A PLAIN-ENGLISH GUIDE FOR FLORIDA FAMILIES

The Florida Guide to *Real Estate* & Medicaid Planning

Protecting your home, your savings, and the people you love



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2026 EDITION

The Florida Guide to Real Estate and Medicaid Planning

2026 EDITION · FIGURES CURRENT AS OF NOVEMBER 2026

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HOW TO USE THIS GUIDE

- **Jason's Tip** practical advice from the office
- **Heads Up** a common trap to avoid
- **Example** how a rule plays out for a family
- **Small numbers** point to the law behind it in Notes and Sources

This guide provides general information about Florida law as of November 2026 and is not legal, tax or financial advice. Reading it does not create an attorney-client relationship. Medicaid rules, dollar figures and tax laws change, often every January, and every family's situation is different. Please speak with a Florida elder law attorney and your tax advisor before acting on anything here. Elder Needs Law, PLLC, 2641 NE 207th Street, #100, Aventura, FL 33180.

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BEFORE WE BEGIN

A Note From Jason

If you picked up this guide, there's a good chance a house is sitting at the center of something you're worried about. Maybe it's your own home and you're wondering what happens to it if you ever need a nursing home. Maybe it's Mom's place, and she just moved into assisted living, and now the whole family is staring at a three-bedroom house with nobody in it and asking what on earth to do next. Either way, you're in the right spot.

I've spent my career helping Florida families sort out exactly this kind of problem, and the same few questions come up in nearly every first meeting. Will Medicaid take the house? Should we sell it? Can we rent it out? Can Dad just sign it over to me? The honest answer to all of them is "it depends," which I know is the most annoying answer a lawyer can give. So in these pages I've tried to lay out *what* it depends on, in the same plain way I'd explain it to a friend over coffee.

One thing I want you to take away before you read another word: the house is usually not lost. Florida gives homeowners some of the strongest protections in the country, and there are legitimate, fully legal ways to use real estate to qualify for Medicaid, keep a family home in the family, and avoid having the state come knocking after a loved one passes. Most of the families who end up losing ground do so because they acted fast without a plan, not because the rules were stacked against them.

Read what applies to you, skip what doesn't, and jot your questions in the margins. If something here sounds like your situation, that's exactly the kind of conversation I enjoy having.

Warmly,

Jason

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Board Certified in Elder Law by The Florida Bar

KEEP THIS PAGE HANDY

Florida's 2026 Numbers at a Glance

These are the figures that come up again and again in Florida long-term care Medicaid planning. Most of them change every January, so double-check them if you're reading this in a later year.

$2,982

MONTHLY INCOME CAP (SINGLE APPLICANT)[1]

Long-term care Medicaid: ICP, the Medicaid Waiver and PACE. Over the cap? A Qualified Income (Miller) Trust can fix it.

$2,000

COUNTABLE ASSET LIMIT (SINGLE APPLICANT)[1]

Your home, one car, and several other items don't count toward this number.

$752,000

HOME EQUITY LIMIT[3]

Applies unless a spouse, a child under 21, or a blind or disabled child lives in the home.

Up to $162,660

WHAT A HEALTHY SPOUSE CAN KEEP[1]

The Community Spouse Resource Allowance, in addition to the home and one car.

60 months

LOOK-BACK PERIOD[16]

DCF reviews gifts and transfers made in the five years before you apply.

About $10,645

PENALTY DIVISOR[20]

Every $10,645 given away inside the look-back costs roughly one month of Medicaid coverage.

$1,000,000

HOME EQUITY CAP STARTING 1/1/2028[17]

A new federal ceiling that will never adjust for inflation.

WHAT DOESN'T COUNT

Your home (within the equity limit), one car, household goods and personal belongings, an irrevocable prepaid funeral, burial plots, and up to $2,500 set aside for burial generally don't count toward the $2,000 limit.

01 Medicaid Isn't One Program

Start here, because it changes every answer that follows.

The most common mix-up I run into, from families and even from other lawyers, is treating "Medicaid" like one big program with one set of rules. It isn't. Medicaid is an umbrella over a whole collection of programs, each with its own eligibility rules, its own income and asset limits, and its own benefits. Florida runs its own version of each, so what your cousin in Ohio went through may have very little to do with what happens here.

This guide sticks to Florida's long-term care Medicaid programs, the ones that help pay for care at home, in an assisted living facility (people call it an ALF), or in a nursing home. Three of them account for nearly every family I meet:

- **The Institutional Care Program (ICP).** This is the program that pays for care in a licensed nursing home. It's an entitlement, which means if you qualify, you get it. There's no waiting list.[22]
- **Statewide Medicaid Managed Care Long-Term Care (SMMC-LTC), better known as "the Medicaid Waiver."** This one is for people who need nursing-home-level care but want to get it at home or in an ALF instead. It covers help with bathing, dressing, personal care and other support so people can stay in the setting they choose. The catch is that it *does* have a waiting list, and the state ranks applicants by how frail they are rather than first come, first served.[22]
- **The Program of All-Inclusive Care for the Elderly (PACE).** PACE is built for people who qualify for nursing home care but stay in the community. It bundles medical, social and support services, most of them delivered at a PACE day center, with some help available at home or in a participating ALF. PACE isn't offered in every Florida county.

All three share the same income cap and the same $2,000 asset limit for a single person, which are different from the rules for programs like QMB or Medically Needy.[1] The financial test is the same, but the strategies I'd use to get someone qualified can be quite different depending on which program we're aiming for. That's why the first question I ask any family isn't about the house at all. It's "where is your loved one going to receive care?"

JASON'S TIP

If a parent is in the hospital or a rehab center and the staff starts talking about "discharge to a nursing home," that's the moment to call an elder law attorney, not after the bills start arriving. A few days of planning at that stage can save months of private-pay costs later.

02 Which Planning Camp Are You In?

Crisis planning and advance planning call for very different moves.

Before we talk about specific strategies, it helps to figure out which of two camps you're in. Where you land changes almost everything, including the role your house can play and the risks and opportunities that come with it.

THE TWO PLANNING SCENARIOS AT A GLANCE

Planning scenario	What it looks like
Crisis planning	Care is needed now, or very soon, and nobody can wait five years. The goal is to protect as much as possible and qualify as quickly as the law allows, without setting off a penalty under the five-year look-back.
Advance planning	The person is healthy today and doesn't expect to need long-term care for five years or more (or can afford to pay privately for that stretch). The goal is to protect the home and savings now, so they're shielded if care is ever needed down the road.

Both camps can use real estate in smart ways. Most families who call me are in the first one, so that's where we'll start.

03 When Mom or Dad Can't Live at Home Anymore

Your four options for the house, and what each one really costs.

Crisis planning usually starts with a health event. A parent has a stroke. A dementia diagnosis reaches the point where serious in-home help is needed. A hospital stay turns into a rehab stay, and the rehab stay is about to end with a move to a nursing home. These families don't have five years. What they often do have is a house, and sometimes a rental property or two.

Once a loved one moves into an ALF or nursing home, the question lands fast: what do we do with the house? In my experience there are really four choices. Here they are side by side, and then we'll walk through each.

YOUR FOUR OPTIONS AT A GLANCE

Option	Medicaid effect	The risk	The upside
Keep it empty	The home stays exempt	Taxes, insurance, HOA dues, utilities and upkeep keep coming	The family keeps a home that usually grows in value
Rent it out	Allowed, but net rent counts as income	Can lose homestead tax and creditor protection	Extra income, and you still keep the home
Sell it	An exempt home turns into countable cash	Sale money can push someone over the $2,000 limit	Often the simplest path, with a special capital gains break that may apply
Transfer it under an exception	Penalty-free for certain family members	Loss of the tax step-up in basis (except to a spouse) and a property tax reset	The home goes to family without a Medicaid penalty

Option A: Keep the house and leave it empty

In Florida, your primary residence is an exempt asset for Medicaid, whether you own it in your own name or through a trust, as long as the equity stays within the limit.[1][2][3] That means it doesn't count against the $2,000 asset limit. The exemption holds even after a move to a facility, as long as

the person intends to return home, no matter how unlikely that is, or a spouse or certain dependent relatives still live there.[4] So leaving the home empty is perfectly fine as far as eligibility goes.

The real problem is money. An empty house still racks up property taxes, homeowner's insurance, HOA dues, utilities and the usual repairs, and somebody has to pay for all of it. In plenty of families, the adult children are happy to chip in because they expect to inherit the house someday. I'd just encourage you to have that conversation out loud and early. Unspoken assumptions about who pays for what are a reliable recipe for family friction at a time that's already hard enough.

Option B: Rent the house out

Letting the house sit there draining money isn't very appealing, and a lot of people don't realize that renting it out is also allowed under Florida Medicaid rules.[5] It does add some moving parts, though. Once the house brings in rent, the *net* rental income counts as income for Medicaid, and it has to be handled correctly or it can knock the person off the program.

In our office, we handle this with two documents built for the purpose: a **Medicaid-Compliant Property Management Agreement** and a **Medicaid-Compliant Budget**. They line up with the specific expenses Florida's Medicaid manual allows you to subtract from gross rent, things like property taxes, insurance, interest, maintenance and management fees.[6] These aren't the generic property management forms you'd grab from a realtor. When the numbers push someone over the income cap, the extra income usually gets routed through a Qualified Income Trust, which you'll also hear called a Miller Trust. Families who try to wing it with a standard management agreement, without knowing which expenses Medicaid will actually accept, can end up with eligibility problems that take time and money to untangle.



HEADS UP: RENT AT A FAIR PRICE

Florida only treats a rental as exempt if it brings in income in line with its market value.[5] Renting Mom's house to your nephew for $200 a month as a favor can turn an exempt property into a countable asset. If family is going to live there, charge a fair rent and keep the paperwork clean.

There's also a property tax side to renting. Under Florida law, renting all or most of a homestead for more than 30 days a year, two years in a row, counts as abandoning it.[7] When that happens, the home can lose its homestead exemption and its Save Our Homes cap, which normally limits annual increases in assessed value to 3% or the rate of inflation, whichever is lower. The assessment then resets to full market value. Rental property can also lose the creditor protection

that Florida homestead enjoys, and if it ends up passing through probate, it becomes fair game for a Medicaid estate recovery claim. That's why we pair a rental plan with a way to keep the property out of probate, usually a trust or a Lady Bird deed.

Once the old homestead becomes a rental, a whole different set of federal income tax rules kicks in, including deductions and depreciation. I always want the family's CPA in the loop on this one.

Option C: Sell the house

Sometimes neither an empty house nor becoming a landlord makes sense, and that's completely understandable. Selling is often the most practical choice, but from a Medicaid standpoint it can be the trickiest. The moment the house sells, a protected asset turns into cash, and cash is about as countable as it gets.

Without some planning, the sale proceeds can easily push your loved one over the $2,000 limit and knock out their eligibility. That doesn't take selling off the table. Plenty of our clients sell. It just means the sale needs other strategies running alongside it to protect the proceeds and keep, or restore, eligibility. Which strategies make sense depends on the program, how much money the sale brings in, and the whole financial picture, so this needs to be worked out with an elder law attorney *before* closing. The tools I'd use for someone in a nursing home on ICP are different from the ones I'd use for someone on the Medicaid Waiver.

Here's a piece of good news a lot of sellers miss. Normally, to avoid capital gains tax on up to $250,000 of profit ($500,000 for most married couples filing jointly), you have to have owned and lived in the home as your main residence for two of the five years before the sale.[13] But there's a special rule for people who become physically or mentally unable to care for themselves. If they owned and lived in the home for at least one year during that five-year stretch, the time they spend in a licensed nursing home or ALF can count as time living in the home.[8] For a parent who's been in a facility for a while, that can be the difference between a big tax bill and none at all.

Option D: Transfer the house to a family member who qualifies

Giving away an asset usually triggers a Medicaid penalty. Florida follows a short list of exceptions for the home, though, and if your family fits one, the house can change hands with no penalty at all.[9] The home can go to:

- **A spouse.**
- **A child under age 21.**
- **A child of any age who is blind or permanently disabled.** Receiving SSI or Social Security disability benefits is generally enough proof.

- **A brother or sister** who already owns part of the home and lived there for at least one year right before the parent entered a facility.
- **An adult son or daughter who served as a caregiver.** The child must have lived in the home for at least two years right before the parent entered a facility, and provided care that kept the parent out of a facility during that time.

The tradeoffs are worth knowing. Except for a transfer to a spouse, these gifts usually mean the house loses the "step-up in basis" it would get if it were inherited at death, which can mean a much bigger capital gains bill when the child eventually sells. A change in ownership can also reset the home's assessed value for property taxes.[10]



HOW THE CAREGIVER EXCEPTION PLAYS OUT

Picture a daughter who moved back into her mother's Boca Raton home three years ago. She managed Mom's medications, drove her to every appointment and handled her meals and bathing, and because of that care, Mom stayed home far longer than her doctors expected. When Mom finally needs a nursing home, the house can go to the daughter with no Medicaid penalty. What makes or breaks it is proof: medical records, a doctor's letter about the level of care, and anything that shows the daughter actually lived there.

04 Turning Savings Into Real Estate

A crisis-planning tool that sounds strange until you see how it works.

One of the more sophisticated moves in crisis planning, and one of the most misunderstood, is actually *buying* real estate. It sounds backward. Why would you buy property when you're trying to qualify for a program for people with limited means? Stick with me.

When someone has a lot of countable savings or investments standing between them and Medicaid, often hundreds of thousands of dollars, one legitimate approach is to convert those countable assets into exempt ones. Buying real estate at fair market value is one way to do that, and it does *not* set off the five-year look-back penalty. A purchase isn't a gift. You're swapping one asset, cash, for another asset of equal value. Florida's Medicaid manual treats a transaction where you receive fair value as an allowable transfer.[15] The key is that the property you buy has to qualify as exempt under the rules of the program you're applying for.

Here are the three situations where I see this work.

Scenario A: Buying a home when you don't own one

If someone doesn't currently own a home and isn't yet living in a facility, buying a house and making it their homestead can be a powerful way to spend down. The home is exempt from the day it's purchased, and they get a place of their own to live, so it solves a practical problem and a planning problem at once.

This usually works best alongside other strategies so nobody ends up "house poor." The person still needs enough money left over, kept in a Medicaid-friendly way, to cover day-to-day living, upkeep on the home and everything that isn't shelter. A careful budget matters here.

Scenario B: Buying a rental property

If someone already owns a home, or they're already living in an ALF or nursing home, buying a new "primary residence" isn't an option. Buying a rental property can be.

Florida treats income-producing property as exempt when it brings in income consistent with its market value.[5] This is where the Medicaid-Compliant Property Management Agreement and Medicaid-Compliant Budget from Option B come back into play. The property has to be run a specific way, and the income it produces has to be counted within the limits Medicaid allows. Getting the setup right from the start saves a lot of grief.

We also want to title the property properly at the time of purchase so it stays out of probate and, as a result, out of reach of Medicaid estate recovery. A **Lady Bird deed** (Florida's enhanced life estate deed) or a **revocable living trust** can both do that job.[23] A Lady Bird deed is simpler and cheaper to put in place. A revocable living trust gives you more flexibility, especially when there are several heirs or a complicated family picture, and in my experience it tends to leave less room for family disputes later.

Scenario C: When Mom or Dad lives in your home

This one doesn't get talked about enough. Sometimes the person who needs Medicaid doesn't own a home at all because they've been living with an adult child. If that's your family, there are two different paths worth a look.

PATH 1: YOUR PARENT BUYS A SHARE OF YOUR HOME

Your parent can buy an ownership interest in your home at fair market value, which turns their countable cash into an exempt home. This takes a proper valuation to set a fair price, and if you have a mortgage, you'll want your lender's sign-off before adding anyone to the title.

The tax side can be surprisingly friendly. If the home has been your main residence for two of the last five years, you, the seller, may be able to use the federal home-sale exclusion on the slice you sell, up to $250,000 of gain ($500,000 for most married couples filing jointly). One wrinkle: the IRS treats all partial sales of the same home as a single sale for that dollar cap, so selling a share now uses up part of the exclusion you'd otherwise have for a later sale.[13] Run the numbers with your tax advisor first. Done right, though, it can be a graceful way to move money to a child who's already living with Mom and probably doing a lot of the caregiving, in a way that's both tax-smart and Medicaid-compliant. Once your parent owns part of the home, their income can also go toward their fair share of the household costs.

A couple of Florida property tax points to keep in mind. A change in ownership can lead the county property appraiser to reassess the home.[10] On the other hand, some counties offer a reduction in assessed value when you build living quarters for a parent or grandparent who's at least 62, and some offer an extra homestead exemption for low-income seniors 65 and older.[11] Both are local options, so it depends on your county. Even a partial transfer can also trigger Florida documentary stamp tax.[12]

PATH 2: YOUR PARENT PREPAYS THEIR SHARE OF THE HOUSEHOLD

Instead of buying into the home, your parent can sign a carefully written agreement to prepay their fair share of household costs, things like food, utilities and upkeep, for a set period based on their life expectancy. In Social Security language, this falls under "in-kind support and maintenance," which is why you'll sometimes hear it called an ISM shelter contract. It has to be drafted to fit both Florida Medicaid's rules for fair compensation and Social Security's rules.[14]

When it's structured properly, these prepaid shelter payments are generally treated as reimbursing shared costs rather than as taxable rent to the homeowners, though that's something to confirm with your CPA.

JASON'S TIP

Every strategy in this section can usually be put in place within a month or so of applying for long-term care Medicaid, and when it's done properly, none of it triggers a look-back penalty. In other words, it's not too late just because care is already needed.

05 Planning Ahead While Time Is on Your Side

How an irrevocable trust can protect the family home for good.

Advance planning is a different world. These folks are healthy today, or at least steady enough that they don't expect to need long-term care in the next five years. Some of them just watched a parent or sibling go through a Medicaid crisis and decided, "Not me, not my kids." Others are simply doing good estate planning and want Medicaid protection built in.

Advance planning can also make sense for someone who already needs care but has substantial savings, say $2,000,000 in the bank. They can comfortably pay privately for the next five years, but they'd like to cap that private-pay window at five years instead of watching it drain everything.

When there's time, the options get wider and the pressure drops. And once again, the family home tends to be front and center.

The Medicaid Asset Protection Trust

For homeowners who want to protect a homestead or rental property from a future Medicaid spend-down, the **irrevocable Medicaid Asset Protection Trust (MAPT)** is one of the best tools in the box. Here's why it works so well for Florida real estate in particular:

- **Your homestead protections stay put.** With the right homestead language written into the trust, Florida's homestead tax exemptions, including the Save Our Homes cap, and its

protection from creditors continue after the home goes into the trust. You keep living there and keep the benefits.

- **Rental income can keep flowing.** Depending on how the trust is designed, income from a rental property can continue to go to you.
- **Future sale money stays protected.** If the home or rental is sold after the five-year look-back has passed, the proceeds stay inside the trust and remain protected, with no extra planning needed. That's a big advantage over strategies that turn real estate into cash you then have to deal with separately.
- **No probate, and no estate recovery.** Property held in an irrevocable trust at death doesn't go through probate. Because Florida's Medicaid estate recovery only reaches the probate estate, property held properly in the trust is out of reach.[19]
- **The home equity limit stops mattering.** For a single applicant, a home with equity over the limit becomes a countable asset. Once the home is in a MAPT, that limit doesn't apply to it. This is about to matter a lot more, because starting January 1, 2028, federal law caps home equity at $1,000,000 for long-term care Medicaid, and that number will never rise with inflation.[17] In South Florida and other pricey markets, plenty of paid-off homes are already closing in on that line.
- **The tax step-up can often be kept.** A MAPT is usually drafted so the home is still included in your estate for tax purposes, which generally lets your heirs inherit it with a stepped-up basis and avoid a large capital gains bill when they sell.[24] This depends entirely on how the trust is written, so make sure yours is built for it.

A MAPT does come with tradeoffs. It's irrevocable, so you give up direct control of whatever goes into it, although you can keep the right to live in any home the trust owns and the power to remove and replace trustees. It has to be drafted carefully to keep all the benefits above, and the five-year look-back clock starts running on the date of the transfer. For people who have time on their side, though, it can protect what's usually a family's biggest asset from being swallowed by long-term care costs.



HEADS UP: CHECK WITH YOUR LENDER FIRST

Federal law generally stops a lender from calling a home loan due when you move a home of four units or fewer into a living trust where you remain a beneficiary and keep living there, or when your spouse or children become owners.[18] In my experience, lenders get a lot more nervous when an irrevocable trust is involved, and rental or commercial loans may not be covered at all. My advice: get the lender's permission in writing before moving mortgaged property into any trust.

> *The families who sleep best at night aren't the wealthiest ones. They're the ones who made a plan before they needed it.*
>
> JASON NEUFELD

06 Real Estate and a Child With a Disability

A loving gift can backfire if it's handed over the wrong way.

If you're the parent of a child with a disability who gets Medicaid or SSI, leaving them real estate takes extra care. Giving or leaving property directly to that child can knock them off the means-tested benefits they depend on, including their own Medicaid coverage.

In most cases the fix is a **third-party special needs trust**. A well-drafted one can hold real estate, or the money from selling it, for your child's benefit without putting their benefits at risk. The trust can pay for the extras that Medicaid and SSI don't cover, things like transportation, education, recreation and entertainment, and even housing costs when the tradeoff with SSI's in-kind support rules makes sense. And with the right language, and the right people living in the home, real estate held in a third-party special needs trust can still qualify for Florida homestead tax exemptions.

There's another side to this, too. Florida's Medicaid rules allow gifts to a blind or disabled child of any age without a look-back penalty.[21] In the right family, that opens a door: a capable adult child who meets the legal definition of disabled can sometimes play a role in a parent's planning. We have to be careful that nothing we do puts that child's own benefits at risk, which adds a layer of work. But with the right family dynamic, it can be a remarkably helpful planning tool.

07 The Big Worry: Will Medicaid Take the House?

What Florida's estate recovery really reaches, and what it doesn't.

If there's one fear that sends people to an elder law attorney's office, it's Medicaid estate recovery: the state's right to seek repayment from a Medicaid recipient's estate after they pass away, to cover what Medicaid paid for their care.

In Florida, estate recovery is real. After a Medicaid recipient dies, the Agency for Health Care Administration (AHCA) can file a claim in the probate case to get reimbursed.[19] For families who assumed the house or the savings would pass to them, that can be a painful surprise.

Here's the part most people never hear, and it's genuinely good news. Florida's Constitution protects a homestead from the claims of creditors, and that protection passes along to the owner's surviving spouse or heirs.[19] Florida's estate recovery law specifically says the state can't enforce its claim against property that's exempt from creditors under Florida law. So in many cases, a Florida homestead that passes to a spouse or children is protected from estate recovery altogether. The Florida Supreme Court has made clear that this protection applies even when the heirs are grown children who didn't depend on the parent financially.

That protection has conditions, though, and families trip over them all the time. A home that was sold or rented before death, a home left to someone outside the family, a home that loses its homestead character, or money sitting in bank accounts and other probate assets can all be exposed. And the protection is decided in court after death, which isn't a great time to find out you were wrong about something.

The better news is that estate recovery can be avoided, or cut way down, with proper planning, for crisis and advance planning families alike. Keeping assets out of probate through a trust or a Lady Bird deed, and making sure the home keeps its protected status, goes a long way.



JASON'S TIP

This is not a do-it-yourself or "set it and forget it" area. The rules are specific, timing matters, and documents have to be written to meet Florida Medicaid requirements. A generic form from the internet can quietly undo everything else you've done right.

08 The Tax Side, All in One Place

A quick reference for the property tax and income tax issues in this guide.

A lot of the strategies in this guide come with tax consequences, some good and some not so good. I've pulled them together in one table so you can see them side by side. Bring this page to your CPA.

TAX ISSUES AT A GLANCE

Tax issue	When it comes up	What to know
Save Our Homes cap	Renting out the former homestead	Renting more than 30 days a year, two years in a row, can cost you the exemption and the cap, resetting the assessment to market value.[7]
Property tax reassessment	Exception transfers; buying a share of a child's home	A change in ownership can lead the county to reassess the home.[10]
Living quarters for a parent; senior exemption	A parent buys into a child's home	County-option breaks for building quarters for a parent or grandparent 62 or older, and an extra exemption for low-income seniors 65 and older.[11]
Documentary stamp tax	Any transfer of real estate, even a partial one	Florida doc stamp tax can apply, including on the share of an existing mortgage.[12]
Home-sale exclusion (IRC Section 121)	Selling the home; a child selling a share of their home	Up to $250,000 of gain tax-free ($500,000 for most joint filers). Time in a nursing home or ALF can count as living at home if you lived there at least one year first.[8][13]
Step-up in basis	Exception transfers to a child or sibling	Gifts during life usually lose the step-up heirs would get at death (a transfer to a spouse is the exception).
Step-up in basis	Home placed in a MAPT	A properly drafted MAPT usually keeps the step-up for your heirs.[24]
Rental deductions and depreciation	The old homestead becomes a rental	A different set of federal income tax rules applies, so keep your CPA close.
Shelter prepayments (ISM contract)	A parent prepays household costs in a child's home	Generally treated as cost-sharing rather than taxable rent, but confirm with your CPA.

09 Mistakes I See All the Time

Well-meaning moves that cause expensive problems.

Most of the trouble I help families fix started with someone trying to do the right thing quickly. Here are the missteps I see most often, so you can steer clear of them.

- **Adding a child to the deed "just to be safe."** It's usually treated as a gift of part of the home, which can start a look-back penalty, expose the home to the child's creditors or divorce, and cost the family the tax step-up.
- **Selling the house first and calling a lawyer second.** Once the sale closes, the cash counts. The best options for protecting it are almost always the ones you set up before closing.
- **Handing out "thank you" money to the kids who help.** Unless there's a written caregiver agreement in place *before* the care is given, Medicaid will often treat those payments as gifts.
- **Renting the empty house to a relative for next to nothing.** A below-market rent can turn an exempt property into a countable one.[5]
- **Relying on an old, generic power of attorney.** Many don't give the agent authority to make gifts, change titles or create trusts, which are exactly the powers Medicaid planning needs. If your loved one can no longer sign, the fix may be a court guardianship.
- **Assuming the home is safe because it's a homestead.** Homestead protection is strong, but it has conditions. Renting, selling, or leaving the home to the wrong person can strip it away.
- **Waiting until it's urgent.** Crisis planning works, but advance planning works better, costs less and gives you far more choices.

10 Share This With Your Advisors

A short note for the professionals in your corner.

If your family works with a real estate agent, a CPA, a financial advisor, or an estate planning, probate or real estate attorney, please pass this section along. Medicaid planning issues show up in their work more often than most people realize, usually in the middle of ordinary conversations.

A real estate attorney may learn that an older seller is moving to assisted living and needs to sell the homestead before applying for Medicaid. An estate planning attorney may find a power of attorney that doesn't allow Medicaid planning. A probate attorney may see an inheritance about to pass to someone on Medicaid or SSI. A closing may involve a parent adding a child to the deed, an older buyer purchasing with a child, or a family debating whether to rent, sell or keep an empty house after a nursing home move. Each of these can create a Medicaid problem before the deed is signed, the estate plan is finished or the probate distribution goes out.

Many families don't even know Medicaid planning is an option for paying for home care, ALF care or nursing home care. If a client ever says something like "How is Mom going to afford this?" or "At this rate, Dad will burn through his savings in a few years," that's the moment to think about Medicaid asset protection planning. Our firm works closely with attorneys, agents, financial advisors and other professionals across Florida, and we're always glad to be a resource or take a referral.

When to bring in a Medicaid planning elder law attorney

- [ ] A client is selling, transferring or adding a child to the title of a home and may need Medicaid within five years.
- [ ] A client is weighing a Lady Bird deed, a living trust or another title tool with Medicaid in mind.
- [ ] An estate is about to pass assets, including real estate, to a child or grandchild with a disability.
- [ ] A client plans to buy property as part of a Medicaid strategy.
- [ ] A client has moved to a nursing home or ALF and the family can't decide whether to sell, rent or keep the home.
- [ ] A client is about to receive an inheritance, settlement or sale proceeds, or is thinking about gifting real estate or selling it below market value shortly before needing care.

11 Questions Families Ask Me Most

Straight answers to the questions I hear every week.

Q **Is my home counted as an asset for Florida Medicaid?**

Usually not. Your primary residence, whether you own it yourself or through a trust, is exempt as long as your equity stays under the limit ($752,000 in 2026). It stays exempt after a move to a facility if you intend to return home, or if a spouse or certain dependent relatives live there.[1][3][4]

Q **Can we rent out Mom's house while she's on Medicaid?**

Yes. Florida allows it, but the net rent counts as Mom's income and the rent needs to be at a fair market rate. We typically use a Medicaid-Compliant Property Management Agreement and Budget, and often a Miller Trust, to keep everything in line. Keep an eye on the homestead tax rules, too, since renting can affect the exemption.[5][6][7]

Q **What happens to Medicaid eligibility if we sell the house?**

The sale turns an exempt asset into cash, which counts. Without planning, the proceeds can push your loved one over the $2,000 limit. Work out a plan to protect the proceeds with an elder law attorney before you close.

Q **Can buying real estate really help someone qualify?**

Yes, when it's done right. A purchase at fair market value isn't a gift, so it doesn't trigger the five-year look-back penalty. The property just has to qualify as exempt under the program's rules.[15]

Q Can the house go to family without a Medicaid penalty?

In certain cases, yes: to a spouse, a child under 21, a blind or disabled child of any age, a sibling with an ownership share who lived there for a year, or a caregiver child who lived there for two years and provided care that kept the parent at home. Except for a spouse, these transfers usually lose the tax step-up in basis.[9]

Q How does an irrevocable trust protect a Florida home?

A properly drafted Medicaid Asset Protection Trust keeps your Florida homestead protections in place, protects future sale proceeds once five years have passed, avoids probate and estate recovery, and takes the home equity limit out of the picture. The five-year clock starts on the date you transfer the home in.

Q Will Florida Medicaid take the house after death?

Often, no. AHCA can file a claim against the probate estate, but Florida law bars recovery against property protected from creditors, and a homestead that passes to a spouse or heirs is generally protected. That protection has conditions, so planning with a trust or Lady Bird deed is still the safest route.[19]

Q We have a child with a disability. How should we leave them real estate?

Not directly. A direct gift or inheritance can cost them SSI and Medicaid. A third-party special needs trust can hold the property, or the money from selling it, for your child without putting their benefits at risk.

Q How long does Medicaid look back at gifts?

Five years, or 60 months, before the application date. Each $10,645 or so given away inside that window costs roughly one month of coverage, and the penalty doesn't start until the person is otherwise eligible and receiving care.[16][20]

12 Your Next Steps

What to gather, and the words you'll hear along the way.

Gather these before your first meeting

You don't need everything on this list to get started, but the more you bring, the more specific I can be in our first conversation.

- [ ] Deeds for every property, plus the most recent property tax bills
- [ ] Current mortgage statements and any home equity loan or line of credit
- [ ] A recent idea of what the home is worth (an appraisal, broker's opinion or tax assessment)
- [ ] Leases and rent records for any rental property
- [ ] Existing wills, trusts, powers of attorney and health care surrogate documents
- [ ] Recent statements for bank, retirement and investment accounts
- [ ] Proof of monthly income (Social Security, pensions, annuities)
- [ ] Any gifts or transfers made in the last five years, with dates and amounts
- [ ] The names of the care facility and any doctors, if care is already underway
- [ ] Contact details for your CPA, financial advisor and real estate agent

A plain-English glossary

Countable asset
Anything Medicaid counts toward the $2,000 limit, like bank accounts, investments and second properties that don't produce fair income.

Exempt asset
Something Medicaid ignores when deciding eligibility, such as your home (within the equity limit) and one car.

Look-back period
The 60 months before you apply, during which DCF reviews any gifts or below-value transfers.

Penalty period
Months of Medicaid ineligibility caused by gifts made during the look-back.

Homestead
Your Florida primary residence, which enjoys special tax and creditor protections under the Florida Constitution.

Lady Bird deed
Florida's enhanced life estate deed. You keep full control during life, and the home passes outside probate at death.

MAPT
A Medicaid Asset Protection Trust, an irrevocable trust used to shield assets after the five-year look-back.

Miller Trust (QIT)
A Qualified Income Trust that lets someone with income over the cap still qualify for long-term care Medicaid.

Estate recovery
AHCA's claim against a deceased Medicaid recipient's probate estate to recoup what Medicaid paid.

Step-up in basis
A tax reset that values inherited property at its worth on the date of death, which can wipe out capital gains.

MY QUESTIONS FOR OUR FIRST CONVERSATION

LET'S TALK

Questions? I'd Be Glad to Help.

If you've read this far, you're already ahead of most families I meet. Knowing the options is half the battle. The other half is fitting them to your family, your home and your timeline, and that's where a conversation helps.

If you have a question, or you're facing one of the situations in this guide, my team and I would be glad to talk it through with you. There's no pressure and no obligation, just a chance to look at where things stand and what might make sense. We work with families all over Florida, in person at our offices or by video from your kitchen table, and we're happy to include adult children or other family members in the conversation.



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Offices other than Aventura are by appointment only. Hablamos Español.

FOR READERS WHO LIKE TO CHECK THE SOURCE

Notes and Sources

Each small number in this guide points to the Florida law, Florida DCF policy or federal rule behind the statement. Florida Medicaid eligibility is governed by the Department of Children and Families' ESS Program Policy Manual and Florida Administrative Code Rule 65A-1, which carry out federal Medicaid law. Federal tax and lending rules apply to Florida homeowners as written.

1 **Florida DCF, ESS Program Policy Manual §§ 1640.0205, 1640.0534, 1640.0307.01; 2026 Florida standards.**
The $2,000 single-applicant asset limit applies to ICP, PACE and all HCBS waivers (§ 1640.0205). The home is excluded regardless of value while it is the principal residence (§ 1640.0534) and regardless of the type or degree of ownership (§ 1640.0307.01). The 2026 income cap of $2,982 equals 300% of the $994 SSI federal benefit rate; the 2026 maximum Community Spouse Resource Allowance is $162,660 (CMS 2026 SSI and Spousal Impoverishment Standards).
https://ffic.myflfamilies.com/manual/1630.pdf

2 **ESS Program Policy Manual §§ 1640.0304, 1640.0307.01, 1640.0305.03.**
Ownership of real property includes title or a right to use the property; the home exclusion applies whatever the form of ownership. Lady Bird (enhanced life estate) deeds are treated as full ownership and can qualify for the home exclusion.
https://ffic.myflfamilies.com/manual/1630.pdf

3 **ESS Program Policy Manual § 1640.0307.04; CMS 2026 home equity standards.**
Applicants with home equity above the standard are ineligible for long-term care services unless a spouse, a child under 21, or a blind or disabled child (of any age) lives in the home. Florida uses the federal minimum, $752,000 for 2026. Only the applicant's fractional share counts when the home is co-owned.
https://ffic.myflfamilies.com/manual/1630.pdf

4 **ESS Program Policy Manual §§ 1640.0543.01, 1640.0543.02.**
A temporary absence does not end the home exclusion if a spouse or dependent relative still lives there, if a sale would cause undue hardship to a co-owner, or if the individual (or a designated representative) states an intent to return. There is no time limit on the exclusion.
https://ffic.myflfamilies.com/manual/1630.pdf

5 **ESS Program Policy Manual §§ 1640.0548, 1640.0549; Fla. Admin. Code R. 65A-1.712(2)(f).**
Income-producing property, including rental and vacation homes, is excluded if it annually produces income consistent with its fair market value. Property producing a less-than-reasonable return is counted in full, subject to narrow exceptions.
https://ffic.myflfamilies.com/manual/1630.pdf

6 **ESS Program Policy Manual § 1840.0504 (Computation of Rental Income).**
Ordinary and necessary expenses, such as real estate taxes, interest, insurance, utilities, maintenance and management costs, are deducted from gross rent to determine countable rental income.
https://www.elderneedslaw.com/articles/chapter-1800-income

7 **Fla. Stat. § 196.061; Fla. Const. art. VII, § 4(d); Fla. Stat. § 193.155(1).**
Renting all or substantially all of a homestead constitutes abandonment of the homestead for tax purposes once it is rented more than 30 days per calendar year for two consecutive years. Save Our Homes limits annual increases in a homestead's assessed value to the lesser of 3% or the change in the Consumer Price Index.
https://www.flsenate.gov/Laws/Statutes/2025/196.061

8 **26 U.S.C. § 121(d)(7) (applies to Florida homeowners for federal income tax).**
A taxpayer who becomes physically or mentally incapable of self-care, and who owned and used the property as a principal residence for at least one year during the five-year period, is treated as using the home as a residence while living in a state-licensed facility such as a nursing home.
https://www.law.cornell.edu/uscode/text/26/121

9 **ESS Program Policy Manual § 1640.0609.04(1)-(5); 42 U.S.C. § 1396p(c)(2)(A).**
Florida treats a transfer of the homestead as allowable when made to (1) a spouse, (2) a child under 21, (3) a blind or permanently disabled adult child, (4) a sibling with an equity interest who resided in the home for at least one year immediately before institutionalization, or (5) an adult son or daughter who resided there at least two years immediately before institutionalization and provided care that delayed it.
https://ffic.myflfamilies.com/manual/1630.pdf

10 **Fla. Stat. § 193.155(3).**
A change of ownership of homestead property generally causes the property to be reassessed at just (market) value as of the next January 1, subject to statutory exceptions such as certain transfers between spouses.
https://www.flsenate.gov/Laws/Statutes/2025/193.155

11 **Fla. Stat. §§ 193.703 and 196.075.**
Section 193.703 lets counties reduce the assessed value attributable to living quarters built for a parent or grandparent age 62 or older. Section 196.075 lets counties and cities grant an additional homestead exemption to residents 65 and older who meet a household income limit. Both are local options.
https://www.flsenate.gov/Laws/Statutes/2025/193.703

12 **Fla. Stat. § 201.02.**
Florida documentary stamp tax applies to deeds and other instruments conveying an interest in real property, including the proportionate share of any mortgage balance on transfers of encumbered property.
https://www.flsenate.gov/Laws/Statutes/2025/201.02

13 **26 U.S.C. § 121(a)-(b); Treas. Reg. § 1.121-4(e).**
Up to $250,000 of gain ($500,000 for qualifying joint filers) on the sale of a principal residence owned and used for two of the prior five years may be excluded. The exclusion can apply to the sale of a partial interest, but all sales of partial interests in the same residence share a single maximum exclusion amount.
https://www.ecfr.gov/current/title-26/chapter-I/subchapter-A/part-1/subject-group-ECFRb467872627553f1/section-1.121-4

14 **ESS Program Policy Manual § 1640.0614.04; SSA POMS SI 00835.480, SI 01150.005.**
Florida values compensation received in the form of support and maintenance using its fair market value and the individual's life expectancy. Social Security's rules on in-kind support and maintenance (ISM) and contributions toward household expenses, and its fair market value standard for transfers, must also be satisfied.
https://secure.ssa.gov/poms.nsf/lnx/0500835480

15 **ESS Program Policy Manual §§ 1640.0606, 1640.0609.05(4).**
A transfer occurs only when fair compensation is not received. Transfers in which fair compensation is received, such as a purchase at fair market value, are allowable and carry no period of ineligibility.
https://ffic.myflfamilies.com/manual/1630.pdf

16 **ESS Program Policy Manual §§ 1640.0608, 1640.0618, 1640.0619.**
The look-back period for non-trust transfers is 60 months before the application. The penalty equals the uncompensated value divided by the average private-pay nursing home rate, and it begins only once the person is otherwise eligible for long-term care Medicaid.
https://ffic.myflfamilies.com/manual/1630.pdf

17 **Budget Reconciliation Act of 2025 (H.R. 1, the "One Big Beautiful Bill Act"), § 71108; 42 U.S.C. § 1396p(f).**
Effective January 1, 2028, federal law caps the home equity a long-term care Medicaid applicant may have at $1,000,000, with no inflation adjustment (homes on agricultural lots excepted). Florida's current limit ($752,000 in 2026) is below the cap but indexed to inflation, so it will meet the frozen ceiling over time.
https://www.elderlawanswers.com/new-law-caps-home-equity-for-medicaid-long-term-care-21524

18 **12 U.S.C. § 1701j-3(d)(6), (d)(8) (Garn-St Germain Act).**
For loans secured by residential property with fewer than five dwelling units, a lender may not enforce a due-on-sale clause for a transfer where the borrower's spouse or children become owners, or for a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not transfer rights of occupancy.
https://www.law.cornell.edu/uscode/text/12/1701j-3

19 **Fla. Stat. § 409.9101; Fla. Const. art. X, § 4; Public Health Trust of Dade County v. Lopez, 531 So. 2d 946 (Fla. 1988).**
AHCA recovers Medicaid costs by filing a claim against the probate estate (§ 409.9101). Subsection (7) bars enforcement against property exempt from creditors under Florida law. Article X, § 4 exempts homestead from forced sale, and the exemption inures to the owner's surviving spouse or heirs; Lopez held it applies even to adult, non-dependent heirs.
https://www.flsenate.gov/Laws/Statutes/2025/409.9101

20 **ESS Program Policy Manual § 1640.0618 and Appendix A-35 (average private-pay nursing home rate).**
Florida's 2026 transfer penalty divisor is approximately $10,645 per month. DCF updates the divisor periodically, and the rate in effect when the penalty begins applies.
https://www.elderneedslaw.com/medicaid-planning-guide-florida

21 **ESS Program Policy Manual § 1640.0609.05(6).**
Transfers to the individual's blind or disabled child (adult or minor), or to a qualifying trust established solely for the benefit of a disabled adult child, are allowable with no period of ineligibility.
https://ffic.myflfamilies.com/manual/1630.pdf

22 **Fla. Stat. § 409.979; Florida AHCA, SMMC LTC Program Waitlist Release.**
Nursing facility services under ICP are an entitlement with no waiting list. Home and community-based services under SMMC-LTC are subject to a waitlist managed by the Department of Elder Affairs and Aging and Disability Resource Centers, prioritized by frailty rather than application date.
https://ahca.myflorida.com/medicaid/statewide-medicaid-managed-care/long-term-care-program/smmc-ltc-program-waitlist-release

23 **ESS Program Policy Manual §§ 1640.0305.03, 1640.0613.01.**
Florida DCF treats a Lady Bird (enhanced life estate) deed as full ownership by the grantor, and creating one is not a transfer of assets, because ownership passes to the remainder beneficiary only at death.
https://ffic.myflfamilies.com/manual/1630.pdf

24 **26 U.S.C. §§ 1014, 2036; IRS Rev. Rul. 2023-2.**
Property included in a decedent's gross estate receives a basis equal to its value at death (§ 1014). Assets of an irrevocable trust that are not included in the gross estate do not (Rev. Rul. 2023-2). MAPTs are commonly drafted with retained interests that cause estate inclusion under § 2036, preserving the step-up.
https://www.irs.gov/pub/irs-drop/rr-23-02.pdf

INSIDE THIS GUIDE

For most Florida families, the house is the biggest thing they own and the first thing they worry about when long-term care enters the picture. In this friendly, plain-English guide, Board Certified Elder Law Attorney Jason Neufeld walks you through what really happens to a home when Medicaid is involved, and the legal ways to keep it in the family.

- Whether to keep, rent, sell or transfer a parent's home
- How buying real estate can help someone qualify for Medicaid
- How an irrevocable trust can shield a home for good
- What Florida's estate recovery can and can't touch
- The 2026 Florida numbers, a tax table, a checklist and more



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ABOUT THE AUTHOR

Jason Neufeld is the founder and managing partner of Elder Needs Law, PLLC, and is Board Certified in Elder Law by The Florida Bar, a designation held by a small group of Florida attorneys. A Florida lawyer since 2007 and a graduate of the University of Miami School of Law, he focuses on Medicaid planning, asset protection and estate planning for Florida families. Jason serves on the board of the Academy of Florida Elder Law Attorneys, co-chairs the Elder Law Section of the Broward County Bar Association, regularly teaches other attorneys about Medicaid planning, and is the author of *How to Get Medicaid to Pay for Some or All of Your Long-Term Care Expenses*.

"My job is to give families choices before they run out of them."

JASON NEUFELD

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