

## **The Law and You**

### **Is Your Home Sacred in Medicaid's Eyes?**

Do you have to give your home to Medicaid in order to qualify for long term care assistance? Or, is your home sacred in Medicaid's eyes? The short answer is Yes and No. Let me explain.

These questions often arise when seniors are faced with costly long term care. When a spouse has to go into a long term care facility, the stay-at-home spouse is especially concerned about having sufficient financial means to remain in the Home.

This concern stems from a desire to avoid a change in residence. It also stems from a desire to preserve an inheritance for the couples' children. The children also want to find a way to preserve the Home for their inheritance.

Today's seniors are often frugal. They make tremendous sacrifices in order to preserve an inheritance for their children. Their desire to leave an inheritance causes them to become very anxious over the possibility that the "government" may take their Home.

To most seniors, their Home is sacred and it is intended to pass to their children. But while the Home is sacred to seniors, it is not always sacred to Medicaid.

If you become a resident of a long term care facility, and if Medicaid assists with payments to the facility, Medicaid will, after your death, place a lien on your estate.

Medicaid views your Home as sacred while you are alive but not once you are deceased.

To see how this works, we need to know how you become eligible for Medicaid. First, it is important to understand that Medicaid is a welfare program. It is the last resort. It provides assistance only to those who cannot afford to pay for their own long-term care. Since Medicare does not pay for long-term

care, Medicaid is the only other program available, except for private care insurance and private funds.

If it becomes necessary for you to live in an extended care facility and your monthly income is insufficient to pay for the costs, you can apply for Medicaid. However, your assets cannot exceed \$2,000, excluding your Home. There are other exclusions, but for now we are only concerned with your Home.

Since your assets are limited to \$2,000, not counting your Home, your estate is essentially your Home. Medicaid's lien, if any, attaches to your estate, including your Home. This preserves Medicaid's claim for reimbursement for the amount it paid on your behalf to a long term care facility.

But it should be clear that this lien is placed on your estate after your death, not before. The lien is only for the amount paid by Medicaid. If the amount paid exceeds the value of your estate, the excess is absorbed by Medicaid. Your family is not be obligated to pay any amounts which are not covered by your estate.

A simple example will illustrate this. Assume that your estate is valued at \$200,000 at the time of your death. Assume further that Medicaid paid 7 years for your long term care for a total of \$210,000. Medicaid would collect your entire estate and absorb the excess of \$10,000.

But what if the value of your estate is more than the amount paid by Medicaid? Assume that your estate is the same \$200,000 and that Medicaid paid for only 2 years of your care for a total of \$60,000. Your estate would have a lien placed against it for \$60,000, leaving an inheritance of \$140,000.

In the above analysis, the term "estate" was used instead of "home." This is because Medicaid uses "estate," since it more

accurately describes the assets subject to Medicaid's claims. Although your Home usually comprises your entire estate, there may be other assets which add to the value of your estate. All such assets may be claimed by Medicaid.

You can now see that while you are alive, your Home is sacred in Medicaid's eyes. Upon your passing, Medicaid will place a lien against your Home. For a married couple, however, your Home may be preserved if the stay-at-home spouse does not have to accept Medicaid assistance.

To better understand your rights and to better plan for your long term care, you should consult with an Elder Law Attorney who specializes in Medicaid matters. Check the National Academy of Elder Law Attorneys at (520) 881-4005, or the Yellow Pages under the heading of "Elder Law."