

“Medicaid Qualification” Volume II (Protecting Your Home and Other Assets) By Lenoard Mondschein

Part 1: Can the Nursing Home Take My Home

As an Elder Law Attorney, I have been asked the following question on several occasions: “Can the Nursing Home Take My Home?” While the simple answer is “No,” it is also misleading. Elder Law is a complex practice, and simple answers can sometimes create a false sense of security. What follows is a more complete answer to the question posed above, in the hope that the reader may gain a more complete understanding of the issues involved in Florida Homestead property when a person is admitted to a skilled nursing facility.

Homestead property in Florida is protected from creditors by the Florida Constitution. It is also an exempt asset when applying for Medicaid to pay for nursing home care. There is no limit to the value of Homestead real property, if there is a spouse or disabled child living in the home. If the Medicaid applicant is single, Homestead property is exempt up to the equity value of \$552,000.00 in 2016. This figure will be raised by the government over time. Homestead property can be a single family structure, mobile home, condominium or co-op. A person can only have one Homestead. To be an exempt asset for Medicaid qualification, Homestead property must be located in the State of Florida or in one of 20 states which have a compact (treaty) with the State of Florida.

When applying for Medicaid, the applicant, or his or her representative, must declare an “intent to return home,” at some time in the future, so that Homestead property will be an exempt asset. Although the

Department of Children and Families can be lax on requiring this statement, it is the best practice to declare this intention in writing.

The real problem arises when the applicant's family can no longer afford to pay the taxes, insurance and sometimes mortgage on the Homestead property. While Homestead property is exempt while it is vacant, it loses its exempt status as Homestead property if it is sold or rented. When either of these events occur, further planning on an emergency basis must be initiated to solve this problem.

For example, if the family of a nursing home resident wants to rent the Homestead real property, a special type of deed, known as a 'Ladybird Deed,' needs to be drafted to protect the property from Medicaid Recovery when the applicant dies. In addition, the Homestead real property must be rented at fair rental value, and all expenses of the property such as taxes, insurance, mortgage payments and management must be proved.

If the family wants to sell the Homestead real property, the proceeds must be immediately invested in non-countable resources.

These decisions regarding Florida Homestead real property require the assistance of an Elder Law Attorney skilled in Homestead real property, taxes, estate and Medicaid planning . Typically, a board certified Elder Law Attorney can resolve these complex planning issues.

Part 2: Can I Qualify for Medicaid if I Own a Vehicle?

When a person applies for Medicaid, the inclusion of all or a portion of the value of vehicles, as well as the determination of value, differs according to the Medicaid program. Specifically, a person applying for Nursing Home Medicaid, who may or may not have a spouse and owns one or more vehicles, may

be rejected for Medicaid by the Department of Children and Families (DCF), unless the vehicle(s) in question, are exempted under the Medicaid rules.

A vehicle is defined as “any automobile, truck, motorcycle, etc., that is used to provide transportation, and includes vehicles that are unregistered, inoperable or in need of repair.” ESS Policy Manual, Section 1640.0583.

If the applicant owns one automobile, it can be excluded regardless of value, use, or whether the applicant has a spouse. ESS Policy Manual, Section 1640.0591. All other automobiles are treated as non-liquid assets and counted as their equity value. Equity value is defined as the average trade-in value of the vehicle less any indebtedness. DCF will exclude the vehicle with the highest equity value, if there is more than one vehicle.

Although only one automobile is excluded as a general rule, there is an exception for automobiles over seven years old. However, this exception does not apply to luxury cars, automobiles that are more than 25 years old as they may be considered classics or antiques, and customized or specially modified automobiles, except those modified for use by a handicapped person.

DCF calculates the value of an automobile using the National Automobile Dealers’ Association book or NADA BOOK. If a vehicle is not listed in Southeastern Edition, NADA Book, the Official Used Car Guide or the Older Car Guide, an appraisal will be required or other evidence of value.

If you are in need of help regarding Medicaid qualification and are unsure as to how DCF will count your assets or income, call The Elder Law Center of Mondschein and Mondschein, P.A. Miami office at (305) 274-0955 for a FREE telephone consultation.

Part 3: What Should I Do With Mother's Home When She is in a Nursing Home?

“What should I do with my mother's home when she is in an assisted living facility or a nursing home and is no longer living at home?” This is one of the questions that I am frequently asked at initial consultations. Since all of mother's income will typically be needed to pay for assisted living, or be required to go to the nursing home, other sources of funds are needed to maintain the home. There is no one right answer here. Family dynamics, financial resources, and the proximity of the home to family members come into play. The typical options are leaving the home vacant, having a family member or tenant occupy the home, or selling the home. Each one of these options will be discussed in this article. The first option is to keep the home without renting it or having a family member move into it. Since the home is a Medicaid exemption (ESS Manual 1640.0307.04), keeping the home will not affect Medicaid qualification. However, there is a limit on the equity value in the home of \$552,000.00 in 2015 (ESS Manual Appendix A-9). This figure is indexed to increase each year. The problem with this option is paying the expenses of the home while it is vacant. Taxes, Insurance, maintenance, and sometimes mortgage payments make it difficult for children to maintain the home. Sometimes, if a family member moves into the home and covers all expenses, under certain circumstances the home will maintain its homestead status. It is critically important for the home to not lose its homestead exemption, since Medicaid Recovery can lien real property other than homestead property when a person dies. The second option is renting the home. Although mother's home will lose its homestead exemption when rented, mother will still qualify for Medicaid since rental property is another Medicaid exemption. This can be a good solution to the problem, but there are many rules that must be followed to qualify property as rental property to protect the home from Medicaid Recovery after the owner's death. There may also be a loss of income tax benefits if the home is sold. However, income tax benefits are

unimportant if the home is held until mother's death. There will be a step up in basis to fair market value at that time and, therefore, no income tax to the children on an immediate sale of the home. An Elder Law firm with a Board Certified Elder Law attorney can guide a family through these rules to avoid Medicaid disqualification and/or Medicaid Recovery.

The third option to this dilemma is selling the home. This option raises the problem of what to do with the proceeds from the sale if mother applies for Medicaid to help pay for assisted living or to pay for a nursing home. Since a single applicant for Medicaid can have no more than \$2,000.00 of countable resources, something will have to be done to protect the proceeds of the sale. While there are solutions to this problem as well, in most cases the best solution is to purchase Rental Property. If that solution is being seriously considered, it may not make any sense to sell the home in the first place, unless the home cannot be rented for some reason. The income tax consequences of a sale need to be considered as well.

As explained in this article, there are solutions to the problem of what to do with mother's home when she is no longer living there, but each one has its own pluses and minuses. A careful analysis of the specific facts of the case and a clear understanding of the Medicaid, Real Property and Tax laws are essential for a positive outcome.

If you would like more information on what you should do with mother's home, call the Elder Law Center of Mondschein and Mondschein, P.A. Miami-Dade County office at 305-274-0955 to arrange for a FREE telephone consultation.

Part 4: How Does Medicaid Regard Ownership of Joint Bank Accounts?

When families meet with our Elder Law Attorneys, they sometimes ask if The Department of Children & Families (DCF) will regard some of the funds in a joint bank account as belonging to the family member and not the Medicaid applicant. On the surface it seems to make sense, but logic does not always translate into law.

DCF's position on joint bank accounts is that all funds in a joint bank account with the Medicaid applicant, who has unrestricted access to the funds, belong to the Medicaid applicant. (ESS Manual 1610.0302.01). This policy applies to checking accounts, savings accounts, certificate of deposit and other jointly owned financial accounts. This position by DCF can be challenged, if the joint owner on the account can prove that some or all of the funds were deposited by the joint account holder. Proving this challenge may be harder than it seems. The joint account holder needs to show some evidence that he or she deposited these funds. Pay stubs, cancelled checks or affidavits may be enough; but if the DCF Caseworker does not agree, a Fair Hearing may be required. At the Fair Hearing, evidence will again be required, and it is up to the Fair Hearing Officer (a DCF employee) to decide whether or not the evidence presented rebuts the presumption that all of the funds in the joint bank account belong to the applicant. If the Fair Hearing officer rules against the applicant, an appeal to the District Court of Appeals will be necessary. If a Fair Hearing or Appeal is required, it is strongly recommended that a Board Certified Elder Law Attorney is retained to represent the applicant in these matters.

If you are applying for Medicaid in Miami, and joint bank accounts or other jointly held assets are involved, call The Elder Law Center of Mondschein and Mondschein, P.A. for a free telephone consultation.