

ASK THE EXPERT

Selling a jointly owned home

The problem: My sister and I own a home together in East Rockaway. She married and moved out 25 years ago. I stayed, never married and paid the bills myself. She is now in a Florida nursing home on Medicaid. If I sell the house, will the proceeds go to Medicaid?

The expert: Lawrence N. Berwitz, a partner at the law firm of Berwitz & DiTata LLP, in Garden City.

The rules: The signatures of all the owners of real property are necessary for the sale, regardless of who lived where and who

paid the bills. The proceeds of the sale will be allocated in proportion to your respective ownership shares. Your sister's share will be paid to her and may affect her Medicaid eligibility. Your share, however, will be paid to you.

The strategy: Your ability to sell the house will depend on whether your sister is capable of signing a deed. If she isn't, find out whether she has a valid power of attorney authorizing someone else to act on her behalf in real estate transactions. If she does, that person can sign the deed for her. If not, a proceeding to appoint a guardian will be required.

How it works: If your sister cannot sign the deed

and she does not have a valid power of attorney that includes authority to transfer real property, you'll have to bring a guardianship proceeding in Florida, and then an ancillary guardianship proceeding in New York. The court will appoint someone to sell the property on her behalf.

Assuming that you have an equal share in the property, either as co-tenants or joint tenants, you will each be entitled to an equal share of the sale's net proceeds. If your interests are unequal, the net proceeds will be

divided proportionately. Your sister may still be able to implement asset protection planning to save a portion of her share from going to Medicaid.

The result: Your situation illustrates the importance of planning before the need arises. You should evaluate taking steps to protect your share of the proceeds, to ensure against the estate erosion that may very well affect your sister's share.

— KAREN E. KLEIN

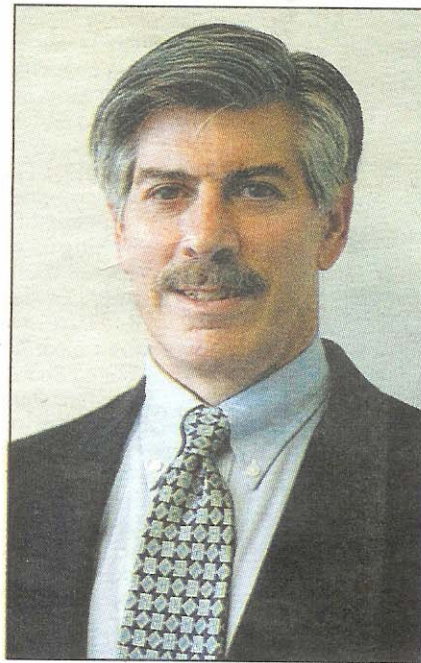


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Attorney Lawrence N. Berwitz

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