

Ask the Expert:

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My mom is 93 and in failing health. She has fallen twice in the past, and recuperated after 100 days in a nursing home. I've lived in her house with her since 1995. Recently, I've had to enlist a live-in attendant to care for her. What are the rules governing house ownership if she has to go into a nursing home? I have her health-care proxy.

Your mother can take legal steps that will preserve your right to inherit the house without jeopardizing her Medicaid eligibility.

Owning her house won't disqualify her for Medicaid assistance, says Vincent Russo, a Westbury elder-law attorney. But as things stand, Medicaid can claim the house after her death to recoup what it paid for her nursing-home care. (Medicaid can't claim a house that's occupied by a surviving spouse or a minor or disabled child, but an adult child in your situation has no such protection.) But your mother could transfer the house to you now without delaying her Medicaid eligibility. The reason: A transfer to a "caretaker child" who has lived in her house for at least two years is penalty-free.

The transfer must be done by your mother, or, if she is incapacitated, by someone who is authorized to act on her behalf. A health-care proxy permits you to make medical decisions for her. To transfer the house, you would need a durable power of attorney that specifically lets you make gifts to yourself, says Russo. The alternative is to undertake a guardianship proceeding in which you ask for court authority to transfer the house into your name.

The bottom line Medicaid's rules are complex and easily misunderstood. Don't transfer assets before applying for Medicaid assistance without first consulting an attorney who specializes in elder law.