

MEDICAID PLANNING

by: J. Ray Deal, Attorney at Law

A few months ago I discussed some general Medicaid rules for parents/spouses going into skilled nursing facilities. In this series of articles I'm going to give you some information on how property can be protected.

Basically in this area of the law I have two types of clients - those coming in for planning and those having to go in a facility with no planning or they planned but didn't make it five years from the time transfers were done (we call it crisis planning). There are several ways to protect your assets if you go into a nursing home.

The main asset most folks want to protect is the home. You say, "Ray, I thought that the home is a non-countable asset for Medicaid". That is correct but in Medicaid planning there are two main issues - having the property considered a non-countable asset for eligibility is one. The other is to make sure that asset does not end up as part of the estate. Medicaid will file a claim against the estate of the individual receiving benefits upon their death. If there are assets in the estate the property will have to be sold to pay the State of North Carolina back. Therefore, in planning we do not want the home included in the estate so we need to transfer it.

There are several ways to transfer the home. One is to just give it away (well not to just anyone, usually to the kids!) using a gift deed. This type of transfer is subject to the five year look back period under Medicaid. The positives for this transfer are that after five years the property is not considered as an asset of the transferor in any way and can be sold or rented and none of the proceeds or income gets considered in the Medicaid application process. The negatives are loss of control, changes in insurance (because it doesn't qualify for homeowners insurance), and this cannot be done if there is a mortgage on the property. Also, if something happens within the five year look back can the home be deeded back? You say sure the kids will give it back but what if the kids have a lien against them and that has to be paid before the property can be transferred back. What if your daughter in law doesn't like you - in North Carolina unless there is a Free Trader Agreement in place the spouse must sign off on any property to be transferred during the marriage! There are also gifting issues and potential capital gain issues for the kids when they sell the property.

This is usually not the best option but we'll explore more ways to protect property in the coming months. Stay tuned...and stay cool.