

From [Elder Law Answers](#): (10/15/07)

New to Estate Recovery, Michigan Attorneys Seek Aid

On September 28th, 2007, Michigan became the last state in the nation to pass an estate recovery program required by federal law. Federal Medicaid officials had threatened to cut off \$5 billion in annual Medicaid payments if the state was not in compliance by September 30.

Michigan adopted "probate only" estate recovery. However, living trusts cannot be used to avoid recovery because the state's Medicaid Manual provides that a home in such a trust loses its exempt status, reports ElderLawAnswers Michigan member [Robert C. Anderson](#) of the Elder Law Firm of Anderson Associates, P.C., in Marquette.

"This is new for us," said Anderson. "We need some help." Anderson wonders whether elder law attorneys in other states have thoughts on what Michigan attorneys can do.

If transfers must be made within the 60-month look-back period, Anderson said any short-term strategy would have to be one that avoids probate *and* does not create a significant divestment period.

"The only two strategies I can think of are (1) the "Lady Bird deed" (deed to loved ones with a retained life estate and power of sale) or (2) an unequal joint ownership deed where the divestment would be insignificant, such as 'Sally Senior as to a 99.9 percent interest and Debbie Daughter as to a .1 percent interest as joint tenants with rights of survivorship'," said Anderson.

Does your state permit "Lady Bird" deeds or unequal joint ownership deeds? Why or why not?

Any help provided will be included in the Tax SIGs™ breakfast presentation, "Home Ownership Options for Seniors " Elder Law Solutions," to be held at the National Academy of Elder Law Attorneys' upcoming Institute in Memphis. Bob Anderson can be reached by e-mail at rcanders@charter.net.

An article on the new estate recovery law in the *Detroit News* quotes two other Michigan ElderLawAnswers members, [Don L. Rosenberg](#) and [Sanford J. Mall](#).

Rosenberg says that the estate recovery effort is "not even worth it," given that estate recovery efforts recoup only a small percentage of Medicaid funds spent on nursing home care. "Estate recovery is bad public policy," he observes.

Mall, who is chair of the Elder Law & Disability Rights Section State Bar of Michigan, notes that nursing home residents currently relying on Medicaid will be exempted from recovery efforts. He also provides advice in a sidebar on how to avoid recovery. Mall suggests that the state is considering developing an estate preservation program that would act as an insurance policy against losing a home to estate recovery.

To read the *The Detroit News* article, [click here](#).

See also an article in the Adrian, MI, *Daily Telegram*, ["New law threatens homes of deceased."](#)