

OPTIONS TO PROTECT YOUR RESIDENCE

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As individuals mature, and the requirement for long term care becomes a concern, many people become aware of the need to protect their assets. An individual's primary residence is usually one of the most important assets to protect in such an event. If the proper planning is not in place and a person enters a nursing home, the economic impact can be undesirable. The New Jersey Department of Medicaid can place a lien on the residence, and when the property is eventually sold, the New Jersey Department of Medicaid can receive the proceeds from the sale. If no lien exists, then the receipt of the proceeds from the sale of a home can make an individual ineligible for Medicaid. Neither of these results is desirable.

When this situation arises, many individuals seek the advice of an Elder Law Attorney. An Elder Law Attorney can advise the client of the different strategies that exist to best protect an individual's primary residence. One option is to transfer a home to a third party, for example a child or children. However, there are certain risks involved with this option. If a child becomes the owner of a parent's primary residence, he or she can sell the property without the consent of the parent. Furthermore, if the child predeceases the parent, the property could pass to a son-in-law or daughter-in-law. In addition, the parent would lose the right to receive the New Jersey Homestead Rebate and the ability to qualify for the income tax exemption when the primary residence is sold. Consequently, this option is not usually desirable to the parent.

An option that I often suggest to my clients is to transfer the property into the names of their child or children, while reserving a life estate for them. A life estate deed provides that the parent can continue to live in the home for the duration of his or her lifetime. During the occupancy of the property, the parent would be responsible for the real estate taxes, maintenance and upkeep of the home. Therefore, the parent would still be entitled to the New Jersey Homestead Rebate and could deduct the real estate taxes associated with the property on their income tax return. Furthermore, the parent would have the security and peace of mind of knowing that their children could not sell the house without their approval.

If a life estate is in place, and if in the future the parent had to enter a nursing home, then the entire value of the residence would not be at risk to the nursing home. The parent would possess only a "life interest" in the property. The life interest would be valued as of the date of sale. For example, the life interest of an 80 year old is approximately forty-four percent. Therefore, forty-

four percent of the sale proceeds would be distributed to the parent and fifty-six percent would be distributed to the children. The amount distributed to the children would be protected from a nursing home.

While the parent is residing in the residence, he or she would still be entitled to the tax benefits associated with home ownership. Furthermore, no one could force the parent to sell the home. In addition, if the property was sold a significant portion of the sale proceeds could be protected. The preparation of a life estate deed is considered a transfer for Medicaid purposes and is subject to a look back period of thirty-six months. The look back period starts from the date the deed is recorded, and not the date the property is sold. As such, when a life estate deed has been prepared and recorded early enough, then a significant portion of the sale proceeds of an individual's primary residence can be protected from a nursing home .

In summary, if you are interested in protecting your home, but do not want to give up control, then you should consider having a life estate deed prepared. Please seek out the advice of an Elder Law Attorney to better understand the legal issues involved in protecting your home.