

Families usually come see me after something scary has already happened. A parent has fallen, rehab turned into long term care, and suddenly the family hears a phrase they had never considered: Medicaid estate recovery. The next question comes fast and blunt:

"Can Medicaid take our house?"

The short answer is that Medicaid does not send a truck, change the locks, and throw you out. But Medicaid can, and often does, assert a claim against a home after the owner dies. Whether that happens, and how painful it is for your family, depends heavily on how early you plan and what tools you use.

What follows is the kind of conversation I have in the conference room every week, translated into plain English. Laws vary by state, so treat this as a framework to discuss with an estate planning and elder law attorney near you, not a substitute for one.

How Medicaid Actually Works with Your Home

Medicaid is a joint federal and state program. Federal law requires states to seek reimbursement for long term care costs from the estates of certain deceased Medicaid recipients. States implement that requirement in different ways, but the pattern is similar.

Medicaid looks at two big periods:

First, before you qualify, to decide if you are eligible.

Second, after you die, to see if it can be reimbursed from whatever you leave behind.

Your primary residence sits in the middle of both questions.

While you are alive: eligibility rules for the home

In most states, your primary residence is treated as an exempt asset while you are living in it, up to a generous equity cap that is often in the hundreds of thousands of dollars. Roughly speaking, you can own a home, qualify for Medicaid long term care, and not be forced to sell it immediately, especially if a spouse or certain family members still live there.

This is why the fear that "Medicaid will just take my house if I go into a nursing home" is usually mistaken. The nursing home wants payment, but it is Medicaid, not the facility, that becomes the payer and later may seek recovery.

After you die: Medicaid estate recovery

Medicaid's leverage typically starts at death. The state tracks what it paid for your long term care. After you die, it can file a claim against your probate estate, and in some states against nonprobate transfers as well.

If the home is still titled in your name and passes through probate, the state can demand that the executor liquidate it or otherwise satisfy the Medicaid claim before distributing anything to heirs. Your children can lose part or all of the home's value this way, even if nobody actually forced a sale during your lifetime.

There are exceptions and protections:

Spouses who survive you are typically shielded while they remain alive in the home.

Minor or disabled children, in many states, prevent recovery against the house while they live there.

Many states offer “hardship waivers” if forcing a sale would be especially devastating, although these are not guaranteed and often involve a difficult application process.

The bottom line is that Medicaid usually waits until the end of your life, then looks at what you left in your name and asks to be paid back out of that pile. If your largest asset is the house, that is where it looks first.

Can Medicaid Take Your House if It Is in a Trust?

The word “trust” gets thrown around as if it were a magic shield. Whether your house is protected depends almost entirely on the type of trust and when it was created.

Revocable living trust: great for probate, weak against Medicaid

Most people who say “I have a trust” mean a revocable living trust. You create it, you control it, and you can amend or revoke it any time. For many families, a revocable trust is the best way to leave a house to children: it avoids probate, keeps things organized, and allows for disability planning if you become incapacitated.

However, for Medicaid purposes, a revocable trust is essentially invisible. If you can revoke it and pull the house back into your name, Medicaid treats it as though you own it. The house is countable for eligibility, and in many states, subject to estate recovery when you die.

So if you ask, “Can a nursing home take your house if it’s in a trust?” and the trust is revocable, the answer is that the house is just as exposed to Medicaid as if you owned it outright. Again, the facility itself does not seize the house, but Medicaid can seek recovery from it later.

Irrevocable trust: better shield, but real trade offs

The more serious planning tool is an irrevocable trust. You transfer the house into a trust that you cannot unilaterally change or revoke, and you give up direct control. Done correctly and early enough, the house is no longer yours for Medicaid purposes.

Here is where timing becomes critical.

The Medicaid 5 Year Lookback and the “5 Year Rule” for Irrevocable Trusts

Medicaid has what people call the “5 year lookback.” When you apply for long term care coverage, the state reviews transfers you made in roughly the prior five years. If it finds that you gave assets away or moved them into an irrevocable trust for less than fair market value, it can impose a penalty period during which Medicaid will not pay for your care.

The “5 year rule for irrevocable trusts” is simply this: if you put your house into an irrevocable trust and then you do not apply for Medicaid for at least five years, that home is typically outside the lookback period and not counted as an available asset. In many states, that also means it will not be subject to estate recovery at your death, because it is no longer in your name or in your probate estate.

If you transfer the house to an irrevocable trust and need care within those five years, you may be penalized as if you had made a gift.

People often ask me how to avoid the Medicaid 5 year lookback without running afoul of the law. The honest answer is that there is no secret “Medicaid loophole” that lets you transfer assets at the last minute without consequence. What you can do is:

Plan early, ideally while you are still healthy and independent.

Use legal transfers, such as properly drafted irrevocable trusts, well before the five year window.

Coordinate the trust design with your broader estate plan, tax picture, and family dynamics.

Anything advertised as a magic Medicaid loophole that works at the eleventh hour is usually either misleading or risky.

The So Called 7 Year Rule for Trusts

You may hear friends mention a “7 year rule for trusts.” That phrase usually comes from UK inheritance tax law, where gifts made more than seven years before death can escape certain taxes. In the United States, most Medicaid rules are based on a 5 year lookback, not seven.

If someone is telling you that you must do everything at least seven years in advance for Medicaid, they are probably mixing systems or oversimplifying. For American Medicaid planning, the key number is usually five years, although some states have special rules for certain transfers and programs.

What you should take away is that last minute planning is rarely clean or painless. Whether the key number is five or seven in your jurisdiction, the best time to prepare is always years before you think you will need care.

The 5 by 5 Rule in Estate Planning

In more advanced trust planning you may see a reference to the “5 by 5 rule in estate planning.” This has nothing to do with Medicaid. It is a tax concept used in some irrevocable trusts.

The 5 by 5 rule says a beneficiary’s power to withdraw assets from a trust can be limited to the greater of 5,000 dollars or 5 percent of the trust value each year without causing certain estate tax problems. Lawyers use this rule when designing trusts with “Crummey powers” or limited withdrawal rights.

If you are working with an estate planning attorney on both tax minimization and Medicaid planning, you might see the 5 by 5 rule in the trust documents. Just remember it addresses federal estate and gift tax exposure, not your Medicaid eligibility directly.

When Does an Irrevocable Trust Make Sense?

Irrevocable trusts are powerful tools, but also sharp. When someone asks me, “What are the only three reasons you should have an irrevocable trust?” my own short list looks something like this:

- You want to protect assets from long term care costs and Medicaid estate recovery, and you can afford to give up control well in advance of needing care.
- You have significant wealth and need to remove assets from your estate for federal or state estate tax planning purposes.
- You have a family or business situation that requires ironclad protection from creditors, lawsuits, or future spouses.

That is the first of the two lists.

Notice what is missing: routine probate avoidance, simple inheritance planning, or basic convenience. For those, a revocable living trust usually does the job with far fewer headaches.

The downside of putting your house in an irrevocable trust

You are giving up control of the home. You cannot change your mind easily.

Refinancing becomes more complicated, sometimes impossible, depending on your lender.

If your children are trustees and future beneficiaries, you are tying them together financially in a way that can cause friction later.

Tax treatment can be less favorable if the trust is not properly drafted. A poorly designed trust might forfeit your heirs' step up in basis at your death, creating capital gains headaches if they sell.

Many parents do not fully appreciate the psychological shift of no longer "owning" the house. They feel stuck with decisions that seemed fine at 65 but not at 80.

Irrevocable trusts can be invaluable, but they are not casual tools. They should be used deliberately, for specific objectives, and with clear eyes about the trade offs.

The Best Way to Leave Your House to Your Children

Every family wants the "best way" to leave a house. That answer depends on what problem we are solving: avoiding probate, protecting against Medicaid, minimizing taxes, or simply keeping peace among siblings.

Here are the tools I reach for most often:

A well drafted revocable living trust that owns the house and spells out who gets what and when. For many middle class families, this is the cleanest route.

In states that allow them, a transfer on death deed or beneficiary deed. You keep full ownership while alive and the deed passes the property automatically at death, often avoiding probate.

A remainder interest or life estate, where you keep the right to live in the house for life, with your children named as remainder owners. This can help in some Medicaid planning situations, but it must be used carefully.

An irrevocable Medicaid planning trust, created early, if the family is genuinely focused on long term care protection and is comfortable with the loss of control.

What I almost never recommend is simply adding a child as a joint owner during life without a trust. That choice can expose the house to the child's creditors, divorces, or bankruptcies, and it can create tax and family messes that are expensive to unwind.

So, is it better to leave a house in a will or trust? If your goal is smooth administration, privacy, and flexibility, a trust usually wins. A will alone leaves your family at the mercy of the probate process, and in many states, the house will sit in that process until a judge allows it to pass.

Will vs Trust for the Home: A Practical Comparison

Here is how I explain the main difference to clients who are deciding whether to use a will or a trust for their home:

- A will speaks only at death and must go through probate. The house may be tied up for months before anyone can sell or refinance it.
- A revocable trust owns the house during your life and keeps owning it at death, so there is no court supervision needed to transfer or sell it.

- A will offers no real protection from incapacity. If you become disabled, your family may need a court guardianship to deal with the house.
- A trust allows a successor trustee to step in if you are incapacitated, keep the mortgage paid, and handle repairs without court approval.
- Neither a basic will nor a revocable trust alone protects the house from Medicaid estate recovery. For that, you need earlier and more specific planning.

That is the second and final list.

Bank Accounts that Avoid Probate

Clients often ask, "Which bank accounts avoid probate?" This matters because probate and Medicaid estate recovery are closely linked. The more that passes outside probate, the fewer assets are typically exposed to estate creditors, including Medicaid.

Common ways to keep bank accounts out of probate include:

Payable on death (POD) or transfer on death (TOD) designations naming a beneficiary.

Joint accounts with right of survivorship.

Accounts titled in the name of your revocable trust.

Retirement accounts, such as IRAs and 401(k)s, that pass by beneficiary designation.

Remember that avoiding probate is different from protecting assets from Medicaid or other creditors. A POD account still belongs to you while you are alive, so it is counted for Medicaid eligibility. The nonprobate feature only appears at your death.

The Most Common Inheritance Mistake

The single most common inheritance mistake I see is disjointed planning: people assume that a will controls everything, ignore beneficiary designations, and ignore how titling interacts with Medicaid and taxes.

Examples:

Naming children as beneficiaries on life insurance and retirement accounts, then writing a will that says "hold everything in trust for my minor kids." The will never touches those accounts, so minors receive cash directly or through a custodian who is not bound by your trust terms.

Leaving a house outright in equal shares to children who do not get along, with no guidance on who can live there, who pays expenses, and how to resolve disagreement over a sale price.

Assuming that Medicaid or tax rules will not apply because "we are not that rich," and then discovering that long term care costs or a state estate tax decimate the legacy.

Comprehensive estate planning is about knitting together your will, trusts, beneficiary designations, powers of attorney, and, when needed, Medicaid planning. The question, "What is comprehensive estate planning?" is really asking whether all those moving pieces work together for your family and your likely risks.

Who Should You Not Name as a Beneficiary?

You have enormous flexibility when naming beneficiaries, but some choices create [Comprehensive Estate Planning Attorney Near Me](#) predictable trouble.

People you should think twice about naming as direct, outright beneficiaries include:

Minor children, because they cannot legally receive assets. A court may need to appoint a guardian, and the money may become available to them at 18 or 21 with no strings attached.

A child or sibling with special needs who relies on Medicaid or Supplemental Security Income. A direct inheritance can disqualify them from benefits. A special needs trust is usually better.

Someone with serious debt, addiction issues, or a pattern of poor financial decisions. Leaving assets in a spendthrift trust, managed by a responsible trustee, often protects both the beneficiary and your legacy.

Ex spouses, unless you very intentionally want them to benefit. Old beneficiary forms that still list a former spouse cause more litigation than most people realize.

Charities you do not actually support, simply because they are printed on a form your financial institution gave you.

Beneficiary choices can also affect Medicaid planning. For example, directing retirement assets into a trust for your spouse instead of outright can prevent those funds from being mishandled if your spouse later needs care.

What Should Not Be Included in a Will

A will is not a catchall document. Some instructions are either ineffective or problematic when placed there.

You generally do not want to include:

Assets that pass by beneficiary designation, like life insurance or retirement accounts. The contract with the institution controls, not your will.

Jointly owned property with right of survivorship. Your share passes automatically to the co owner.

Funeral and burial instructions that must be acted on immediately. Often, families make these decisions before the will is even located.

Digital passwords and security credentials. A will becomes a public record in many jurisdictions when probated, so do not embed sensitive access details.

Highly detailed care instructions that belong in a health care directive or separate letter of wishes.

Understanding what a will does not control helps you avoid relying on it for things better handled with trusts, beneficiary forms, or separate documents.

Taxes, Inheritances, and Gifts to Adult Children

Another frequent concern is, "How much can you inherit from your parents without paying taxes?" For most American families, the answer is "a lot more than you think." Federal estate tax applies only to estates above a very high exemption, in the range of many millions of dollars per person as of 2024. Many states have their own thresholds, some lower, so your location matters.

However, income tax can apply to certain inherited assets. Traditional IRAs and 401(k)s, for example, create taxable income for beneficiaries when withdrawn. Houses, by contrast, usually receive a step up in basis at the owner's death, often allowing children to sell with little or no capital gains tax.

When parents ask, "What is the best way to gift money to an adult child?" the answer usually involves perspective more than mechanics. You can:

Use the annual exclusion amount each year without filing a gift tax return, as long as you stay within the limit per recipient.

Pay tuition or medical expenses directly to the provider, which can be unlimited and not count against your annual exclusion.

Coordinate large gifts with your overall estate tax exemption, which, for most families, leaves plenty of room.

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**ORANGE COUNTY
ESTATE PLANNING
ATTORNEY**

Parker Law Offices

28202 Cabot Rd 3rd floor, Laguna Niguel, CA 92677
949 385-3130
<https://www.estateandtrustlawyer.com/orange-county-estate-planning-attorney/>

State Plan
Testament
Health Care Directive
Statutory Power Of Att

What matters most is whether the gift timing fits your own retirement and care needs. Gifting money or property that you may later need for your own support can undermine both your security and your Medicaid planning.

How Much Does It Cost to Have an Estate Planning Attorney?

Cost is a practical question, and one that people often hesitate to ask. In most regions, working with an estate planning attorney on a comprehensive estate plan typically ranges from around 1,000 to 4,000 dollars for an individual, and somewhat more for a couple.

That often includes a will, revocable trust, financial power of attorney, health care directive, and basic deed work. More complex planning, such as irrevocable Medicaid trusts, tax driven irrevocable trusts, or business succession planning, can increase the fee significantly.

Some attorneys charge flat fees, others bill hourly, often in the 250 to 600 dollar per hour range depending on experience and geography. The right question is not simply "How much does it cost to have an estate planning

attorney?” but “What risks are we addressing, and what problems are we preventing?” Losing a house to Medicaid estate recovery, or leaving your family tangled in a contested estate, is usually far more expensive.

Pulling It Together: House, Medicaid, Trusts, and Family

Medicaid does not swoop in and padlock your house, but it does keep careful track of what it spends on your care. If you leave the home in your own name and rely only on a simple will, your estate may face a Medicaid recovery claim that forces a sale or diverts most of the value from your children.

You have real options:

Use a revocable living trust and beneficiary designations to keep your estate organized and mostly outside of probate.

Add targeted Medicaid planning, often through an irrevocable trust created at least five years before you might need care, **Comprehensive Estate Planning Attorney Near Me** if asset protection is a priority.

A graphic advertisement for Parker Law Offices. It features a QR code in the top left corner. To the right of the QR code, the text reads: "Parker Law Offices", "28202 Cabot Rd 3rd floor, Laguna Niguel, CA 92677", "(949) 385-3130", and "[https://www.estateandtrustlawyer.com/orange-county-probate-attorney/](\"https://www.estateandtrustlawyer.com/orange-county-probate-attorney/\")". Below this, on the left, is the Parker Law Offices logo (scales of justice) and the text "PARKER LAW OFFICES". To the right of the logo, the text "PROBATE ATTORNEY ORANGE COUNTY" is displayed in large, bold, blue letters. At the bottom center, there is a photograph of a wooden desk with a gavel, papers, and hands in the background. The entire graphic is framed with a dark blue border and includes decorative geometric shapes and dots.

Coordinate your will, trusts, beneficiary forms, and powers of attorney so that everything points in the same direction, rather than pulling against itself.

Work with an attorney who does both estate planning and elder law, so the person helping you decide “Is it better to leave a house in a will or trust?” is also thinking about Medicaid, taxes, and family dynamics.

For many families, the house is more than an asset. It is memory, identity, and security. Treating it with that level of care in your planning is the surest way to keep it from becoming a source of conflict, surprise taxes, or an unexpected bill from the state years down the road.

Parker Law Offices

28202 Cabot Rd 3rd Floor, Laguna Niguel, CA 92677

9493853130