

Medicaid Lien on Inherited Property? Understanding the 5-Year Rule

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Navigating Medicaid eligibility with recent property transfers? Discover how the five-year look-back rule applies and potential ways to avoid penalties on your family home.

By Harry S. Margolis

Question:

I have a question about transfer of assets and Medicaid. Here is the scenario: My parents owned a family ranch that they bought from my grandfather many years ago. They are getting up in age and have reached a point where they could no longer care for the place. Three and a half years ago my father had a heart attack which forced us to make a decision. My wife and I bought the ranch from them for the amount of their outstanding mortgage. They have continued to live in their ranch house and we moved into a small mobile home we moved to the property.

Since then, my father has had multiple strokes and as a result of them has developed vascular dementia. His mind is going downhill fast and is quickly getting to the point he will need to be in a care facility. My parents have no savings. To have any hope of getting into a facility my father will have to get on Medicaid. When he does, will Medicaid or the government be able to put a lien on the ranch since we are still within the five-year threshold since the transfer?

Response:

You are correct that anyone in a nursing home applying for Medicaid must report any transfers of assets made during the prior five years. This is not a lien. Instead, in most cases, such transfers cause a period of ineligibility for benefits. The length of that penalty period is based on the value of the transferred asset. In your case, this would be the

difference between the mortgage and the fair market value of the property.

However, there are a few possible solutions for you. First, there is only supposed to be a penalty if the transfer was made for Medicaid-planning purposes. It sounds like in your case it was made so that you could take over managing the ranch. You may be able to convince the Medicaid agency not to impose a penalty.

Second, while it sounds like you did not give your parents a legal right to stay in the ranch house, that there was an understanding that they would have this right. You might argue that this reduced the value of the ranch to you, perhaps to as low as the mortgage, eliminating any penalty.

Third, there's a so-called "caretaker child" exception which provides that there is no transfer penalty if the person receiving the property is a child of the applicant, lived in the house for at least two years before the transfer, and provided care that delayed the parent's move to the nursing home by two years. I presume that the mobile home is on the ranch. If so, you may be able to argue that you were living with your parents and providing this care.

Fourth, if none of these works, perhaps you could take out a mortgage or line of credit on the ranch to raise enough money to pay for your father's care in the nursing home for a year and a half. If you then wait until five years have passed since the transfer to apply for Medicaid, you won't have to report it on the application.

As you can see, this can be complicated and a lot depends on local practice, how your state agency typically applies the Medicaid rules. I recommend that you consult with a local elder law attorney. You can find one at www.ElderLawAnswers.com.

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Harry S. Margolis practices elder law, estate and special needs planning at [Margolis Bloom & D'Agostino](#) in Wellesley, Massachusetts, and is the founder of ElderLawAnswers.com and co-founder of the Academy of Special Needs Planners as well as a fellow of FreeWill.com. He is author of "[The Baby Boomers Guide to Trusts: Your All-Purpose Estate Planning Tool](#)" and answers consumer questions about estate planning issues at www.AskHarry.info. Please post your estate planning questions there.
