

PROTECTING THE FAMILY HOME

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All too often, seniors will find themselves in a dire predicament. Immediate long-term nursing home care is needed and they do not have insurance or the private funds with which to pay for such care. It is not unusual for an individual's primary asset to be the home in which he or she resides. There is a common misconception that in such instances, the only recourse would be to sell one's home and to use the entire proceeds to pay for long-term health care needs.

If the home is transferred to the individual's children or to an irrevocable trust, Medicaid will impose a waiting period before nursing home care will be granted unless the transfer falls within the exceptions below. Such "non-exempt" transfers are often used when nursing home care will likely not be needed for 3 or 5 years. But what if no advance planning was done and nursing home care is needed immediately?

The law provides that in five instances, an individual's "homestead" (his/her primary residence), can be transferred without waiting to become eligible for Medicaid nursing home benefits. First, one can transfer his home to his spouse or minor child without incurring any Medicaid transfer penalty. In addition, a transfer to a disabled or blind child is exempt regardless of the child's age. Further, transfer of the home to an adult caregiver child who has lived in the home of the parent for at least two years prior to the parent's admission into a nursing home and has provided care to the parent is exempt. Finally, a transfer of one's home is exempt if it is to a sibling who has resided in the home and had an equity interest for at least one year prior to the individual's admission to a nursing home. A sibling is deemed to have an equity interest for Medicaid purposes if he is named on the deed, pays all or part of the mortgage, has paid for capital improvements or has paid real estate taxes.

If a transfer is made to any of the aforementioned people, these transfers will be exempt, and the transfer will not cause the individual to wait before becoming eligible for nursing home benefits under the Medicaid program. While this is good news and offers an excellent planning option for those who fit within the above exceptions, there are still many whom these exceptions do not apply. In such cases, there is still last minute planning that can be done in order to save some, or possibly even all of the value of the home. For example, there are techniques in which a homeowner who must enter a nursing home can protect approximately half of the home by selling the home and gifting a portion of the proceeds to his loved ones. The balance of the proceeds that are not gifted can be used to pay for the long-term care until the Medicaid penalty or waiting period has passed. In appropriate circumstances, a greater portion of the home can be protected if a life estate is retained by the Medicaid applicant before utilizing this technique.

Any of the above-described options must be handled with the utmost care to ensure the greatest protection of the home in accordance with current laws, rules and regulations.

Ronald A. Fatoullah, Esq., CELA is the principal of Ronald Fatoullah & Associates, a law firm that concentrates in elder law, estate planning, Medicaid planning, guardianships, estate administration, trusts and wills. The firm has offices in Great Neck, Forest Hills and Brooklyn, NY. Mr. Fatoullah is the past chair of the Legal Committee of the Alzheimer's Association, LI Chapter. Mr. Fatoullah has been named a "fellow" of the National Academy of Elder Law Attorneys and is a former member of its Board of Directors. He serves on the Executive Committee of the Elder Law Section of the New York State Bar Association and is currently chair of its Liaison to Public Agency and Legislation Committee. Mr. Fatoullah has been certified as an Elder Law Attorney by the National Elder Law Foundation. In addition, he is a co-founder of Senior Umbrella Network of Queens, and currently serves on its Board of Directors.