

# Legally Speaking

## Plan ahead for nursing home expenses

**M**rs. "Martin" (not her real name) walked into my office visibly upset. She had just come from an appointment with her husband's doctor, who confirmed her fears by diagnosing Mr. Martin with Alzheimer's disease.

Mrs. Martin remembered the experience of her neighbor, Betty, when Betty was placing her husband in a nursing home. Betty spent every dollar they had on nursing home care, and was reduced to absolute poverty, with nothing left to provide for her own needs.

Mrs. Martin is terrified of facing the same fate as Betty. Should she be concerned? Absolutely. Does she have to spend everything on a nursing home? Definitely not (and neither did Betty). Is there still time to plan? Certainly, although our planning choices need to be made cautiously, so as not to run afoul of the 36 or 60 month penalty period imposed by MassHealth (also known as Medicaid) as a result of taking certain impermissible actions.

Mr. and Mrs. Martin are typical clients, in that they own their home, and have \$100,000 in CDs in the bank. The very first thing I told Mrs. Martin when she recounted Betty's tragic experience was that she absolutely does NOT have to spend the entire \$100,000 on the nursing home. By law, Mrs. Martin as the "community spouse," (i.e., the spouse still residing in the community), is entitled to keep a portion of their combined assets. This amount is either a minimum of \$18,132, or one-half the assets, up to a maximum of \$90,660 (these figures are tied to the cost of living, and therefore change slightly every year).

Thus, without doing anything "fancy," Mrs. Martin can keep \$50,000 of the cash. The way she keeps this is not to spend it on the nursing home. This is the mistake Betty made. Betty spent every dollar, when, in fact, she could have stopped at the half-way point and applied for MassHealth to take over. So far, half the cash is sheltered by allocating it to the community spouse. What about the other half? Can some of it be saved as well? Yes, yes, yes.

One way to save the "nursing home" half of the cash is to pay off existing debts, including any mortgage, equity line of credit, car loan, or credit card bills. Paying these loans has the double benefit of sheltering the exposed cash (by using it to pay off existing debt, rather than spending it on nursing

home costs), and by reducing Mrs. Martin's monthly income needs, since she will no longer be faced with these monthly bills.

There are two key points to remember here: first, that it is perfectly permissible to pay these debts. This means these actions incur NO ineligibility period. Put simply, Mrs. Martin can keep her money intact in the bank until she is on her way to the nursing home to admit her husband. Then, she can come home, pay off all these bills, and assuming they used up the \$50,000, she would be immediately eligible to apply for MassHealth assistance to pay Mr. Martin's nursing home bill.

The second point we need to remember is that these debts should not be paid from Mrs. Martin's share of the cash; rather, all debts should be paid from Mr. Martin's share, as this is the half which is at risk to be used on the nursing home bill. Thus, Mrs. Martin keeps her \$50,000, plus uses most of her husband's \$50,000 on their joint debts, and then goes and applies for MassHealth to pay Mr. Martin's bill.

If, after paying off all her debt, Mrs. Martin still has some of her husband's half of the cash left over, she can spend the balance on certain permitted expenditures. She can pre-pay the funeral expenses for both her husband and her-self. This can be in any amount, although MassHealth may question funeral expenses greater than \$8,000 per person. She can also establish "burial" bank accounts for both of them, up to \$1,500 each.

In addition, she can purchase a new car for herself, make major home repairs, upgrade the septic system to qualify under Title V regulations (or tie into town sewer), and purchase major appliances such as refrigerator or washer and dryer.

There are a number of ways to use the cash other than paying it to the nursing home. The point to keep in mind is that what works for one person may be all wrong for you. The worst thing someone can do is blindly adopt the strategy of a friend or a sibling. Competent legal advice is absolutely essential in crafting a complete sheltering strategy designed for your individual circumstances.

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