

Medicaid and Asset Protection Law Newsletter



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A FREE LEGAL UPDATE FOR ELDERS AND OTHERS WHO SEEK ASSET PROTECTION ♦ OCTOBER, 2017 EDITION

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

Probate court is no one's idea of fun. It's something you may want to spare your heirs when they inherit your home. It can involve long delays and costs in Florida. This 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; it allows your designated heirs to inherit without the hassle of probate court proceedings. All they have to do is file your death certificate at the county courthouse.

Make sure this document complies with Florida law and the intricate rules of Medicaid. Let me prepare this document and record it with the Court. You should also 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 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, without 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 inheritance and perhaps later.

In Florida, a life estate, properly drafted, also protects your heirs from Medicaid liens. People can keep their house and still receive Medicaid for nursing home care.

Life estates will protect the heirs, too. Your heirs will be protected from Medicaid liens, and also avoid the cost and delays probate. Combined fees on a \$250,000 property, for both the probate attorney and the personal representative could approach \$15,000.

Tax Issues

There can be some tax caveats, particularly if your home has appreciated by more than the \$250,000.

If 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 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 this desirable result.

For most people, though, neither capital-gains nor inheritance taxes are likely to come into the picture. You may be charged a recording fee when the life estate is established. In Florida, this is only about \$20.00.

Summary of Advantages of the Enhanced Life Estate

1. It avoids Probate – no need to go through court upon death. Probate can involve substantial fees and delays.

2. You can change your mind up to time of death - you can have a document that doesn't require approval of heirs if you want to change your mind and/ or borrow against the property.

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

4. You don't lose Medicaid eligibility if you need Medicaid for nursing home, home health care, or assisted living facility.

5. 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

2017 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,205.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Community Spouse Resource Allowance:	\$120,900.00
Minimum Monthly Maintenance Income Allowance:	\$2,002.50
Maximum Monthly Maintenance Income Allowance:	\$3,022.50
Monthly Personal Needs Allowance:	\$105.00
Home Equity Interest Max.:	\$560,000.00
Average Monthly Cost of Nursing Home Care:	\$7,680.00