

Spouse Going Into Nursing Home? Why Estate Plans of BOTH Spouses Need Review

People are heartsick when they recognize that they can no longer care for an incapacitated spouse at home. Worrying about how to pay the nursing home bills compounds the anxiety.

Clients who consult us about obtaining nursing home Medicaid benefits for a spouse are usually laser-focused on the plans and documents that need to be made for the ill spouse. But that's only half the story. In order to protect both spouses, each one's legal documents must be carefully examined.

The well spouse's will; trust if there is one; durable power of attorney; health care surrogate; and all other planning documents need careful review. Our experience is that in the vast majority of cases the incapacitated spouse is still named as personal representative, successor trustee or co-trustee, agent for handling financial affairs and health care.

New documents must be created without delay and new fiduciaries named to reflect the family's new realities.

Also, it's a common assumption that the spouse entering the nursing home will predecease the well spouse. That's not always the case. The nursing home resident could live a long time, depending on age and the nature of incapacity. Moreover, the so-called "well" spouse, after months or years of stress and caregiving, may be physically compromised. If he/she passes on first and the spouse in the nursing home inherits money that puts him/her over the \$2000 Medicaid asset cap, Medicaid benefits will



Joseph S. Karp, C.E.L.A.

terminate. Therefore, planning needs to include the possibility that the incapacitated spouse outlives the other.

To address this issue, we often recommend a will for the well spouse that establishes a special needs trust at death, with the nursing home resident as beneficiary. Any monies in the estate will flow into the trust to be used to benefit the incapacitated spouse, paying only for those services and items not covered by Medicaid. Because those monies are not "countable" by Florida Medicaid, Medicaid benefits will not be jeopardized. For this same reason, we also check to make sure the incapacitated spouse is

no longer listed as a death beneficiary or co-owner on any assets.

All this underscores the importance of consulting an experienced elder law attorney when seeking Medicaid benefits. Coping with the reality that your spouse needs nursing care is challenging enough. You should be 100% confident that you are getting sound legal advice!

Joseph S. Karp is a nationally certified and Florida Bar-certified elder law attorney (C.E.L.A.) specializing in the practice of Trusts, Estates and Elder Law.

His offices are located at 2500 Quantum Lakes Drive, Boynton Beach (561) 752-4550; 2875 PGA Blvd., Palm Beach Gardens (561) 625-1100; and 1100 SW St. Lucie W. Blvd., Port St. Lucie (772) 343-8411.

Toll-free from anywhere: 800-893-9911. E-mail: KLF@Karplaw.com or website www.karplaw.com.

Read The Florida Elder Law and Estate Planning Blog at www.karplaw.blogspot.com.

Listen to **Joe Karp** and **Anita Finley** on Saturday, March 9 from 7:30-8:00 AM on WSBR 740AM and WWNN 1470AM and on our YouTube Channel: *BoomerTimes Presents*.