

SENIORS

Medicaid protections for your home

People that come to my office are sometimes afraid. Often, they or their spouse (or both) are elderly and afraid they will lose their largest asset, their home, to the cost of a nursing home. Especially when an individual is married and one spouse continues to live in the home, there is no cause for worry. The home is not considered an available

asset for Medicaid eligibility purposes as long as one spouse continues to live in the home. I explain the reasoning using my own parents as an example. My father has been in a nursing home for 8 years, a fact my family could never have anticipated or prevented. If the Medicaid rules permitted my father to qualify for Medicaid but pushed my mother out of their home, would any meaningful public purpose be accomplished? No, a person, my mother, would remain without a basic need, shelter. In this regard, the law makes sense; as long as a spouse continues to reside in the home, the home is a "non-countable" asset for Medicaid purposes. No lien will be placed on the home, even after the surviving spouse dies.

In addition, unmarried nursing home residents do not automatically need to sell their homes to

qualify for Medicaid. In Rhode Island, the home will not be considered a countable asset for Medicaid eligibility purposes as long as: 1) the applicant intends to return home and 2) the Medicaid applicant's equity in the home is less than \$543,000 (in 2014). The nursing home resident need not prove a likelihood of returning home but only wish to return home, if possible. However, when the nursing home resident dies, the state can place a lien on the home in the amount necessary to return to the state amounts paid for the Medicaid recipient's care. A few opportunities exist to avoid the Medicaid lien, but many of the options must be undertaken at least 5 years before the individual requests Medicaid assistance. As a result, individuals without a spouse that wish to protect their home must plan ahead.

The equity value of the home is the fair market value minus any debts secured by the home, such as a mortgage or a home equity loan. For example, if your home has a fair market value of \$600,000 and an outstanding mortgage of \$100,000, the equity value is \$500,000 and below the Medicaid limit. Consider also that the amount of an equity interest depends on whether a person owns their home with someone else. If a home is owned by one person alone, the equity interest is the entire equity value. If, instead, the home is owned jointly with a spouse or another person,

the equity interest is only half of the home's equity value.

The home equity rule does not apply, however, if the Medicaid applicant's spouse or a child who is under 21 or is blind or disabled lives in the home. This is another reason why a married individual need not worry about losing their home to the cost of a nursing home.

When home equity exceeds the Medicaid limit of \$543,000, sometimes a home equity loan and subsequent planning with Medicaid compliant promissory notes will protect the home's value or, at least a portion of it. The available options depend entirely on the facts presented and can be different for each client. The law is often generous but must be complied with precisely.

In my opinion, it is rarely advisable to put the home in the name of children who often have debt, divorce and college tuition considerations. I realize "everybody" says that's what should be done, but "everybody" does not know everything.

Attorney Macrina G. Hjerpe is a partner in the Providence law firm Chace Ruttenberg & Freedman. She practices in the areas of Estate Planning, Probate, Estate Administration, Trust Administration, Trust Litigation, Guardianship, Business Succession Planning, Asset Protection Planning, Elder Law and Estate Litigation.

TRASH OR TREASURE

From **FACING PAGE** just go into the house and take things. This is technically stealing and if the object is valuable enough, you can be charged and sent to jail. An estate needs to clear probate court and even if you put your estate in a trust, there could be tax implications which need to be considered.

Consult an estate planner or attorney.

Karen Waterman is an antique furniture and decorative arts appraiser in the East Bay area and will answer as many questions your own "hidden treasures" as possible. By sending a letter of email with a question, your give full permission for use in the

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