FLORIDA HOMESTEAD PROTECTION CHECKLIST

Understanding Your Home's Lifetime Shield vs. After-Death Vulnerabilities

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THE SINGLE MOST IMPORTANT MISUNDERSTANDING IN FLORIDA ESTATE PLANNING

Florida's Constitutional Homestead protection (Article X, Section 4) is among the strongest asset protection laws in the United States. However, thousands of families fall into a devastating trap every year because they assume Homestead protection is permanent.

The Golden Rule: Homestead protects your primary residence while you are living in it. It does NOT automatically make the house bulletproof against Medicaid Estate Recovery (MERP) after you pass away if the home goes through probate court.

PART 1: LIFETIME HOMESTEAD & MEDICAID ELIGIBILITY

During your life, your primary residence is generally considered an EXEMPT asset for Florida Long-Term Care (LTC) Medicaid eligibility. Check the criteria below that apply:

- ☐ **Primary Residence:** The property is owned by you and serves as your primary domicile in the State of Florida.
- ☐ **Intent to Return:** If you must enter an assisted living facility or skilled nursing facility, you sign a formal statement expressing an "Intent to Return" to your home.
  This maintains your home's exempt status regardless of how long you reside in care.
- ☐ **Qualifying Relatives Residing in the Home:** A community spouse, minor child, or certified blind/disabled child currently resides in the primary residence.
- ☐ **Equity Limit Compliance:** Your home's total equity value falls within Florida's current Medicaid home equity allowance.
  This limit does not apply if your spouse, or a minor, blind, or disabled child, lives in the home.

PART 2: AFTER-DEATH VULNERABILITY (THE PROBATE TRAP)

When a Medicaid recipient passes away, the state's Medicaid Estate Recovery Program (MERP) can file a claim against the estate to recover the cost of care paid during life—often totaling $100,000+. Evaluate your home's post-death status:

YOUR ESTATE SETUP	PROTECTION STATUS	MERP RISK LEVEL
Sole Ownership + Standard Will (or No Will)	**VULNERABLE**	**HIGH:** Must go through Probate Court. The state can file a claim against the estate to force a sale or recovery.
Joint Ownership with Children (Tenants in Common)	**VULNERABLE**	**HIGH:** Your share passes through probate court. Also exposes the property to your child's creditors, divorces, or lawsuits during your life.
Standard Revocable Living Trust	**UNCERTAIN**	**MODERATE:** Avoids probate, but requires specialized language to preserve Homestead tax exemptions and ensure MERP protection.
Enhanced Life Estate Deed (Lady Bird Deed)	**PROTECTED**	**LOW:** Under current Florida law, transfers the home outside probate, placing it beyond the reach of estate recovery as the program is presently administered.
Irrevocable Medicaid Asset Protection Trust (MAPT)	**PROTECTED**	**LOW:** Removes the property from probate and shields it, but only if established at least 60 months before applying for Medicaid; transfers within that window create a penalty period.

PART 3: 3 ESSENTIAL STEPS TO EXTEND PROTECTION PAST DEATH

1. Avoid Gifting the Home Outright to Children

Transferring a home directly to children without proper planning triggers a severe penalty period under Medicaid's 5-Year (60-Month) Lookback Rule. Exceptions exist: Transfers to a spouse or a qualifying Caregiver Child (who lived in the home for at least two years immediately before you entered care, providing care that allowed you to remain at home) may be exempt.

2. Execute an Enhanced Life Estate Deed (Lady Bird Deed)

Maintain 100% control, the right to sell or mortgage, and all homestead tax exemptions during your life. Property passes automatically to your named heirs at death. Under current Florida law this keeps the home outside probate, placing it beyond the reach of estate recovery as the program is presently administered.

3. Establish a Qualified Income Trust (QIT / Miller Trust) if Income Exceeds Limits

If monthly income slightly exceeds Florida Medicaid limits, a QIT fixes the eligibility barrier without requiring you to sell your homestead.

"You usually do NOT have to sell your home to qualify for Medicaid—if you take the right legal steps in time."

Take Action Based on Your Planning Timeline:

Planning Ahead (5+ Years)

Set up a Medicaid Asset Protection Trust (MAPT) to safeguard real estate and liquid savings.

Mid-Window (2-4 Years)

Review property titles and execute an Enhanced Life Estate (Lady Bird) Deed.

Crisis Planning (Immediate)

Use court-tested spend-down methods, annuities, and marital protections immediately.

Contact Elder Needs Law, PLLC

Our team specializes in protecting homes, assets, and savings from six-figure long-term care costs.

- **Schedule a Planning Consultation:** Map out your customized asset protection strategy.
- **Facing an Urgent Nursing Home Stay?** Ask for our 15-Minute Crisis Triage Call.

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