

## **Protecting Your House If You Move To a Nursing Home**

Many people have asked us “If my parent is going into a nursing home and likely to apply for Medicaid, what can we do with his/her home?” The following summary identifies some of the issues and answers many of the pertinent questions arising from this situation.

### **Residence is Not a Countable Asset**

Under the new Medicaid rules established by the Deficit Reduction Act of 2005, the home is not counted as an asset for Medicaid eligibility purposes if the equity is less than \$500,000. You may keep your house with no equity limit if your spouse or another dependent relative lives there. (An exception is where the home is owned in a revocable living trust, in which case the entire value of the residence will be counted.) Therefore, you do not have to sell your home in order to qualify for Medicaid coverage of nursing home care. However, if you enter a nursing home and get Medicaid assistance, you will not be allowed to pay any of your monthly income for mortgage, utilities, taxes and upkeep on your home. (If you are married, your spouse may be entitled to keep part or all of your income; otherwise, your available income must be paid to the nursing home each month.)

If you get help from Medicaid to pay for the nursing home, the state must attempt to recoup from your estate whatever benefits it paid for your care. This is called "estate recovery," and given the rules for Medicaid eligibility, the only property of substantial value that a Medicaid recipient is likely to own at death is his or her home. If possible, you should consult with an experienced elder law attorney before entering a nursing home, or as soon as possible afterwards, in order to discuss ways to protect your home.

### **Lien on Home**

Except in limited circumstances, Medicaid may not put a lien on your house for the amount of money spent on your care. Medicaid is a creditor for the amount of money paid for your nursing home and related care, and is entitled to be paid from your estate assets at your death (“estate recovery”).

### **Estate Recovery**

If your spouse, a disabled or blind child, a child under age 21, or a sibling with an equity interest in the house, lives in the house, the state cannot file a claim against the house for reimbursement of Medicaid nursing home expenses. Also, there are some circumstances under which the value of a house can be protected from Medicaid recovery. The state cannot recover if you and your spouse owned the home as joint tenants with right of survivorship or if the house is in your spouse's name and you have relinquished your interest. If the house is in an irrevocable trust, the state cannot recover from it.

In addition, some children or relatives may be able to protect a nursing home resident's house if they qualify for an undue hardship waiver. For example, if your daughter took care of you before you entered the nursing home and has no other permanent residence, she may be able to avoid a claim against your house after you die.

## Transferring a Home

In Mississippi, transferring your house to your children (or someone else) will lead to a Medicaid penalty period, which would make you ineligible for Medicaid for a period of time. There are circumstances in which it is legal to transfer a house, however, so consult an attorney before making any transfers. (For example, transfers to a disabled child or one who qualifies as a "caregiver child" are permitted without penalty.) Transfer of a house that has gained significantly in value over what the parent paid for it may cause capital gains income tax problems for the child who later sells the house.

While you can sell your house for fair market value, the cash from the sale may make you ineligible for Medicaid and you may have to apply the proceeds of the sale to your nursing home bills.

The considerations involved in Medicaid planning with a principal residence include (a) securing your right to a residence, (b) avoiding Medicaid's claim on the residence at death, (c) the ineligibility period that would be created by transfer of the home to someone other than a spouse, (d) property taxes on the home, (e) gift tax requirements, and (f) effect on future sale or mortgage of the residence.

*Outright Deed:* If you deed your home outright to someone *other than a spouse*, the following will be the results:

- You will no longer have the *legal* right to live there if such owner decides to sell or rent out the residence.
- The residence will no longer be in your probate estate and will not be subject to Medicaid's estate recovery claim at your death.
- Your transfer of the property will result in a Medicaid ineligibility period based on the value of the home (if you apply within five years after the transfer).
- The new owner would be required to pay the full undiscounted property tax (without homestead exemption credit) if s/he does not live in the home.
- If the value of the home deeded *exceeds* \$12,000 per recipient, you must file a gift tax return, but no tax may be payable.
- If, after deeding the house outright, you or the recipient need to sell or mortgage the home, such sale or mortgage could only be done by the new owner(s).

*Deed with Retained Life Estate:* If you deed your home to another while retaining a life estate (that is, the right to live there during your lifetime with ownership passing at death to the other person), the following will be the results:

- You will have the right to live in the house during your lifetime.
- The residence will not be in your probate estate and subject to Medicaid's claim at your death, but will pass to the other person (the "remainder owner").
- The transfer of the property will result in a shorter Medicaid ineligibility period (as described above) based on the value of the remainder interest in the home.
- As long as you continue to reside in the home as your principal residence, you would retain the right to homestead exemption which lowers your property tax bill.
- If the value of the remainder interest deeded *exceeds* \$12,000 per recipient, you must file a gift tax return, but no tax may be payable.

- After a life estate deed, a sale or mortgage of the home would require the signatures of both you, as the life interest owner, and the remainder interest owner(s). This would be a problem if either of the owners were mentally incapacitated and unable to sign a valid deed or mortgage at that time.

**Contact us at 601-987-3000 or 866-ELDERLAW (353-3752)** as early as possible to discuss potential nursing home care and planning for your residence if Medicaid is anticipated.