

An abstract watercolor splash in various shades of blue, ranging from deep navy to light sky blue, with some darker, more saturated areas. The splash originates from the bottom left and moves upwards and to the right, creating a sense of movement and depth. The edges are soft and blended, typical of watercolor painting.

# ASSET PROTECTION PLANNING FOR OLDER CLIENTS

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# SOME OF THE BIGGEST CONCERNS I HEAR

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- Will I be able to afford care if my spouse and/or I need it
- If I need to go into a nursing home, how will my spouse make ends meet
- Will I have anything left to leave as a legacy for my loved ones if I have to go into a nursing home





# ASSISTED LIVING VS. NURSING HOMES

- 24 hour staffing and help with daily living tasks like medication management, but not 24/7 supervision
- Patients often need minor nursing care but not full-time medical care
- Skilled nursing facilities which typically provide 24/7 supervision and help with Activities of Daily Living (ADLs) such as bathing, dressing, toileting, eating, etc.



Note: MEMORY CARE

Can be either Assisted Level of Care or Nursing Home Level of Care

# PAYING FOR CARE

## ASSISTED LIVING VS. NURSING HOME

- Typically paid for solely out of pocket

- NO Medicaid available for assisted living level of care

- Possibly "SPECIAL ASSISTANCE" but only for very low-income individuals

- Average cost in NC is \$5,769 per month (up by almost 44% since 2021) but can vary widely depending on where in NC you live



- May be paying out of pocket



- MEDICARE may pay for up to 100 days



- MEDICAID may be available



- Normally about 50% more than Assisted Living



- Average cost in NC for a semi-private room is \$8,365 per month and for a private room is \$9,125 per month



Varies greatly by region and quality of facility  
- could be as high as \$10,000+ per month depending on where in NC you live



## PRE-PLANNING: MEDICAID ASSET PROTECTION TRUST (MAPT)

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1. Irrevocable
2. Client loses control of assets
3. Generally, Client can not be a beneficiary or Trustee of the MAPT
4. Beneficiaries?
5. How do you get money out of the trust? Can you?
6. Gift-tax implications?
7. Five-year Lookback period
8. When should you definitely NOT use this option?

# “CRISIS” PLANNING



If the MAPT is NOT an option or you are not comfortable with the thought of giving up control of assets, what options are there?

1. Deeds
  - a. “Ladybird” or enhanced life estate deeds
  - b. “1%” deeds
  - c. Pros and cons to each
2. Basic Concepts
  - a. Countable vs. Non-Countable Resources
3. Married Couple
  - a. Spend-down
  - b. Medicaid Compliant Annuity or Promissory Note
4. Single Client
  - a. Spend-down
  - b. “Half-a-loaf” strategy (gifting plus MCA or promissory note)

# DO I QUALIFY?

- 4 PRONG TEST:

- MEDICAL – DO YOU NEED SKILLED-NURSING LEVEL OF CARE?
- INCOME – DO YOU MAKE MORE INCOME THAN THE MEDICAID REIMBURSEMENT RATE FOR THE FACILITY?
- RESOURCES – ARE YOU OVER THE RESOURCE LIMIT?
- GIFTS
  - FIVE-YEAR LOOK-BACK FOR GIFTS
  - “GIFTS” ARE “TRANSFERS FOR LESS THAN FAIR MARKET VALUE”

# DEEDS



## Ladybird Deed –

- *Gift real estate to children and keep a remainder interest and the right to live in the property*
- *Retain the right to change the remaindermen*
- *Is it a gift?*
- *Not all counties (or states) recognize or honor these*

## 1% Deed

- *Unique to NC and only a handful of other states*
- *Gift or SELL a portion of your property*

*BOTH HAVE PROS AND CONS TO CONSIDER*



# COUNTABLE VS. NON-COUNTABLE RESOURCES

Countable - \$2000 (Community Spouse Resource Allowance - ½ up to \$154,140)	Non-countable - UNLIMITED
Bank Accounts	Primary Residence
IRA/401(k)/Retirement	One vehicle
Investments	Household goods/jewelry
Additional vehicles	<i>Irrevocable</i> Funeral Plans
Additional Real Property (maybe)	Additional Real Property (maybe)
Life Insurance (maybe)	Life Insurance (maybe)

# SPEND-DOWN

Anything over the \$2000 for the institutionalized individual (plus the CSRA) must be spent down

- \$ Improve or replace non-countable resources
- \$ Purchase non-countable resources
- \$ Funeral Plans
- \$ Attorney fees
- \$ Convert Countable to Non-Countable Resources
- \$ Medicaid Compliant Annuity or Promissory Note (sometimes combined with gifting)
- \$ CSRA and MMMNA



# OTHER POTENTIAL ASSET PROTECTION TOOLS

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- Powers of Attorney
  - Financial/Durable
    - Needs Gifting Power
    - Needs LTC Planning Power
    - 2018 – Uniform Power of Attorney Act
  - Medical/HealthCare
- Guardianship (last resort)

# CAVEAT

These are all very legally complex planning techniques that should be done with a licensed attorney skilled in elder law and Medicaid planning.

Attempting to do these techniques on your own could result in loss of benefits or non-qualification.

None of the prior is to be construed as legal advice or guidance. Information is for educational purposes only.





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