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**New Jersey Elder Lawyer**

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## Will I Lose My Home?

Many people who apply for medical assistance benefits to pay for nursing home care ask this question. For many, the home constitutes much or most of their life savings. Often, it's the only asset that a person has to pass on to his or her children.

Under the Medicaid Regulations, the home is an unavailable asset. This means that it is not taken into consideration when calculating eligibility for Medicaid. But in 1993, Congress passed a little-debated law that affects hundreds of thousands of families with a spouse or elderly parent in a nursing home. That law requires that states try to recover the value of Medicaid payments made to nursing home residents.

Estate recovery does not take place until the recipient of the benefits dies. Then, federal law requires that states attempt to recover the benefits paid from the recipients' probate estate. Generally, the probate estate consists of assets that the deceased owned in his or her name alone without beneficiary designation. Some states (particularly NJ) go even further and recover from non-probate assets, including assets owned jointly or payable to a beneficiary.

About two-thirds of the nation's nursing home residents have their costs paid, in part, by Medicaid. Obviously, the Estate Recovery law affects many families. The asset most frequently caught in the Estate Recovery web is the home of the Medicaid recipient. A nursing home resident can own a home and receive Medicaid benefits without having to sell the home. Upon death, however, if the home is part of the probate estate, the state may seek to force the sale of the home in order to reimburse the state for the payments that were made.

James E. De Martino is licensed to practice in the State of New Jersey.

Our practice is limited to estate planning, long-term care planning, and NJ Medicaid asset protection.

**Elder Law and NJ Estate Planning Strategies**

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