

CAN THE STATE REALLY TAKE MY HOUSE IF I NEED MAINECARE ASSISTANCE?

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MaineCare is the program that provides federally funded Medicaid assistance with the expense of long term care to people who qualify. Qualifying involves an asset test. An individual's assets must be below \$10,000 and if there is a spouse, the spouse can keep an additional \$126,420. To the surprise of many, the house is not a countable asset to the extent its value does not exceed \$500,000 for an individual and \$750,000 in the case of a couple. For most Mainers who apply for MaineCare, the value of their home is well under these limits. One's home is exempt even if there is no spouse. The individual applying for MaineCare assistance simply must state on the MaineCare application that he intends to return home. It doesn't matter how unrealistic such intent may be. So, contrary to popular belief, one does not need to sell the home or turn it over to the state in order to qualify for long term care assistance.

Where things get complicated, however, is after the death of the home owning MaineCare recipient. Federal law has mandated that the state must attempt to recoup some of the expense of providing Medicaid to people over the age of 55 years. These programs are referred to as estate recovery. In Maine, an arm of the Department of Health and Human Services called the Third Party Liability Unit routinely pursues claims against the estate of deceased MaineCare recipients who have received any form of MaineCare after the age of 55. Because of the strict financial eligibility limits, typically the only asset to go after is the home. The upshot is that although one can keep the home and still qualify for nursing home assistance, the home will be vulnerable to an estate recovery claim after death.

The state's job is quite simple. When a person dies owning a home in his sole name, his estate will need to be probated. If the person was over the age of 55 years at the time of death, the Probate Code requires that the state be notified. The state will then file a claim in probate for the amount that was paid on behalf of the individual. This claim takes precedence over any other creditor claim and the personal representative of the estate is responsible to satisfy the claim to the extent of the proceeds in the estate. Typically, the home will have to be sold and the state will need to be reimbursed before the remaining proceeds (if any) can be distributed to the beneficiaries of the estate.

There are instances in which the state is not allowed to proceed with an estate recovery action. These include when the deceased MaineCare recipient has a surviving spouse or a disabled child (of any age) or if one can meet a stringent formula showing financial hardship. There is also a provision allowing some compensation for having provided care to the deceased MaineCare recipient.

The specter of losing one's home in order to receive long term care is troubling. The good news is that the house is indeed exempt insofar as qualifying for long term care assistance. The bad news is that it may be vulnerable to an estate recovery claim after death. People often choose to take action to avoid this eventuality by transferring their homes during their lifetimes. This is certainly a strategy, but it is one that also has traps for the unwary. There are transfer penalty rules that could disqualify one from needed assistance, there are nightmarish stories of children abandoning their parents after they've received the title to the parent's home, and even in the case of the most trustworthy child, there can be unforeseen events like divorce or bankruptcy which put the parent in a vulnerable position. There are also tax consequences to consider. Before considering taking steps to this end, it is always advisable to seek the advice of a professional who fully understands these issues.

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