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New Jersey Elder Lawyer

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CAN THE SPOUSE KEEP THE HOUSE?

NJ Long Term Care Planning

Many families are concerned that if a spouse enters a long-term care facility, the marital home will be eventually lost.

Medicaid has no intention of evicting the at-home spouse (also known as the Community Spouse). Nor does Medicaid require the at-home spouse to sell the home and apply the proceeds toward long term care costs.

What Medicaid can do, under the veil of estate recovery, is place a "lien" of claim on the subject premises. When the Community Spouse passes away, or when the Community Spouse sells the house, then Medicaid can demand to be reimbursed for all monies expended on behalf of the ailing spouse.

Under the law, there is a way to avoid both the lien and any estate recovery. If an ailing spouse conveys his/her share of the marital home to the Community Spouse (healthy spouse) within the proper time period, then the residence becomes an exempt asset.

Medicaid will place no claim on the premises whatsoever.

When the healthy spouse dies, he/she is free to pass it to her family. This presupposes that the healthy spouse survives the ailing institutionalized spouse.

NOTE WELL: In order for a family to take advantage of this Medicaid regulation, the couple should have the proper estate planning instruments in place. Such properly drafted documents will allow the Community Spouse to sign the Deed of transfer on behalf of the ailing spouse.

The rules discussed above apply to married individuals. In another newsletter, we will discuss the status of the primary residence insofar as single people are concerned.

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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