

Another smart reason to have Good & Current Powers of Attorney: Spouses and Medicaid Spousal Refusal Planning

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Complex spousal issues arise from an obligation to support & marital rights. This Article will consider some of these in the context of a “Spousal Refusal” Medicaid application.

To pay for Long Term Care some families will buy Long Term Care Insurance. Those that don't are left with insurances that typically do not cover very much leaving only the Medicaid Program. Under Medicaid, if one spouse is in a nursing home the spouse at home can have a home of any value, between \$74,820 and \$115,920 in assets, a prepaid funeral & IRAs in Medicaid pay status. The spouse at home can have \$2,898 a month in gross income. If the couple has more than allowed they can use a technique referred to as “*spousal refusal*”. Having good current Powers of Attorney is critical here!

Families use “*spousal refusal*” without considering the consequences. A well thought out plan can minimize these issues. For example, Medicaid may have a right to recover from the well spouse or their probate estate. It still can provide significant savings because Medicaid recovery is typically less than a private pay. In addition, while the application is pending the “well” spouse cannot make any gifts. If the “well” spouse is sick the assets may be used on them. All assets should be structured to avoid probate which may limit Medicaid's right of recovery if the well spouse should die. A more delicate issue: *Should the well spouse leaving anything to the Nursing Home Spouse?* Typically the answer is no, but that may not be the right answer for everyone. Even if nothing was left to the nursing home spouse, NY law provides that every spouse in NY is entitled to the greater of one third or \$50,000 from the deceased's estate. This must be addressed!

What about taxes? In NY a couple, with proper planning can transfer more than \$1,000,000 in assets (house, insured owned Life insurance, jewelry, shoes etc) without a NY Estate tax. An estate of \$1,100,000.00 draws a \$37,000 NY Estate tax. If all the assets are transferred to the well spouse and the well spouse dies with an estate of \$1,000,000, there will be a tax.

A well thought out plan saves money, time, independence and control.