The in-law suite will often need to include a small kitchen, bathroom, living space, and bedroom. Who will pay for this new construction and expenses? The key is for you not to overpay for your interest in the home. If the construction for the in-law suite is really only valued at \$100,000, but you pay \$150,000, then in the future, Medicaid/MassHealth will view this overpayment as a gift, which can cause a certain period of disqualification.

You also need to plan for what happens to your interest in the home after your death. How do your other children (if any) receive their inheritances? What happens if you spend \$150,000 on construction and then pass away six months later? Should you have an ownership interest in the home? Should you retain a lease? What if your child gets divorced and a court orders

that the house be sold and the money split?

Are you going to split maintenance and utility costs?

Living together may cut down expenses for both you and your child. Will your child receive rental income from you to help pay the mortgage? To help reduce their burden, you may choose to pay a share of the utilities, taxes, and other expenses of the home. Again, it is important for future Medicaid eligibility that the portion you pay be figured appropriately so as not to be considered a gift.

As you can see, there are significant issues and questions that can arise when considering moving in with an adult child. It is advised to consult with a qualified elder law attorney to discuss the Medicaid/MassHealth, tax, and other possible implications of your plans before taking action.

Estate Planning Attorney Brandon Walecka has spent the last decade working with individuals and their families in New Bedford, MA and Southeastern, Massachusetts and Cape Cod. The focus of his practice is Elder Law, Estate Planning, Estate & Trust Administration, Special Needs Planning and Business Succession. As a passionate advocate for my clients, I enjoy helping them to create comprehensive estate plans designed to protect them, their family, and their assets. As founder of Walecka Law, P.C., I enjoy helping seniors, and clients of all ages, protect their hard-earned assets and make important decisions regarding their estate and their loved ones.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.

*Also see this same article published in [Coastline Elder Services, Inc.'s March 2021 Senior Scope Newsletter](#).
Reproduced with permission.*