

Elder Law and Medicaid Law Newsletter



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A FREE LEGAL UPDATE FOR ELDERLY AND OTHERS WHO SEEK ASSET PROTECTION ♦ APRIL 1, 2015 EDITION

AN EASY WAY FOR HEIRS TO INHERIT YOUR HOME: Protect Medicaid and Avoid Probate

Probate court is no one's idea of fun, so it's something you may want to spare your heirs when they inherit your home. It can involve long delays and fees and costs in Florida that can eat up to 6% of the gross value of your estate.

Avoid these delays and expenses. Use a lady bird deed or enhanced life estate.

A life estate is a deed that entitles you to remain in your home for the rest of your life and allows your designated heirs to inherit it without the hassle of probate-court proceedings when you die.

All they have to do to take possession is present your death certificate at the county courthouse.

To make sure this document complies with Florida law and the intricate rules of Medicaid, you should let me prepare such documents and supervises their recordation in the Circuit Court.

You should have a durable power of attorney and health care designation declaration as well.

Giving Up Control

One drawback of most life estate documents is that they restrict your flexibility. You can't sell or mortgage your home or change the heir or heirs without the consent of those named in the life estate.

But my enhanced life estate achieves all the advantages of a conventional life estate, but has none of its drawbacks.

Assuming you're certain of your intentions, a life estate has some advantages for your heirs apart from avoiding probate. For one, they will inherit the property at its "step up" value—what it is worth when you die, not when you bought it.

That reduces or eliminates any taxable capital gain if they decide to sell the home. This is true, if they sell immediately upon inheriting it or later.

In Florida, a life estate, properly drafted, also protects your heirs from Medicaid liens.

People, whose long-term-care costs deplete their resources to the point where they become Medicaid-eligible, despite owning their own homes, can keep their house in most cases and still receive benefits.

Life estates will protect the heirs, too. Your heirs will be protected from Medicaid liens, and also avoid the cost and delays of going through the court system called "probate".

Combined fees on a \$250,000 property, for both the probate attorney and the personal representative could be up to \$15,000.

Tax Issues

There can be some tax caveats, particularly if you have owned your home for many years and it has appreciated by more than the \$250,000-per-owner federal capital-gains exemption allowed for a primary residence.

If, in those circumstances, you change your mind after establishing a life estate and decide to sell your home before you die, you would be allowed the \$250,000 exemption on the portion of the property deemed to be yours as stipulated by Internal Revenue Service actuarial formulas.

Your designated heirs, known in a life estate as remainder owners, would be allowed no exemption on their portion, unless your primary residence is theirs too.

But if you have me draft an enhanced life estate (lady bird deed), you can retain the full \$250,000 capital gain exemption by selling while still living. You do not need approval of heirs to obtain such an excellent result.

For most people, though, neither capital-gains nor inheritance taxes are likely to come into the picture.

You may be charged a transfer tax when the life estate is established. In Florida this is only about \$20.00 to record the deed.

Summary of Advantages of the Enhanced Life Estate

It avoids Probate – no need to go through court upon death. Probate can involve fees of 6% of GROSS estate plus substantial delays.

You can change your mind up to time of death - you can have a document that requires approval of heirs if you want to change your mind and/ or borrow against the property.

If you decide to sell your home, you can still get full \$250,000 exemption on capital gain.

Transfer tax is only \$20.00.

You don't lose Medicaid eligibility if you need Medicaid for nursing home or home health care.

Neither you nor your heirs will suffer expense of a Medicaid lien imposed by the State of Florida. (A lengthy stay in a nursing home could otherwise eat up the entire value of your home.)

News You Can Use

2015 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,199.00
Personal Needs Allowance:	\$105.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Medicare Part B Premium:	\$104.90
Community Spouse Resource Allowance:	\$119,220.00
Minimum Monthly Maintenance Income Allowance:	\$1,966.25
Maximum Monthly Maintenance Income Allowance:	\$2,980.50