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## MYTHS AND FACTS ABOUT THE MEDICAID APPLICANT'S HOUSE

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Many people are under the erroneous assumption that all Medicaid applicants must sell their homes in order to qualify for Medicaid benefits. Many others mistakenly believe that the government or the nursing home will take the applicant's home. These are myths.

Medicaid is a means-tested government program for people with a minimum amount of assets and very low income. The Medicaid rules are complex. The asset and income limits vary among the different Medicaid programs in New Jersey. In many cases, the principal place of residence of the applicant maybe exempt or not counted for purposes of determining Medicaid eligibility.

The Medicaid applicant's house is exempt as long as the applicant continues to reside in the house. The house also is exempt if the applicant's spouse, a child under age 21, or disabled or blind child lives in the house after the applicant moves to a nursing home.

A single person may be able to qualify for Medicaid benefits in a nursing home in New Jersey even though he or she owns a house. If an unmarried Medicaid recipient who does not reside with a minor child or disabled or blind child lives in a nursing home for six months, however, the state presumes that the recipient will not return to the home. Unless a specific exception applies, the state will require the house to be placed on the market for sale. If the sale price is less than the fair market value of the house, the recipient will be disqualified from receiving Medicaid benefits for a period of time.

A house that is exempt for the purpose of determining Medicaid eligibility may be subject to the Medicaid estate recovery rules if the house remains in the recipient's name at the time of his or her death. There is no penalty for transfers of assets between husbands and wives and therefore, it often is prudent to transfer the Medicaid applicant's ownership interest in the house to the spouse who will continue to reside in the house.

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## **RAMIFICATIONS OF GIVING THE HOUSE AWAY TO CHILDREN OR OTHERS**

Generally, transfers of real estate owned by the Medicaid applicant to anyone other than a spouse for less than fair market value will result in a penalty period during which time the applicant will be ineligible to receive Medicaid benefits. In addition, the recipient of the property will also receive the applicant's tax basis. If the property has a low tax basis, the recipient may have to pay substantial capital gains taxes when the recipient sells the property. Moreover, a gift tax return may have to be filed by the Medicaid applicant. Gift taxes may have to be paid as well.

## **LIFE ESTATES**

The transfer of a remainder interest in a house and the retention of a life estate entitling the owner to live in the house during his or her lifetime is a common planning technique. If the transfer of a remainder interest occurs within five years of applying for Medicaid, then a penalty period would be imposed during which time the owner would not be eligible for nursing home Medicaid benefits. If the transfer is made at least five years before a Medicaid application is made, the transfer will be exempt.

When the owner of the house transfers a remainder interest in the property, then the value of the entire house will be included in the owner's taxable estate when he or she dies. The tax basis of the house, however, is stepped-up to the value of the house on the date of death. Therefore, the capital gains taxes will be substantially less than the capital gains taxes that would have to be paid if the owner did not retain a life estate. If the property is sold, the individual retaining the life estate will be entitled to a portion of the sales proceeds.

## **EXEMPT TRANSFERS**

A transfer of a house to a child will not result in a Medicaid penalty period if several conditions are met. The son or daughter must have resided in the parent's house for at least two years immediately before the parent moved into the nursing home. The son or daughter also must demonstrate that he or she provided support to the parent over and above "normal personal support activities." An elder law attorney should be consulted to make sure the specific conditions are met before the house is transferred.

A house may also be transferred without penalty to a brother or sister of the Medicaid applicant who has an equity interest in the home prior to the transfer and who lived in the house for at least one year before the Medicaid applicant moved to a nursing home.

Transfers to "caregiver children" or siblings who meet the conditions set forth in the Medicaid regulations may still result in capital gains or estate taxes.

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