Legal Matters®

Elder Law
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Is a reverse mortgage right for you?

A "reverse mortgage" is a type of loan in which a lender pays you a certain amount of money from the equity you have generated in your home as you've paid it off. Fees and interest accrue on the loan each month, but you don't have to pay the balance until you either move, sell your home or pass away. At that point, the loan is repaid from your estate or from the proceeds when you sell the home.

If you are at least 62 years old, you live in your home and it's paid off or close to it, this may be a good vehicle to have more cash at your disposal, perhaps to fill the gap between your retirement income and expenses, to make your home more senior-friendly, to cover medical bills or even to help your grandchildren pay for college.

But before deciding to get a reverse mortgage, you should sit down with an elder law attorney who can go over the pros and cons. That's because a reverse mortgage isn't right for everybody. In the meantime, here is a rundown of some benefits and drawbacks.

On the plus side, a reverse mortgage can help supplement your income in retirement, giving you a lot more flexibility in terms of living the lifestyle you'd like to live. And you're not constantly worrying about meeting loan payments, since no payments are due until you move, die or sell your home. If you have substantial equity in your home, you plan to stay in that home for a while and you're straining to cover expenses, a reverse mortgage could be useful.

On the negative side, however, when you take out a reverse mortgage you are reducing equity in your home. That is an important consideration when thinking about the type of inheritance you hope to leave your loved ones.

In addition, you need to keep treating your house as your primary residence. If you don't, your loan will become due. If you were thinking about renting out your house or even a portion of your house for short periods of time through an app like Airbnb, that might be considered a commercial use of your home, violating the terms of your loan.

Meanwhile, if you wish to be a "snowbird" and move to warmer climes for part of the year, be sure you are living in the home with the reverse mortgage at least 50 percent of the time or the lender may claim it is no longer your residence and the loan will come due.

continued on page 3

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Holding nursing homes accountable in court: steps to take

If your loved one has been a victim of nursing home abuse and neglect, you may be able to hold the home accountable in court. If you find yourselves in that situation, here are some things to look for and what to expect.

First, abuse can be physical, emotional or even financial. If you notice that your elder has unexplained cuts or bruises, they've lost a lot of weight in a short period of time, they are exhibiting poor hygiene, they seem emotionally withdrawn or unusually short-tempered, they are missing certain belongings or you have seen suspicious financial transactions, these could be signs of abuse.

In such instances, your initial step would be to report the situation to the nursing home administrator and potentially to the state adult protective services agency and, if it seems like criminal abuse, to the police.

You would also need to document your evidence through photographs of injuries or dangerous conditions, medical records and detailed notes from conversations with witnesses and nursing home personnel. Documentation should be very specific, with dates, times and names of those involved.

But most importantly, you should consult with an elder law attorney who can work with you through these steps to ensure you're documenting everything effectively and who can help you evaluate potential legal action. If you were to file a lawsuit, your attorney would prepare and file the complaint and serve it on the nursing home, demand documents and information from the home that would be relevant to proving your case, help you produce information that the other side's lawyers request and take depositions (out-of-court statements under oath) from relevant witnesses.

In certain instances, the nursing home could settle, meaning they agree to pay a fair amount in compensation to resolve the case. If that doesn't happen, the case could proceed to trial where, if you have a strong case, a court might order the nursing home to compensate your loved one for their medical expenses, pain and suffering and emotional distress.

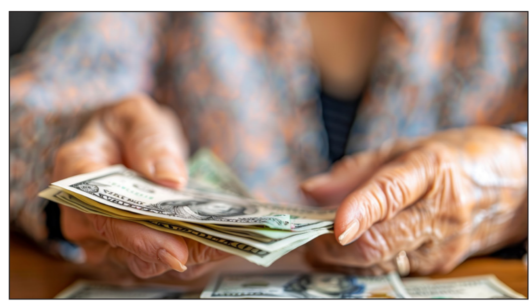
If you believe a loved one has suffered abuse or neglect in a nursing home, it's critical to contact an attorney as soon as possible, because every state imposes deadline for filing a case, and those vary from state to state.

Moving in with adult children? Important tips to preserve Medicaid eligibility

Many Americans who can no longer live safely on their own move in with an adult child. If you or your parents are in this situation, it's important to be aware of issues that can compromise your parents' Medicaid eligibility should they eventually need hands-on in-home care or long-term residential care.

The key thing to be aware of is Medicaid's "look back" period, which scrutinizes transactions from the five years leading up to an individual's application for benefits. If gifts were made during that time, benefits could be denied. This happens a lot when an elder parent living with an adult child is moving cash back and forth. For example, if a parent makes frequent cash withdrawals and shares the cash with their child, even if it's just to contribute to their own expenses, it may be deemed a "gift" in Medicaid's eyes.

To minimize the possibility of this happening, it's important to maintain an ongoing record of all the parent's financial transactions. If a parent is paying the child for room and board, it's a good idea to create a signed, dated written agreement with a specific, reasonable monthly amount. This serves as useful



evidence should Medicaid claim the parent is making gifts. An elder law attorney can help with this.

A parent should not "reimburse" a child by cash or check for money they spent on the parent. Medicaid will assume such reimbursement is a gift and it can be difficult to prove otherwise.

Additionally, even if a parent benefits from a child's home renovation, they should not pay for it without discussing with an elder law attorney how it might impact Medicaid eligibility.

These are just some very basic issues to consider. The landscape can be very complicated, so if you are considering having an older parent move in with adult children, you should talk through all the issues with an elder law attorney first.

How domicile can impact retirees' estate and tax planning

A lot of people planning for retirement look forward to spending a good chunk of the year in another state, either to be closer to grandchildren or to enjoy a different climate. If that's your situation, it's important to consider how the concept of "domicile" may impact your estate and tax planning.

Your "domicile" is your permanent, primary residence where you intend to stay. If you maintain homes in more than one state, even if you spend roughly equal time in each place, it's not always clear which state is your domicile. However, the laws of the state where you establish your domicile may determine whether your estate documents get executed as you envisioned and may also dictate how your estate is taxed.

For example, let's say someone passes away "intestate," meaning they did not leave a will. Their state's "intestacy" laws determine how the estate assets are distributed. However, different state laws allocate assets in different ways. If you haven't established domicile in the more advantageous state, your assets could get distributed in a manner you would have objected to. The best way to ensure this doesn't happen is to have a properly executed will, but even if you have a will your domicile still has a significant impact on the probate process. That's because certain provisions in your will may be handled differently by courts in different states. For example, most states have what is called the "elective share." This refers to a minimum share of an estate that is guaranteed to a surviving spouse. If your will seeks to disinherit your spouse or give them less than your state's elective share, even for a valid reason, they can opt for that amount instead. Some states provide the spouse with a bigger

elective share than others, which could obviously impact other heirs and beneficiaries.

Taxes are another consideration. In addition to the federal estate tax, many states impose estate taxes of their own, which vary in amount. Some, like Florida, impose no estate tax at all. Similarly, states have different income and property tax laws. If you have residences in multiple states, you would want to make sure you are officially domiciled in the state with the most tax advantages.

However, establishing domicile in a particular state can be a complicated process. It's probably not enough just to change your voter registration or driver's license. You may also need to be able to prove your permanent residency by documenting, among other things, how much time you've spent in the state and your ownership of property. The best way to ensure you establish the most advantageous state as your domicile is to meet with an elder lawyer who has estate planning expertise and familiarity with the laws of all states at issue.

How to decide if a reverse mortgage is right for you

continued from page 1

Finally, if you have an adult child or children living with you and you pass away, either the loan needs to be paid off at that point or your children may need to take out their own loan to pay off the balance on your reverse mortgage. If an adult child was living with you because they couldn't afford housing on their own, this could put them in a difficult situation.

These, of course, are complicated issues, so talk to an elder law attorney about whether a reverse mortgage is right for you or what other vehicles you might consider instead.

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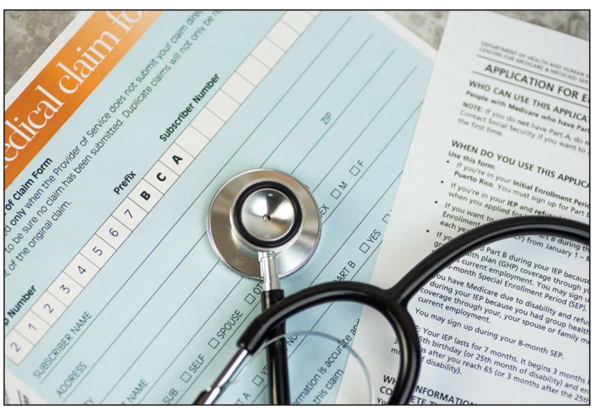
Recent Medicare changes may strengthen your benefits



If you are one of the millions of Americans who receive their health care through Medicare, you should be aware of recent changes that may strengthen your benefits.

First, Medicare expanded its mental health coverage this past year. More than 400,000 more mental health providers, including marriage and family therapists and mental health counselors who accept Medicare were added to the network, making it easier to find such care where you live. Along similar lines, Medicare is now offering expanded help for drug and alcohol abuse, given that more and more elders are suffering from addiction. Covered treatments will now include therapy, prescription drugs and screenings for substance abuse disorders.

Additionally, Medicare's "Extra Help Program," which helps lower income seniors pay their Medicare Part D premiums, has dropped out-of-pocket costs for prescription medications by an average of $300 per year. Enrollees in this program also do not have to pay a premium or deductible.

Meanwhile, as part of the Inflation Reduction Act, insulin price cuts took effect at the start of 2024, which means that Medicare Part D plans can no longer charge enrollees more than $35 per month for insulin included in their plan. Additionally, there are no longer Part D deductibles for insulin supplies.

Finally, Medicare recipients who suffer from chronic pain can now have their medication management and pain assessment covered by their plan, though they still need to pay applicable deductibles and coinsurance under Medicare Part B, which covers doctor visits and preventative care.

Interested in learning more about expanded benefits you may qualify for? Call an elder law attorney today.