

► This content is for informational purposes only. Consult an attorney regarding specific legal questions.

Home Sweet Home

Making sense of Medicaid recovery.

BY RICK WEAVER AND TRAVIS WEAVER

Often, when we meet with a client regarding Medicaid planning or estate planning, his or her initial idea is to ensure that the “government” does not receive any portion of his or her estate.

Apparently, many people fear a shadow organization will swoop in and abscond with any and all accumulated assets. This fear is usually bred out of a horror story from a friend or acquaintance where the aforementioned government took everything.

Fortunately, we have good news for Medicaid clients (and bad news for

conspiracy theorists). The Medicaid Estate Recovery Program, or MERP, will only file a claim against a deceased recipient’s homestead (where the person lived) as of the time of the recipient’s death. Your bank accounts, handmade furniture, antique china, and priceless golf clubs are generally safe for the time being. That’s not to say that nephew Johnny isn’t going to pawn off all of your bequests to him for a new flat screen.

So, you qualified for Medicaid and own a house but now some lawyer tells you that the state can come in and recover against your home for any costs incurred for your stay in a Medicaid facility. What do you do?

Luckily, there are two tried and true methods for protecting your home. The first method involves deeding your property to someone else by means of an enhanced life estate deed, or “Lady Bird deed.” Named after President Lyndon B. Johnson’s wife, a Lady Bird deed is an instrument whereby a Medicaid recipient deeds his or her home to a family member or close friend while simultaneously reserving the right to live on the property during the Medicaid recipient’s life. For Medicaid purposes, the recipient no longer technically owns this property after death. MERP cannot file against a person if that person doesn’t own anything. As long as the deed is drafted correctly and filed with the correct county prior to the recipient’s death, the home and land is protected from such recovery claims.

Medicaid has blessed this transaction as a valid method of avoiding a MERP claim, and caseworkers are familiar with this process. Ask your attorney about concerns with title companies and relatives who stand to inherit

property covered by a Lady Bird deed—your pocketbook will thank you.

We know none of you are procrastinators, but let’s say you never quite get around to signing the Lady Bird deed. Are you out of luck? No! Lawyers have successfully argued that a MERP claim is barred in an estate where four years have passed since the decedent’s date of death. A MERP claim may only be brought under the “administration of an estate,” which has a statute of limitations in Texas of four years. After that time, an administration is barred by statute; therefore, a MERP claim is too.

Let’s say you are averse to using a Lady Bird deed; maybe it sounds fishy to you. In 2015, Texas added a new section of the Texas Estates Code providing a statutory basis for a Transfer on Death Deed. As of May 2016, the Texas Health and Human Services Commission will allow a properly drafted and filed Transfer on Death Deed in lieu of a Lady Bird deed to protect a Medicaid recipient’s homestead from a MERP claim. Notice we said properly drafted *and* filed. The requirements for the deed are numerous and specific and can be found in Texas Estates Code 114.151. Consider that some caseworkers are inexperienced in dealing with Medicaid and Transfer on Death Deeds, which could complicate the Medicaid application process down the road.

Regardless of the method, understanding how to protect your home from a potentially costly Medicaid recovery claim is critical. **TBJ**



RICK WEAVER and **TRAVIS WEAVER**

are based in Rhome and practice with Shannon, Gracey, Ratliff & Miller. Rick has been practicing elder law and estate planning for nearly 30 years and Travis has been alive for nearly 30 years. Together that’s over 60 years of law and life experience.

TRADEMARK Copyright & Patent Searches

*“Experienced Washington office
for attorneys worldwide”*

FEDERAL SERVICES & RESEARCH:

Attorney directed projects at all Federal agencies in Washington, DC, including: USDA, TTB, EPA, Customs, FDA, INS, FCC, ICC, SEC, USPTO, and many others. Face-to-face meetings with Gov’t officials, Freedom of Information Act requests, copyright deposits, document legalization @ State Dept. & Embassies, complete trademark, copyright, patent and TTAB files.

COMPREHENSIVE: U.S. Federal, State, Common Law and Design searches, **INTERNATIONAL SEARCHING**

EXPERTS: Our professionals average over 25 years experience each
FAST: Normal 2-day turnaround with 24-hour and 4-hour service available

GOVERNMENT LIAISON SERVICES, INC.
200 N. Glebe Rd., Suite 321
Arlington, VA 22203

Ph: 703-524-8200, Fax: 703-525-8451

Minutes from USPTO & Washington, DC

TOLL FREE: 1-800-642-6564

www.GovernmentLiaison.com
info@GovernmentLiaison.com