

ELDER LAW UPDATE

Vouga Elder Law, LLC
Veteran & Senior Asset Protection

Helping YOU Get YOUR Ducks In A Row



Leading the Way in Special Needs and Elder Law

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Estate Recovery Law More Aggressive Than Ever

Your mother is in a nursing home and has qualified for Medicaid. She's been able to keep her home because it is an exempt asset so long as she is living and "intends to return home." But what happens to the house after she dies? What if it was your spouse on Medicaid and the state has paid over \$70,000 in benefits? Will they attempt to recover benefits upon your spouse's death?

After a Medicaid recipient dies, the state has the right to recover any assets remaining in order to reimburse itself for Medicaid benefits paid out. This process is called estate recovery. Certainly, it makes sense from a public policy standpoint---if the state is going to help pay for a resident's care while they are living, then the state should be reimbursed, as fully as possible, by any assets remaining at the resident's death. But while this policy may make sense, families are never happy to learn that the state may put a lien on your/your parent's home after your spouse/parent dies.

At one time, was only pursuing certain real and personal property that the Medicaid recipient had titled in his/her name alone. But now Missouri is taking advantage of the Federal law's expanded definition of "estate" that allows the states to recover most assets in which the Medicaid recipient has an ownership interest, including jointly owned property, property held in trust, life estates, and life insurance

proceeds. The states also have the right to recover assets conveyed at the Medicaid recipients' death through transfer on death deeds or beneficiary designations.

In addition, the states are now placing liens on the Medicaid recipient's home. This is a way for the state to secure a debt against the Medicaid recipient's property, meaning that the property can't be sold or transferred until the lien is satisfied. The state would then inform the Medicaid recipient or the family before a lien is imposed and the family would have the chance to appeal the action.

Fortunately, the state will not place a lien on the home if the Medicaid recipient's spouse, minor child, or disabled child is still living in the home. Nor will the state place a lien on the home if the Medicaid recipient's doctor thinks he or she may be able to go home.

There are still, in certain circumstances, perfectly legal ways of avoiding estate recovery. For example, if mom is the Medicaid recipient, and she has a child with a qualifying disability, she may be able to give her home to that child penalty free and avoid estate recovery at her death. Also, if mom has a child who moved into her home with her, cared for her, and that care kept her out of a nursing home for at least two years, then mom can transfer her home to that child,

penalty free, and avoid estate recovery. This is called the caretaker/child exemption. There may also be other strategies to consider for avoiding estate recovery, including purchase of the home by family members or, perhaps, even using a reverse mortgage.

Medicaid estate recovery rules are complicated. You should consult an Elder Law Attorney who practices in the area of Medicaid asset protection before drafting your estate plan with the intent of qualifying for Medicaid with the hopes of avoiding estate recovery.

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