

## Nursing Homes Can Not Seize Homesteads in Florida

I am constantly amazed at how many people rely on their neighbors (usually from “up north” somewhere) for legal advice.

I cannot tell you how many times I have had clients come to me wanting to know how to prevent the nursing home from taking their homestead. When I answer “do nothing,” they usually look at me with amazement.

If you read my previous article about homestead, you will know no creditor can file a claim against your house, even at death, except in rare circumstances. The only exception is if the debt is connected with the property, such as property taxes, a mechanic’s lien, a mortgage, home owner or condo assessments, and so forth.

The rare circumstances would be if you left your house to a nonrelative.

Additionally, you can qualify for Medicaid benefits to pay for care in a nursing home, certain assisted living facilities, or at home, and up to \$500,000 of equity in your homestead will be treated as an exempt asset (not counting toward the asset limits of \$2,000 for an individual and \$101,640 for the spouse at home). Furthermore, Medicaid cannot file a claim against your house, because it is a debt not connected with the property.

These rules do not apply in every state. Florida has a constitutional protection for the homestead many states do not offer. Thus, if you are listening to your neighbor from New Jersey for your legal advice, you may get the wrong answer.

In many states, creditors (including Medicaid) can force the sale of homestead. Thus, stories of Medicaid forcing the sale of the family farm or the family home from “up north” may be true.

One of the worst things people facing long-term care situations do is to sell the house without getting professional advice first. This is because once the house is converted to cash, creditors can get at the cash. Cash assets also “count” against the asset limits for Medicaid qualification purposes.

There is an exception for cash that is reinvested in another homestead. The money to be reinvested cannot be commingled with other money and must be reinvested within a short time frame.

Florida is a very debtor-friendly state. State courts have repeatedly upheld these state constitutional homestead protections. So hold on to that homestead. It may be the best thing you ever do.