

## *Is your home safe from the nursing home?*

**S**o, you own your own home, you've even paid off the mortgage (hurray!), and you think you're "snug as a bug in a rug" in your own personal "castle." Right? Well, maybe. If you belong to the fastest growing demographic group in America, you're part of the 50+ crowd and you're honing in on a deserved retirement.

The only problem with this scenario is the unexpected – what if you (or your spouse) becomes chronically ill, so sick you need nursing home care? Is your house safe? Is your money?

A lot depends on whether you've done any advance planning, and whether you have purchased long-term care insurance. Without insurance, you will have to private-pay for expensive nursing home care. This is currently costing \$7,000 to \$9,000 per month in eastern Massachusetts. When (not if) you run out of money, the State Medicaid program, known as MassHealth, will take over the payment of your bill.

So the question becomes, when can you qualify for MassHealth and what assets can you protect? Today, we'll talk about the house. First the good news. Your house is safe for your life and your spouse's. You are allowed to own a home of any value and still qualify for MassHealth benefits to pay for nursing home costs.

Now the bad news. If they don't get it now, they will get it later. That's because while your house is protected during your life, after your death, your ownership interest in the house will be subject to a reimbursement claim by the State for all benefits they paid. This is called "estate recovery." Since the amount that MassHealth pays a nursing home averages about \$4,000 per month (that's \$48,000 each and every year), it won't take too long to use up your entire ownership interest in the house. So in the end, the kids DO NOT get the house, the State does. Can you prevent this? Maybe. Before June 30, 2003, there were several ways to own the house and still avoid this reimbursement claim. Since July 1, the rules have tightened up quite a bit (thanks, Gov. Romney), and you have fewer choices. The easiest way to prevent the State from

grabbing the house after your death is to give it to the kids, by deeding the house over to them. This way, there is nothing for the State

to claim against, since at your death you don't own the property, the kids do.

Sounds great, right? Wrong. You want to be careful that in solving one problem (avoiding the after-death reimbursement claim by the State), you don't create a worse one. What could be worse? Plenty.

If you need a nursing home within three years (and maybe five years) of giving the house to the kids, that gift could prevent you from getting MassHealth benefits,

even if you have no money to pay the bill. Additionally, if one of the "owners" (that's now the kids, not you) gets divorced, their share of your house is included in their list of marital assets and the Court could give YOUR house to your divorcing son or daughter-in-law! Or, if your kid got in a jam with creditors, the creditor might be able to force a sale of your house to pay the debt! Now, you are evicted onto the street and have no place to live. Very bad.

These are just a few of the things that can happen; there are plenty more, and the risk just isn't worth it, particularly since there are better choices - an irrevocable, income-only trust or a life estate deed are just two examples.

There are a number of actions a person can take to protect assets from possible nursing home care, and we will explore these in future articles. However, the rules are complex and ever-changing. Every possible strategy has an offsetting disadvantage, which must be fully explored in order to make an informed decision. Actions should only be taken after consultation with a qualified elder law attorney to design an estate plan designed for your individual circumstances.

*Leslie Madge is an elder law attorney with a practice in Acton. For questions, call 978-635-1100.*



*By Leslie Madge*