



## Look Before You Leap Part Two: Long-Term Care Planning Strategies for Your Home

by Gwynne Wiatrowski Guzneau

Summer on the Cape and the living is easy... unless your family's home on the Cape is subject to a Medicaid lien because your parent is in a nursing home and the state is paying for the costs of his or her care.

On the Cape, long-term care planning strategies are especially important given the desire of many people to pass on their Cape home to the next generation.

Last month, I introduced some of the basic rules to qualify for Masshealth (the Massachusetts Medicaid program) eligibility for long-term care nursing home costs. The column focused on how a life estate deed can protect your home from the collection on the lien MassHealth places on real estate assets. This strategy continues to work in Massachusetts because our rules regarding Medicaid lien estate recovery limit MassHealth to recovering from only the probate estate.

If the rules are changed to allow MassHealth to recover from the probate estate as well as other assets in a person's control during their lifetime, then the life estate deed will not work to protect the value of the Cape home from the collection of a MassHealth lien.

So what can you do to be certain that your Cape (or Massachusetts) home will not be subject to a MassHealth lien? Give away your home to the trustees of an irrevocable trust.

### WHAT IS A TRUST?

A trust is a relationship between you, as the grantor or the person who owns an asset, and a trustee, the person who will receive legal title to your asset. The trust document is a contract that outlines the terms of this relationship. In a trust, the grantor sets forth specific directions regarding how the trustee will control and distribute the assets that the grantor has transferred into the trust.

### IRREVOCABLE TRUST

This type of estate planning strategy is designed to allow you, as the grantor, to irrevocably transfer real property or other assets into a trust that can direct the trustees, whom you name, to pay out income to you while living and then the trust assets are distributed to the beneficiaries upon your death or the assets remain in trust for the beneficiaries. An irrevocable trust is just that – it's an irrevocable gift that you cannot change, amend or "take back" and you do not have any access to the principal.

*Pros:* Under current law, after transferring assets to an irrevocable trust, if five years pass before you need to apply for Medicaid, then you will not be penalized for the transfer of the assets into trust. In addition, Medicaid would not be able to put a lien on any real property in the trust because you do not own it. The trust owns it. Therefore, the irrevocable trust strategy protects the house from ever being subject to a MassHealth lien.

*Cons:* Using an irrevocable trust planning strategy requires you to relinquish complete control of your real estate – a step that should be undertaken only after careful consideration of all options and consequences.

Estate lawyer Gwynne Waitrowski Guzneau brings some legal ease to the ever-changing laws that are now going into effect.

Elder law practitioners take different approaches when it comes to drafting the document and including provisions to pay-out income to you, the grantor, during your lifetime.

In many states, courts have determined that the grantor's right to income from an irrevocable trust is sufficient access or control of the trust property to deem the trust property available to the grantor; therefore, many elder law practitioners do not advise including a right to income in an irrevocable trust for Medicaid planning purposes.

However, in Massachusetts some practitioners include a right to income in their irrevocable trust documents. As you can see, this lack of consistency is a down-side to the irrevocable trust approach, especially if you are uncomfortable giving away control of the assets, as well as any right to income. Be certain to ask your elder law attorney the status of the law in Massachusetts at the time you consider drafting an irrevocable trust to determine if a right to income makes sense.

Furthermore, if you need nursing home care sometime during the five years after you transfer your home into the irrevocable trust, then you will incur one month of MassHealth ineligibility for every \$8,600 in value that you transferred into the trust. (See the [Spring 2012 article](#) for a review of the basic MassHealth eligibility rules.)

Many people who choose an irrevocable trust strategy also purchase long-term care insurance to cover the cost of nursing home care in the event the need arises within the 5-year period. After the five-year period, these same clients often "drop" their long-term care insurance coverage. Of course, the expense and process of qualifying for long-term care insurance are prohibitive for many clients.

Finally, the cost of an irrevocable trust plan typically starts around \$2,500-\$3,000, excluding the recording costs for the deed and trustee certificate.

#### **SUMMARY**

By creating an irrevocable trust, you are protecting your house from the placement of a MassHealth lien. Compared to a life estate deed, which exposes the house to a MassHealth lien yet protects against the collection of the lien (so long as the Massachusetts estate recovery rules are not expanded), the irrevocable trust offers greater protection of the real estate asset. Yet, relinquishing ownership of your primary residence is a serious undertaking.

Admittedly, this is heavy reading for summertime, yet many families seek consultations with elder law attorneys because protecting the value of their family's home on the Cape is about more than money -- it's about legacy.

The information in this column is offered as general information and it is not intended as legal advice. For complex planning matters related to long-term care and nursing home costs an experienced elder law attorney should be consulted.

You can find elder law attorneys in your area at [www.naela.org](http://www.naela.org) (National Academy of Elder Law Attorneys).



Below, I've identified a few other resources; however, always be sure that you are consulting an up-to-date book or website resource given the changing nature of estate planning and elder law.

[www.web.mit.edu/workplacecenter/hndbk](http://www.web.mit.edu/workplacecenter/hndbk)

The MIT Workplace Center offers this free comprehensive on-line handbook to guide you through the maze of elder care resources in Massachusetts.

<http://www.massresources.org/senior.html>

General information about various services for seniors in Massachusetts.

<http://www.nolo.com>

The book Long Term Care: How to Plan and Pay For It, by J. Matthews, is a comprehensive, user-friendly guidebook that includes information about protecting your assets. This book is available in the local CLAMS library system. CLAMS has over 200 NOLO titles, many of them about estate planning matters.





Gwynne Wiatrowski Guzneau is a lawyer and entrepreneur. She lives with her family in Orleans.

If you have questions for Gwynne please email the Editor at CapeWomenOnline.

You can also visit Gwynne's website at [www.gwglaw.com](http://www.gwglaw.com)