

Medicaid & Married Couples: Protecting Your Home in a Second Marriage

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Understand the complexities of Medicaid eligibility for married couples. Explore the Community Spouse Resource Allowance and spousal refusal options.

By Harry S. Margolis

Question:

A husband and wife have been married for at least 10 years (second marriage for both) and their home is in the wife's name. The husband is having serious health issues and may require long-term care at some point. Does the wife have to worry about protecting her home from Medicaid? Does she have to do anything at all to protect her home?

Response:

No. But she may want to take steps to protect her other assets. If one spouse moves to a nursing home and spends down their savings, Medicaid will then pick up their cost of care. But Medicaid also looks at the assets of the other spouse, which also must be spent down to about \$150,000, the so-called Community Spouse Resource Allowance, or CSRA.

Fortunately, the home is not counted against this limit. And if the home is in the healthy, or in Medicaid parlance "community," spouse's name, it will not be subject to Medicaid estate recovery upon the nursing home resident's death. This is assuming the nursing home spouse dies before the community spouse.

Of course, there's the small risk that the community spouse dies first. In that case, if the house passes to the nursing home spouse it will be subject to claim for reimbursement by Medicaid upon their death. To prevent this from happening, the community spouse should make sure their estate plan either disinherits the nursing home spouse or leaves their inheritance in a testamentary trust for their benefit.

Getting back to the non-house assets. If those assets exceed \$150,000, there are generally two strategies for protecting them. The first, and the one that is more widely used, is for the community spouse to convert excess assets into income through the purchase of an immediate annuity. This works because there is no limit on the community spouse's income nor any obligation that they pay any of it towards the care of the nursing home spouse. Further, while the community spouse's countable assets must be below \$150,000 when Medicaid coverage begins for the nursing home spouse, there's no restriction on their assets after Medicaid eligibility is approved. So they are free to begin accumulating the annuity payments to build their savings back up.

The other approach which often works in second (and in this case third) marriages is known as "spousal refusal" or "just say no." There's an exception to the \$150,000 spend-down for the community spouse if they refuse to cooperate with the Medicaid application process and supply no information about their assets. While the law says nothing about whether the marriage is longstanding or short-term, this exception is generally used only in second marriages when the spouses have kept their finances separate and in first marriages where the spouses are in fact estranged.

For an answer specific to your state's Medicaid program. I recommend that you consult with a local elder law attorney. One place to find one is 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. 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.
