

# Protecting Your House if you Need to Go into a Nursing Home

By Robert K. Schweitzer, Esquire  
January 2019

Your home, even if you bought it fifty years ago, is likely your most valuable asset today. Most of our clients want to protect their house for their family—particularly for their spouse, if married, or as inheritance for their family members upon death. Two typical refrains we hear in our office from clients concerned about going into a nursing home are: (1) the nursing home is going to take my house and (2) if I run out of money to pay the nursing home, your family can sell the house and keep the proceeds.

While the nursing home will not take your home, Medicaid (which is the joint federal and state program that pays for nursing home care—roughly, a monthly cost of \$10,000 if you are paying out of your pocket, mind you) has an estate recovery program. Medicaid's estate recovery program provides that if you receive Medicaid benefits after the age of fifty-five (55), any assets in your sole name at the time of your death must first be used to reimburse Medicaid before anything can be distributed to your family. In addition, if you sell your home while receiving Medicaid benefits, the sale proceeds will have to be used to pay for your nursing home care unless proper advance planning techniques are utilized.

So how then can you protect your home or its sale proceeds? The balance of this article addresses how using an asset protection trust can protect your home and provide the most protection over other alternatives.

A properly drafted asset protection trust eliminates your home from being subject to both Medicaid estate recovery upon your death and eliminates the sale proceeds (if you sell your house while on Medicaid) from having to be spent on your nursing home care during your lifetime. For this protection to occur, you must transfer your home into an asset protection trust five (5) years prior to applying for Medicaid benefits.

Thus, it is imperative to do this planning “before” you need to go into a nursing home. You can still maintain full control over your home. The transfer of your home will not trigger real estate transfer tax. It will also preserve your homestead exemption in almost all cases. You can still live in your home and not rely on others to pay your utilities and expenses. Your house will also be protected from your creditors and the creditors of your children if you or your children are ever involved in a lawsuit or your child gets divorced. If you sell your home while receiving

Medicaid, the sale proceeds will be protected from having to be spent down on your nursing home costs. The sale proceeds can then be protected for your family. An asset protection trust will help to preserve a “step up in basis” for capital gains tax purposes for your family members. Finally, the house will avoid having your family absorb the costs and time delays often involved with the probate of a Will. The advantages of utilizing an asset protect trust can preserve tens or hundreds of thousands of dollars.

An asset protection trust is superior to other alternatives in most cases. So then what are some of the most common alternatives? The two most common alternatives to utilizing an asset protection trust are adding the names of family members to the deed to your home and outright gifting your home. Both of these options, if done five (5) years before applying for Medicaid will avoid a Medicaid estate recovery claim after your death and both options avoid probate. Adding the names of family members to the deed to your home will protect some, but not all, of the sale proceeds from having to be spent on your nursing home care while alive. By adding family members to your deed, your family members lose “full” step up in basis while gifting your home causes your family members to lose step up in basis altogether.

Depending upon your basis in your home (i.e. what you paid for it, plus any improvements) your family members could potentially lose tens of thousands of dollars in tax savings. Further, the creditor protector given by an asset protection trust is greatly diminished by adding family members to the deed while gifting the property outright causes you to lose creditor protection all together. Rather, the person to whom you gift your home has full control and can decide whether you may live in your home and what you understood to be your home is subjected to their creditors even if you have an “understanding” that you may live your home for your life.

Even if you or a family member are in a nursing home, it is virtually never too late to engage in asset protection planning. However, planning well in advance of entering a nursing home will protect most of the important assets for you and your family.