

Elder Law Advisor



Winter 2017

My mother has been in a nursing home and on Medicaid for over two years. All of her income goes to pay for her care, but she still owns a modest, unoccupied home. I currently maintain the home and pay all bills. Should I sell the home now or should I wait to sell until after her death? If I sell the home now, I will effectively turn all of the proceeds from the sale over for her care, and if I wait until after her death, Wisconsin's Estate Recovery Program will take the proceeds from the sale anyway.

Making the decision of when to sell the home is never easy. If you sell the home now, and there is already a lien against the home, you will have to satisfy the lien from the proceeds of the sale. Any remaining proceeds from the sale belong to your mother and will cause her to lose her Medicaid, which requires that you privately pay for her care until she is again eligible for Medicaid. One option to avoid losing Medicaid benefits is to place the proceeds from the sale of the home in an exempt trust (e.g., WisPACT sub-account) that would be for your mother's benefit. This trust is, however, subject to estate recovery upon your mother's death.

If you wait until after your mother's death to sell the house, it will be subject to a lien. However, the lien may not consume all of the proceeds from the sale, as the State pays a rate that is less than the private pay rate for nursing home care. For example, if the private pay rate is \$10,000 per month, the State may only pay \$7,500 per month. You would then save \$2,500 each month you keep the home, rather than privately pay a lien payable to the state.

If a lien has not yet been filed, you may be able to sell the home before the lien is filed and avoid estate recovery. The proceeds from the sale will still impact your mother's Medicaid. Ultimately, you must weigh the costs associated with keeping the home versus the potential for the proceeds from the sale being used to pay for your mother's care. ♦

My mother gave me hunting land worth about \$750,000. She has been having some health problems and may need nursing home care in the next couple of years. I am aware of the five-year lookback period for Medicaid, and the land gift will cause issues with receiving Medicaid. Is it possible for me to give my mother money to pay for the nursing home, if needed, until we are past the five-year lookback period and can apply for Medicaid?

You are able to give your mother money to pay for nursing home care until the five-year lookback period has passed. Once the lookback period has passed, your mother can apply for Medicaid, and the land gift will no longer be considered. ♦

I was involved in a car crash and am settling the matter. I am unsure of what effect the settlement will have on my Medicaid. How can I deal with this situation and keep my benefits?

In addition to spending the money on exempt assets (e.g., funeral insurance or a new vehicle), you can protect the settlement proceeds by using certain trusts. One type of trust you can use is called a "self-settled special needs trust." This trust is also called a (d)(4)(A) trust. This trust can only be used for your benefit and requires that the trust have a "pay-back provision," which pays the State for the Medicaid services you received before making distributions to your beneficiaries. Additions to a self-settled special needs trust are only allowed while you are younger than 65. The other type of trust that can be used is a pooled or community trust, also called a (d)(4)(C) trust. Additions to this type of trust are allowed at any age. This trust is set up through an account with a non-profit organization that runs the pooled trust (e.g., WisPACT). Your account is an exempt asset for Medicaid purposes and may only be used for your benefit. The State is the primary beneficiary on the account and will be reimbursed for Medicaid services provided. Any remaining funds will be distributed to your designated beneficiaries. ♦

Save the Date: 2017 Elder Law Seminars

Protect Your Assets
Medical Assistance & Long-Term Care Planning

Presentations by Attorney Mark Munson, CELA
and Attorney Aric Burch

March 7, 2017 @ Holiday Inn & Suites, Rothschild, WI

March 9, 2017 @ Holiday Inn 94 South,
Eau Claire, WI

Visit www.ruderware.com for details.

Elder Law Services offered by Ruder Ware include:

- Nursing home and long-term care planning
- Asset protection
- Gifting and divestment planning
- Medicare and Medicaid benefits
- Social Security benefits
- Insurance analysis (including long-term care insurance)
- Residential housing and other living options
- Planning for individuals with special needs
- Tax planning
- Durable powers of attorney for property and finances
- Health care powers of attorney
- Wills
- Trusts
- Marital property agreements
- Real estate
- Guardianship
- Conservatorship
- Veterans' benefits

Attorney Aric Burch



Planning for how you or a loved one will pay for nursing home care can be a daunting task. As an elder law attorney, Aric works with seniors and their loved ones to prepare for possible long-term care needs. His goal is to alleviate stress by helping clients develop a plan to provide for their long-term care needs, while preserving their assets to supplement their quality of life and pass to future generations. His motivation is to find solutions for clients who are preparing for future life transition and care needs or are in need of immediate qualification for medical assistance benefits.

Attorney Mark Munson, CELA



Licensed to practice law in Wisconsin, Illinois and South Dakota, Mark principally advises clients in the areas of elder law, public benefits (including special needs trusts), estate and trust planning, and taxation. Mark regularly advises clients in the areas of asset protection and medical assistance eligibility. Mark also assists clients with probate and estate administration, trust administration and guardianship.

Mark is a Certified Elder Law Attorney (CELA) by the National Elder Law Foundation, the only organization accredited by the American Bar Association for the certification of elder law attorneys in the United States. In order to become a CELA, Mark was required to have sufficient experience in various practice areas with the field of elder law, pass an all-day comprehensive examination that tests various issues and disciplines within elder law, and receive the recommendation of other elder law attorneys in Wisconsin and the United States.

Elder Law Team

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