

# LEGAL EASE



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## **Nursing home won't take your house**

It has been said that a man's (or woman's) home is his or her castle. This implies that a home is more than shelter, although the value of a roof overhead cannot be discounted. For many older Americans, their home is their most valuable asset, and is often a place where a couple has lived many years, raised a family, or created their own memories. When an individual faces nursing home care, if married, the remaining spouse is in a panic, wondering where and how she or he will live, since there is a prevalent rumor that the nursing home "takes" the house.

This rumor is in reference to a person applying for Medicaid, since if one is paying privately for nursing home care, there is no question as to who continues to own the house. However, if someone applies for Medicaid in Pennsylvania, and he or she has a spouse who is remaining at home (community spouse), the house, along with some other assets, is excluded. "Excluded" means "not counted," or "exempt" in this context. The house then belongs to the spouse who remains in the home, although it is recommended that a new deed be recorded transferring the property to the sole name of the spouse who remains at home to insure that it is crystal clear as to who owns the house. Also this protects the value of the real estate from passing automatically to the institutionalized spouse if the community spouse should predecease him or her. Furthermore, this means that there is no Estate Recovery against the community spouse's estate, provided that he or she survives the institutionalized spouse.

There are exceptions to this rule. If a single person applies for Medicaid, and there are no special circumstances involved, and the person passes away while receiving Medicaid in a nursing home while still owning the real estate, then there is an Estate Recovery claim against the value of the house up the amount that the Commonwealth of Pennsylvania expended on that person's care. It is not a lien but a claim, and the nursing home still does not "own" the house, or "take" the house. Pennsylvania is not in the business of owning people's houses, but the government *does* expect to be reimbursed for money spent on keeping an individual in a nursing home, if there are any assets remaining at the person's death. However, Estate Recovery will be permanently waived if there is a spouse remaining in the community.

Another exception is if the community spouse sells the home while his or her spouse is still living in the nursing facility and receiving Medicaid. However, this can be "cured" by having the community spouse purchase another residence of equal or greater value than the first home. If the community spouse must move to an Assisted Living Facility, consultation with an elder law attorney is recommended to maximize the use of the community spouse's assets and resources. The community spouse should also execute a revised Will upon the institutionalized spouse's admission to the nursing home to avoid having the entire estate pass to the institutionalized spouse upon the community spouse's untimely passing, unless that is the intention of both spouses.

To sum up, the nursing home will not own your house, despite what you hear on the street, or you have been told by nursing home personnel. Sometimes a little knowledge is dangerous; be sure to consult with an attorney well versed in elder law before reacting.