

Protecting Your Home from Staggering Long-Term Care Costs

Many of our clients want to keep their home or vacation home in the family. We put much of our life savings and effort into buying and maintaining a home. The cost of long-term care, however, looms as a threat to keeping the home in the family. Our clients frequently look to us for a solution to this problem.

Nursing homes cost over \$12,600 per month in Connecticut. Your home is an exempt asset for Medicaid purposes. Yet, if you receive Medicaid to pay for long-term care costs and you or your spouse are not living in your home, the State will require the home to be listed for sale. After you die, the State will lien your home for the cost of your care. The State can foreclose on its lien to recoup the cost of care.

One of the advance planning techniques we use to completely remove the home from the Medicaid equation involves transferring the home to a trust. A trust is an arrangement where a Trustee holds the property for the good of family members. It is an irrevocable transfer of your home for the benefit of your children. You retain no interest in the Trust as beneficiary. One or more of your children manage the property as Trustee. The Trust is not recorded on the land records of any town. You continue to live in your home and pay all of the expenses of the property including real estate taxes and insurance.

We include grantor trust provisions in the Trust so that when you die, the basis of your home is stepped up to its fair market value. When your children sell the home, they will pay little or no income taxes on the sale. If you have to sell the home to go to an assisted living facility or nursing home, the grantor trust provisions allow you to use your \$250,000 capital gain exclusion to shelter the gain in value from income taxation.

We include a special power of appointment in the Trust so that you retain the power to change the disposition of your home among your descendants. This provision can be important if one of your children goes through a nasty divorce or an unforeseen bankruptcy, a child needs public benefits, or you have a falling out with a child.

Transferring your home to a properly drafted trust is preferable to conveying your home outright to your children for many reasons. It protects the home from your children's creditors. If you have many children, it centralizes management of your home in the child you choose to be Trustee. If a child predeceases you, his or her share of your home does not have to go through probate. You retain ultimate control over the inheritance of property through the special power of appointment. Because your children do not own your home, none of them can sue to partition the property by sale and your home will not render your grandchildren ineligible for college financial aid.

This technique does require advance planning. A transfer of your home to a trust within 5 years of applying for Medicaid will result in a penalty equal to the value of your home divided by the average cost of nursing home care. The average cost of care in Connecticut is currently \$12,604. If your home is worth \$252,080, the penalty would be 20 months.

Thus, you would be ineligible for Medicaid for 20 months. If you do not apply for Medicaid for 5 years (the current "look back period"), however, and thereafter you need to apply for Medicaid to pay for long-term care, you would not have to report the transfer on your Medicaid application.

What happens if you need Medicaid within the 5-year look back period? Medicare may pay up to the first 100 days of nursing home care. You can use other assets that you have to pay privately for long-term care. If one of your children is financially secure, you can borrow from that child to pay for your care. Ultimately, you may have to sell your home if you have no other way to pay for private care to get beyond 5-year period. But, wouldn't it be worth putting your home in trust in case you could avoid applying for Medicaid for the next 5 years?

These Medicaid rules mean you should not wait until you become frail and disabled to consider transferring your home to a trust for your children. Give yourself a chance to protect your home when you are well. If you have financial assets to cover your foreseeable expenses and know you have a good chance of not needing Medicaid for the next 5 years, you and your family will be

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glad you did.

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