FLORIDA MEDICAID ESTATE RECOVERY (MERP) RISK ASSESSMENT

Is Your Home Exposed to State Recovery Claims After You Pass Away?

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THE CORE PRINCIPLE YOU MUST KNOW

Florida's Medicaid Estate Recovery Program (MERP) allows the state to file a claim against a deceased Medicaid recipient's estate to recover money paid for nursing home or long-term care costs. These claims can reach hundreds of thousands of dollars.

The Master Key: Under current Florida law, MERP reaches only assets that pass through probate. A home that bypasses probate is not currently subject to Florida estate recovery.

PART 1: THE MERP RISK CHECKLIST

Check each box that applies to your primary residence or current estate planning setup:

HIGH RISK (Immediate Action Required)

- ☐ The home is titled solely in one person's name with a standard Last Will and Testament (or no Will at all).
  Note: A Will DOES NOT prevent probate; it is simply a set of instructions for the probate judge.
- ☐ The home is owned jointly with a child or loved one as "Tenants in Common," meaning your percentage interest passes through probate upon death.
- ☐ You rely solely on Florida Constitutional Homestead protection without a non-probate transfer deed.
  Homestead protects your home from creditors while you live, but does NOT make it bulletproof against MERP if it goes through probate.
- ☐ You are currently receiving or plan to apply for Florida LTC Medicaid, and no enhanced estate planning deed or trust has been executed.

MODERATE RISK (Requires Legal Review)

- ☐ The home is held in a standard Revocable Living Trust.
  While standard revocable trusts avoid probate, they may require specialized language or additional deeds to guarantee full Medicaid protection without triggering tax or homestead exemptions.
- ☐ You added a child's name directly to the deed.
  This can trigger severe gift penalties under Medicaid's 5-Year Lookback Rule and expose your home to your child's debts, lawsuits, or divorces.

LOW RISK / FULLY PROTECTED

- ☐ An Enhanced Life Estate Deed (Lady Bird Deed) has been properly drafted, executed, and recorded in the county public records.
- ☐ The home is held inside an Irrevocable Medicaid Asset Protection Trust (MAPT) established at least 60 months ago.
- ☐ A surviving spouse, minor child, or certified blind/disabled child is currently living in the home.

PART 2: SCORING YOUR MERP EXPOSURE

> ***Scoring Clarifier:*** *If you checked any HIGH RISK box, treat your overall exposure as HIGH regardless of other boxes checked.*

IF YOU CHECKED...	EXPOSURE LEVEL	WHAT THIS MEANS
1 or more HIGH RISK boxes	**HIGH EXPOSURE**	Your home is currently vulnerable to probate and a potential state lien or recovery claim after death. Simple, cost-effective legal steps can shield it.
1 or more MODERATE RISK boxes	**UNCERTAIN EXPOSURE**	You have taken planning steps, but they may trigger unintended Medicaid lookback penalties or homestead tax issues.
Only LOW RISK boxes	**LOW EXPOSURE**	Your real estate is structured to bypass probate and remain outside estate recovery under current Florida law.

PART 3: HOW TO SHIELD YOUR HOME BEFORE IT'S TOO LATE

If your assessment indicates High or Uncertain exposure, Florida law provides court-tested, approved tools to protect your residence:

1. Lady Bird Deed (Enhanced Life Estate Deed)

Allows you to retain 100% ownership, control, and homestead rights during your life, while automatically transferring the property to your named beneficiaries at death—bypassing probate, which under current Florida law keeps it outside estate recovery.

2. Medicaid Asset Protection Trust (MAPT)

Protects the home and additional liquid assets while starting the clock on Medicaid's 5-Year Lookback Period.

3. Caregiver Child Exception

If an adult child lived in your home for at least two years immediately before you entered a nursing facility, providing care that delayed that placement, special deed transfer exemptions may apply.

"The best time to plan was 5 years ago. The second-best time is right now."

NEXT STEPS: DO NOT WAIT UNTIL PROBATE

Whether you are planning years in advance or currently navigating a long-term care transition, our team at Elder Needs Law, PLLC can review your deed and assets to ensure your home is fully protected.

- **Schedule a Deed & Document Review:** Speak with our team to evaluate your current estate setup.
- **Facing an Urgent Nursing Home Stay?** Ask for our 15-Minute Crisis Triage Call.
- **Call Elder Needs Law:** (305) 614-7379
- **Visit Us Online:** www.elderneedslaw.com
- **Free Educational Videos:** YouTube @elderneedslaw

Disclaimer: This checklist is provided for general educational purposes only and does not constitute formal legal advice. Medicaid figures, exemption rules, and estate recovery laws are subject to change. Consult a Board-Certified Elder Law Attorney regarding your specific situation.