

Elder Law Advisor

Winter 2020

My father is currently in a nursing home and receiving Medicaid. His home is owned by him and his three children. Can we sell or rent the home while he is in the nursing home? What happens with the rent money?

Yes, you are able to rent or sell your father's home. Because your father is a co-owner of the home he will be required to receive his proportional share of either the net rental income or the proceeds of the sale. His share of the income will be included in his income calculations for Medicaid purposes and will have to be paid to the nursing home along with his other income. If you were to sell the house, your father's share of the proceeds would then be a countable asset and will likely make him ineligible for Medicaid until the funds were dealt with (e.g., fund a special needs trust, purchase funeral insurance, spend down, etc.).



My mom and dad have both passed. In 2007, they recorded a life estate deed on their house, listing my siblings and me as the remainderman. The life estate was done through a lawyer as part of Medicaid planning. My dad was the last to die in 2018. We are worried about the possibility of a claim by the state for Medicaid services my dad received. I've found on the internet that the state might be able to recover the costs Medicaid paid for my dad's care with the proceeds from the sale of the life estate. Can the state do this?

As with most issues related to Medicaid, you need to be careful when seeking information online. States often differ in how they carry out their Medicaid programs. In the area of estate recovery (i.e., seeking reimbursement for Medicaid the Medicaid recipient's estate) some states only seek recovery against probate property and other states have so-called "expanded" recovery, which seeks recovery against non-probate property.

Wisconsin has an expanded estate recovery program that began on August 1, 2014. This expanded estate recovery program allows the state to seek recovery against life estates. However, only life estates created after August 1, 2014 are eligible for recovery. In your situation, the life estate was created in 2007, so recovery is not allowed against that life estate.



SECURE Act

The newly signed SECURE Act ("Setting Every Community Up for Retirement Enhancement Act") made changes to the law surrounding retirement plans in several ways. The following highlights three of those changes:

- **Stretch IRAs.** The biggest change eliminates "stretch" IRAs. Under the previous law, if you named anyone other than a spouse as the beneficiary of your IRA, the beneficiary could choose to take distributions over his or her lifetime and pass what is left on to future generations (called the "stretch" option). The required minimum distributions were calculated based on the beneficiary's life expectancy. This allowed the money to grow tax-deferred over the course of the beneficiary's life and to be passed on to his or her own beneficiaries. The SECURE Act requires non-spouse beneficiaries of an IRA to withdraw all of the money in the IRA within 10 years of the IRA holder's death. In many cases, these withdrawals would take place during the beneficiary's highest tax years, meaning the elimination of the stretch IRA is effectively a tax increase on many Americans. This provision will apply to those who inherit IRAs starting on January 1, 2020.
- **Required minimum distributions.** Under prior law, you were required to begin taking distributions from your IRAs beginning when you reached age 70 ½. Under the new law, individuals who are not 70 ½ at the end of 2019 can now wait until age 72 to begin taking distributions.
- **Contributions.** The new law allows workers to continue to contribute to an IRA after age 70 ½, which is the same as rules for 401(k)s and Roth IRAs.

Given these changes, now is a good time to reevaluate your estate plan, especially if you used stretch IRAs as an estate planning tool to pass assets to your children or grandchildren. If a stretch IRA is part of your estate plan, consult with your attorney to determine if you need to make changes.



Save the Date: 2020 Elder Law Seminars

April 16, 2020 @ Holiday Inn 94 South, Eau Claire, WI

May 12, 2020 @ Holiday Inn & Suites, Rothschild, WI

June 2, 2020 @ Holiday Inn, Marshfield, WI

Visit www.ruderware.com/seminars for details.

2020 Updates

Medicaid Figures for 2020

- The new maximum community spouse resource allowance (CSRA) = \$128,640.
- The maximum monthly maintenance needs allowance = \$2,818.34.
- To calculate divestment penalties, the daily average nursing home private pay rate is \$287.29 per day (\$8,738.40 per month).

Medicare Premiums, Deductibles and Copayments for 2020

- Standard Part B premium = \$144.60/month
- Part B deductible = \$198
- Part A deductible = \$1,408 (up from \$1,364)
- Co-payment for hospital stay days 61-90 = \$352/day (up from \$341)
- Co-payment for hospital stay days 91 and beyond = \$704/day (up from \$682)
- Skilled nursing facility co-payment, days 21-100 = \$176/day (up from \$170.50)

About the Authors

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 Jessica Merkel



At Ruder Ware, Jessica provides counsel on the use of irrevocable trusts for asset protection, medical assistance eligibility, and special needs trusts. Jessica engages families by listening, empathizing, and supporting their choices to achieve their goals. In addition, she counsels clients on estate and trust planning, taxation, powers of attorney, probate, and trust administration.

Attorney Mark Munson, CELA



Mark's skillset and experience allows families to focus on caring for one another while he tirelessly works on getting them the legal results, outcomes, and benefits they're entitled to receive. He focuses his practice 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 as well as probate and estate administration, trust administration, and guardianship.

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
- 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

Elder Law Team

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