

Protecting Your Second Residence from Long-Term Care Costs

By Lisa M. Neeley, Esq.

You have put in long hours at the office for the better part of three or four decades, and are now approaching your retirement years. Throughout your working life, you and your spouse have been diligent in paying your bills, financially supporting your children through college, and still managing to save enough money to support yourselves during your golden years. Now that the kids are gone and the 401(k) plan has been funded, you are finally able to buy that vacation home that you have been dreaming of since you started working in your twenties. However, before you sign that purchase and sale agreement and pull the beach cabana out of storage, you should know how to protect your prized asset from your unanticipated long-term care costs.

Medicaid, also known as MassHealth in our state, is a public benefit program that will pay completely for your care in a nursing home if you financially qualify for the program. Fortunately, the government has recognized that a spouse remaining in the community should not become impoverished to pay for the care of their ailing husband or wife. Therefore, the MassHealth regulations permit a community spouse to retain the primary residence in his or her sole name while qualifying the ill spouse for MassHealth benefits. Additionally, the community spouse is allotted \$113,640 in savings, while the ill spouse can retain \$2,000 in his or her individual name. Further planning that is not the subject of this article can be accomplished to assist the community spouse in protecting the spousal assets in excess of \$115,640.

Unfortunately, a second residence is not given the same protective treatment under the MassHealth regulations. The regulations provide that a second residence is a fully countable asset which will render an ill spouse ineligible for MassHealth benefits to pay for his or her care in a nursing home. If the community spouse agrees to sell the second residence, then MassHealth will typically approve the ill spouse's application for long-term care benefits pending the sale of the residence. MassHealth provides the community spouse with a nine month period to sell the residence. The community spouse is obligated, per the MassHealth regulations, to make a reasonable effort to sell the property during this nine month span. A spouse's rejection of an offer that is within two-thirds of the property's listing price could result in termination of the ill spouse's MassHealth benefits.

Once the second residence is sold, the ill spouse will again be disqualified for MassHealth benefits if the spousal assets exceed \$115,640 as a result of the sale. The community spouse will need to engage in a further spend down of the sales proceeds or more complicated MassHealth resource planning before the ill spouse can become re-eligible for long-term care benefits.

If your retirement dreams did not include the forced sale of your prized and long-awaited second residence, then one sound planning strategy involves the transfer of title of the residence into an irrevocable trust. Following the transfer of the second residence into the irrevocable trust, the grantors of the trust cannot apply for MassHealth benefits for a period of five years. After the five year MassHealth disqualification period has expired, the second residence will be protected from the grantors' long-term care costs.

The trust must meet several requirements in order to gain its protective status. Most significantly, it must be irrevocable and cannot make principal available to the grantors at any time. However, the grantors retain the ability to use the second residence for the duration of their lives. For many clients, the restrictive aspects of the trust are often outweighed by the enormous benefit gained from protecting the second residence for the enjoyment of their family for years to come.

Last minute planning strategies also exist for those clients who have never taken steps to establish an irrevocable trust and are now facing a catastrophic health crisis. In some situations, clients may be able to preserve their second residence by demonstrating to MassHealth that the residence generates rental income that is necessary for the community spouse's self support. This exception to the MassHealth regulations is most typically successful when a client can prove to MassHealth that the second residence has been rented and generated income for a period of years. Because every client's situation is highly fact specific, it is best to seek the advice of qualified counsel in the event of a spouse's unanticipated institutionalization.

The MassHealth regulations can seem daunting. However, with careful planning it is possible to preserve your second residence from your long-term care costs.

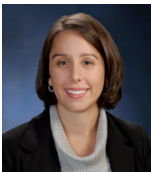
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