The Law Offices of
KIDWELL & KENT
NEWSLETTER

Medicaid and the Principal Residence

Although your stay can be paid for by your personal savings or by your long-term care insurance policy (if you have one), many nursing home residents end up using Medicaid (a joint federal-state program for low-income individuals) to pay for their care. Unfortunately, if you're a Medicaid beneficiary, your state may be able to attach a lien to your house while you're living or after you die. To preserve the home for your family, you should plan for Medicaid well in advance of your nursing home stay. If you're like most homeowners, your principal residence is one of your most valuable assets. It may have sentimental value, and it may also represent financial security for your loved ones.

Medicaid and the treatment of your home during your lifetime

If you want to qualify for Medicaid benefits, you must generally have very limited income and few assets. But several assets, including your family home, may be exempt or not counted toward your Medicaid eligibility. Your house is exempt as long as you live in it. It's also exempt if your spouse, your minor child, or your disabled or blind child lives in your home after you become a permanent nursing home resident.

However, assets that are exempt for the purpose of determining Medicaid eligibility can still be attached to reimburse the state for its costs. The federal government encourages states to seek reimbursement from Medicaid recipients for Medicaid payments made on their behalf. To this end, federal law allows a lien to be placed on your home at the time you become a permanent resident of a nursing home.

(A Medicaid lien makes it impossible for you to sell your home or refinance your mortgage without paying the state whatever may be owed.) But not all states have adopted laws providing for such liens. Even if your state has adopted such a law, a Medicaid lien can't be imposed on your home during your lifetime while specified relatives (such as your spouse) lawfully live there.

Medicaid and the treatment of your home after your death

Your state may be able to seek reimbursement for Medicaid benefits from your estate after you die. For Medicaid purposes, the word estate has traditionally meant your probate estate (i.e., the property that passes under your will, rather than by operation of law). States have the option, though, to expand the definition of estate to include all nonprobate assets as well (to the extent of a Medicaid recipient's legal interest in those assets). If you're interested in Medicaid planning, you should consult an experienced attorney to learn whether your state has adopted an expanded definition.

Your state cannot enforce a lien or attempt estate recovery procedures until after the deaths of your surviving spouse (if you have one) and certain other specified relatives. The same holds true while specified individuals lawfully live in your home.

Medicaid planning strategies can impact your eligibility for Medicaid benefits

If you want to qualify for Medicaid and also preserve your family home, consider transferring your home to family members. Be sure you do this well in advance of your nursing home entry, though. If you transfer your home for less than its fair market value within 60 months (the look-back period under federal law) of the time you apply for Medicaid as a nursing home resident, you may be ineligible to qualify for Medicaid for a period of months, based on a formula set by your state. (For transfers made prior to February 8, 2006, the look-back period is 36 months, or 60 months if the home was transferred to an irrevocable trust.)

If you have time to plan, you should consider the following ways to protect your home.

Gift the house to a loved one

While you're alive, consider making a gift of your home to your children or other loved ones. This will remove the house from your financial picture entirely, assuming the gift is completed more than 60 months (or the applicable look-back period) before you apply for Medicaid. Your state cannot place a lien or force a sale on a home that no longer belongs to you and is not part of your estate. Unfortunately, this strategy may involve gift tax consequences and has income tax repercussions. Also, you'll give up your legal right to live in the home, so you'll be affected by the decisions made by your children and their spouses.

Transfer your home into an irrevocable trust

You can transfer your home into an irrevocable income-only trust, but the effectiveness of this strategy depends on the laws of your state. An irrevocable trust cannot be altered in any way. With the income-only version, you are entitled to receive only the income (if any) that the trust generates. A transfer into this form of trust will remove the house from your probate estate. However, your state may seek reimbursement after your death if it has adopted an expanded definition of estate. Still, it will be able to collect only the present value of your income interest at the moment before your death.

Transfer the home, but reserve a life estate for yourself

Here, you'd transfer the remainder interest in your house to your loved ones but keep a life estate for yourself. This means that you'd have the legal right to live in the house during your lifetime. Only the value of the life estate is treated as a countable asset for Medicaid eligibility purposes, and any period of ineligibility is shortened. After your death, the entire value of the residence would be subject to estate taxes, but your children would own the home automatically and receive a stepped-up tax basis. (That is, the basis of the property would be its fair market value at the time of your death.) On the downside, if your state has adopted an expanded definition of estate, it may be able to force a sale of the property after your death, collecting the value of your life estate at the moment before your death.

Note: The purchase of a life estate in another's home (e.g., your child's home) is treated differently. Generally, for purchases made on or after February 8, 2006, the transfer will be countable unless you have lived in the home for at least one year after the purchase.

Transfer the home subject to a special power of appointment

With a special power of appointment, you'd transfer the ownership of your house to someone else, while reserving your right to redirect the house to a different person at a later time. You could exercise this power during your lifetime (by a deed) or at your death (by a will), subject to certain limitations. With this tool, your state would be unable to go after the house (either during your lifetime or after your death). However, you'd lose the legal right to live in the house.

Obviously, Medicaid planning is complicated. There are several other strategies available to protect your home, and you'll want to explore all of your options. For more information, be sure to consult an elder law attorney who has experience with your state's Medicaid laws.

Sincerely,

John Kent Kidwell