

# Selling the Home without Breaking Medicaid

What to Ask Your Texas Elder Law Attorney Before You List



*A Texas family's caution guide for the legal conversation that has to happen before the real estate conversation.*



## Included Within:

- Why your parent's home sale is a legal question before it is a real estate question
- The three mistakes that cost Texas families the most
- Ten questions to bring to your elder law attorney before you list
- The documents to gather so the meeting runs efficiently
- How the home sale interacts with VA benefits, a reverse mortgage, and Texas Lady Bird Deeds
- How to find the right Texas elder law attorney for this specific situation

# What This Guide Is, and What It Isn't

## **A note before you read further.**

Let me be clear about something up front: I'm not an attorney. I'm not a financial planner. I'm not a doctor. Nothing in this guide is legal, financial, or medical advice, and you shouldn't treat it as such.

This guide is especially careful about that line — because the question it's built around (how to sell a parent's home without breaking their Medicaid eligibility) is one of the most legally sensitive moments in the entire senior transition. Getting it wrong can cost a family hundreds of thousands of dollars. Getting it right means having a real conversation with an attorney who is licensed to advise you.

So what is this? **This is context.** It's the things I've learned matter most when a family is preparing to sell a parent's home where Medicaid is — or might become — part of the funding picture. It's meant to help you understand the landscape, recognize what you'll need, and walk into a meeting with the right professional ready to use their time well.

The goal isn't to make you an expert. It's to help you walk into the conversation with the real expert — your Texas elder law attorney — with some sense of what questions to ask, what documents to bring, and what's at stake if the conversation doesn't happen.

Here's the thing I can't say strongly enough: so much of how this part of a senior transition goes comes down to what you do before you list the house. Who's on title. Whether the home transferred to anyone in the last five years. Whether the parent is married, separated, widowed, or divorced. Whether anyone in the family is on the deed. Whether there's a reverse mortgage. By the time the closing is scheduled, many of the best options have already closed — not because the family did anything wrong, but because no one told them the window was open in the first place.

## **This guide may help you avoid "well, if we had known."**

That's what it's for. The Senior Move Roadmap™ system includes seven guides that walk you through the transition itself — and a small set of companion pieces like this one that handle the legally and financially sensitive corners. Read it for what it is — a starting point from someone who has watched families go through this, sharing what tends to matter — then take it to a Texas elder law attorney who can apply it to your family's actual situation. They do the real work. I'm just trying to help you get ready for it.

And again — because it bears repeating — I'm not an attorney, a financial planner, or a doctor. Take this information as general context. Verify everything that matters with someone licensed to advise you.

# Selling the Home Is a Real Estate Question on the Surface

## **Selling the Home Is a Real Estate Question on the Surface. Underneath, It's an Elder Law Question.**

Most families, when they realize the home needs to sell to fund care, do exactly what makes intuitive sense: they call a real estate agent. The agent walks the house, runs comps, talks about timelines, maybe recommends some staging. The conversation feels practical and forward-moving. The family feels relief that a hard thing is finally being handled.

Then six months later, the parent's savings have run down enough that someone files a Medicaid application — and the application is denied, because \$280,000 from the home sale landed in Mom's bank account three months ago and Medicaid is treating it as a countable asset. Or later: the application is approved, and four years afterward when Mom passes, the state files a Medicaid Estate Recovery Program (MERP) claim against the probate estate. Texas's MERP has meaningful protections — small-estate exemption, surviving spouse, surviving disabled child, hardship — but most of those protections only work if the planning was done before the sale, not after.

Neither of these outcomes was necessary. Both are common.

The home sale is a real estate question on the surface — and underneath, in any family where Medicaid is or might become part of the funding picture, it is an elder law question. The real estate work follows the legal work. The legal work tells you when to sell, how to structure the proceeds, who should be on title before listing, what documents need to exist, and what protections — the spousal exemption, the intent-to-return status, the caregiver child exception, Texas-specific tools like the Lady Bird Deed — are available if the right paperwork is in place before the listing goes up.

This is not true for every family. If your parent is wealthy enough that Medicaid will never be in the picture, the order doesn't matter — call the agent.

# Selling the Home Is a Real Estate Question on the Surface (cont)

If your parent is single, the home is paid off, the savings are modest, and there's no real chance Medicaid will be needed for long-term care within the next five years, the analysis is simpler. But if Medicaid is anywhere in the picture — already in use, likely to be needed within five years, or even just a "we don't know yet" — the order matters.

## **The order is this:**

1. Elder law attorney
2. Real estate agent
3. List the house

An hour with a Texas elder law attorney before you list — \$300 to \$1,000 in most markets — is the cheapest insurance in this whole process. The hundreds of thousands of dollars at stake make this not a place to save money.

## **"BUT MOM ISN'T ON MEDICAID."**

That is the most common reason families skip this conversation. It is also the most common reason they regret skipping it.

The question **IS NOT** whether Mom is on Medicaid today. The question is whether Medicaid **might fund her care within the next five years** — when her savings have been spent down by assisted living or memory care costs that few families fully understand at the start of the journey.

Most families' honest answer to that question is **"we don't know yet."** That answer is itself the reason to have the conversation now, while options are still open. Once the home sells, several of the best options close — and they don't reopen.

# Selling the Home Is a Real Estate Question on the Surface

## The Three Mistakes That Cost Texas Families Most

Three patterns account for the great majority of expensive Medicaid mistakes around the home sale. Each one is preventable. None of them is obvious if no one has told you to watch for it.

### 1. The Five-Year Look-Back

When someone applies for Medicaid long-term care benefits in Texas, the state reviews every financial transaction the applicant made in the prior sixty months. This is called the look-back period. Any uncompensated transfer during that window — money given to a family member, a house transferred for less than fair market value, a check written to pay off someone else's debt — triggers a penalty period during which Medicaid will not cover care. The penalty is calculated based on the value of the transfer divided by the state's transfer divisor (approximately \$213/day in Texas as of 2025; the figure is adjusted periodically and should be verified with HHSC at the time of planning).

The painful feature: the penalty period does not begin running until the applicant would otherwise be eligible for Medicaid. The penalty kicks in at the exact moment the family most needs the coverage — which is by design.

What families think they can do — Give the house to a child to "protect" it from Medicaid.

**What actually happens** — The transfer is treated as uncompensated. A \$280,000 home given to a child in 2024 produces a penalty period of more than three years when Mom applies for Medicaid in 2026. During that penalty period, Medicaid will not pay for care, and the family must cover the gap out of pocket. The transfer didn't protect anything. It postponed Medicaid eligibility at the worst possible moment.

**What the attorney can do** — Structure transfers in ways the look-back doesn't catch. Time the planning so look-back exposure is minimized. Use Texas-specific tools — a properly drafted Lady Bird Deed, an irrevocable Medicaid Asset Protection Trust, the caregiver child exception where it applies — that accomplish the protective goal without triggering the penalty. Each strategy has trade-offs the attorney can map. All of them have to be in place before the application, not after.

# Selling the Home Is a Real Estate Question on the Surface

## 2. The Spend-Down Trap

The family home, while Mom lives in it — or, in some circumstances, while she "intends to return to it" — is an exempt asset under Medicaid rules up to a federal equity-value cap (approximately \$713,000 in 2025, adjusted annually). It does not count against the resource limit. For most Texas homes this is fully exempt. For higher-value homes in Austin, parts of Houston, and certain Dallas-area neighborhoods, the cap can matter and the exemption may be partial rather than full. The cash from selling the home is not exempt regardless. It becomes a countable resource the moment it lands in the bank account.

What families think they can do — Sell the house, deposit the proceeds, use them to pay for assisted living.

**What actually happens** — Depending on the parent's current Medicaid status and the size of the proceeds, the cash either disqualifies Mom from Medicaid (if she was eligible), or pushes the application window out by years (if she was about to apply), or creates a spend-down situation where the proceeds must be used in specific ways within specific timeframes to preserve eligibility.

**What the attorney can do** — Plan the sale to either preserve Medicaid eligibility — sometimes by structuring the sale so the proceeds don't land as one countable lump — or strategically spend down the proceeds in ways Medicaid recognizes: prepaying certain care expenses, paying off a home mortgage before sale, funding a Medicaid-compliant annuity, or moving funds into specific types of trusts. The right strategy depends entirely on the family's situation. It has to be developed before the sale closes.

# Selling the Home Is a Real Estate Question on the Surface

## 3. The Missed Exemptions and Protections

Medicaid law contains more protections for the family home than most families know exist. The spousal exemption protects the home (and a portion of savings) when one spouse needs care and the other stays in the home. The intent-to-return status protects the home even after the parent has moved to a community, if the right paperwork is in place. The caregiver child exception allows the home to be transferred to an adult child who lived with and cared for the parent for at least two years immediately before institutionalization — without triggering the look-back. The exception is real but the documentation standard is stringent: it typically requires a physician's letter confirming the level of care provided, the child's records of caregiving, and corroborating evidence that the care actually delayed institutionalization. Families who qualify often qualify without realizing it — but the documentation has to be assembled.

**In Texas, the Lady Bird Deed** (formally, the Enhanced Life Estate Deed) lets the parent transfer the home at death without probate and without triggering the look-back. The deed protects against the look-back precisely because it doesn't transfer ownership during the parent's life — the parent retains the right to revoke, sell, and mortgage the home until death. Modifying the deed to remove those retained powers eliminates the protection. A self-drafted version, or one drafted by a real estate attorney unfamiliar with elder law, may fail when it matters. The drafting has to be done by an attorney who handles Medicaid planning.

**What families think they can do** — Assume none of these protections apply. Or hear about one — the Lady Bird Deed, usually — and try to execute it themselves. What actually happens — Protections are missed because they weren't claimed correctly. Self-executed planning tools are done with the wrong language and either fail to provide the protection or trigger unintended consequences.

**What the attorney can do** — Identify which protections apply to your specific situation. Claim them correctly. Integrate them with the rest of the plan. This is the most common case where an elder law attorney's fee returns more than it cost — sometimes by orders of magnitude.

# Selling the Home Is a Real Estate Question on the Surface

## "CAN'T WE JUST TRANSFER THE HOUSE TO ME TO AVOID ALL THIS?"

This is the move most families think will work — and the one most likely to cost them. A direct transfer of the home from your parent to you can be treated as an uncompensated transfer under the five-year look-back. It postpones Medicaid eligibility by months or years at the exact moment the family needs it.

A direct transfer also has a tax cost the family rarely sees coming: when you eventually sell the home, you take your parent's original basis rather than the stepped-up basis you'd receive if the home transferred at death. For a home held for decades, that difference can be hundreds of thousands of dollars in capital gains exposure. **Pages 13-14 explain.**

Texas has planning tools that accomplish much of what families are trying to achieve with the direct transfer — the Lady Bird Deed is the most common — but they have to be executed correctly, with the right legal language, by an attorney who handles Medicaid planning. This is the conversation to have with the attorney before the deed gets written, not after.

# The Ten Questions to Bring to Your Texas Elder Law Attorney (1-5)

If you bring these page to the meeting, you've done some of the work the attorney needs to help you. The questions are organized in the rough order an elder law attorney would think through your situation. Don't memorize them — sometimes the attorney will have their own process and other times just hand the attorney the list.

**1. "Where does my parent stand with Medicaid — today, and in the next five years?"**

Why it matters: The plan is fundamentally different for a parent already on Medicaid, a parent applying within the year, a parent who may need it within five years, and a parent unlikely to need it at all. The attorney needs the honest answer here, not the hopeful one.

**2. "Who is on the title to the home right now, and has the title changed in the last sixty months?"** Why it matters: The current title structure determines what planning is still possible. Any title change in the last sixty months may be relevant to the look-back analysis. Bring the deed itself to the meeting, not the memory of what the deed says.

**3. "If my parent is married, what is the spouse's situation?"** Why it matters: The spousal exemption protects significant assets — including the home — when one spouse needs care and the other remains in the community. Whether the spouses are both living, divorced, separated, or one is already in care changes the entire plan.

**4. "Have there been any transfers, gifts, or loans in the last five years that might count as uncompensated under Medicaid rules?"** Why it matters: A \$15,000 check to a grandchild for tuition. Paying off a sibling's credit card. Lending money to a friend without documentation. All of these may show up on the Medicaid look-back and trigger penalty periods. Bring the bank statements; the attorney will tell you what counts.

**5. "Is a Texas Lady Bird Deed the right tool here — or is there another planning tool we should know about?"** Why it matters: Texas recognizes the Lady Bird Deed (Enhanced Life Estate Deed), which allows transfer of the home at death without probate and without triggering the look-back. Other tools — life estates, Medicaid Asset Protection Trusts, irrevocable trusts — may also fit. The attorney decides which, when, and how to draft.

# The Ten Questions to Bring to Your Texas Elder Law Attorney (6-10)

- 6. "What is the right structure and timing for the sale itself?"** Why it matters: Whether to sell now, six months from now, or after a planning step has been completed. Whether the parent should be on title at closing, or someone else. Whether the closing should happen before, during, or after a Medicaid application. The when and the how can change the financial result by hundreds of thousands of dollars.
- 7. "How should the sale proceeds be handled to preserve Medicaid eligibility — or to avoid blowing it later?"** Why it matters: Cash in the bank account is a countable asset. The strategies that preserve eligibility — Medicaid-compliant annuities, specific trusts, structured spend-down approaches, paying off qualifying obligations — depend entirely on the parent's situation. Confirm the tax treatment of any planning step with the CPA, not just the elder law side with the attorney. There is no single answer.
- 8. "Is my parent receiving — or eligible for — VA Aid & Attendance, and how does it interact with this plan?"** Why it matters: Aid & Attendance has its own 36-month look-back, separate from Medicaid's 60-month, and the rules work differently. A move that is safe under one program can disqualify under the other. If VA is anywhere in the picture, the planning has to track both clocks.
- 9. "What is our MERP exposure in Texas — what can the state claim against after my parent passes?"** Why it matters: Texas's Medicaid Estate Recovery Program is more limited than some states'. The state can only recover from the probate estate (not the broader definition used elsewhere), and several statutory protections may apply. The answer in Texas is often better than families expect — but only if the plan is built to use the protections.
- 10. "What is the order of operations — what has to happen, in what sequence, between now and the listing?"** Why it matters: This is the question that closes the meeting. You should leave the attorney's office with a sequenced list of what needs to happen — and in what order — before the listing goes up. If you don't have that list, the meeting hasn't done its job.

## **WE'RE JUST SELLING THE HOUSE — WHY DO WE NEED A LAWYER?"**

This can be the most expensive misunderstanding in the entire process — and one of the most common. The attorney isn't selling the house. The attorney is making sure that the sale, when it happens, doesn't undo years of care funding the family is going to need. The hour costs \$300 to \$1,000. The mistake it prevents has been known to cost families their entire equity.

# The Documents to Gather Before the Meeting

The attorney bills for the time they spend reading documents. The more you have with you the less time their staff spends looking for them.

**Bring everything you can find from the categories below.** Bring originals if possible, copies if not. Don't worry if the list is incomplete — bring what you have. The attorney will tell you what else is needed.

**ABOUT YOUR PARENT** □ Government-issued ID (driver's license or passport) □ Medicare card and Medicaid card (if either applies) □ Social Security benefit statement or recent benefit letter □ Long-term care insurance policy (if any) □ Life insurance policies, including any with cash value □ Annuity contracts (if any)

**ABOUT THE HOME** □ Current deed (most recently recorded) □ Any prior deeds going back at least five years (transfers, name changes, refinances) □ Mortgage statements, or reverse mortgage (HECM) paperwork if applicable □ Most recent property tax bill □ Homeowners insurance policy □ Records of any liens, judgments, or unpaid contractor bills

**ABOUT THE FINANCES** (the five-year history) □ Five years of federal tax returns □ Five years of bank statements — every account in your parent's name, or summary if full statements are unavailable □ Current statements for every financial account (checking, savings, brokerage, IRA, 401(k)) □ Records of any transfer, gift, or loan over \$5,000 in the last five years □ Records of any large purchase (vehicles, second properties, significant gifts) in the last five years

**ABOUT THE ESTATE AND LEGAL DOCUMENTS** □ Current will (and any prior wills if available) □ Durable Power of Attorney for finances □ Medical Power of Attorney and Advance Healthcare Directive □ Any trust documents — revocable or irrevocable □ Marriage license, divorce decree, or spouse's death certificate (whichever applies) □ Any pre-nuptial or post-nuptial agreement

**ABOUT CARE AND CONTEXT** □ Letter from your parent's physician describing current diagnosis and prognosis, if available □ Records of current care arrangements (in-home agency contract, AL community contract, etc.) □ VA benefit paperwork, if Aid & Attendance is in play □ Names and contact information for other professionals involved (CPA, financial planner, GCM, primary care)

## A note on what to do if half of this isn't findable

**Bring what you have.** Tell the attorney what you couldn't find. They will give you a follow-up list, and often they will help you locate replacement copies of key documents (some deeds, tax returns, and trust documents can be reconstructed from public records or other sources).

**Do not delay the meeting because something is missing.** The meeting itself is where you find out what is essential and what can come later. Postponing the meeting to gather more paperwork is one of the most common ways families lose the planning window they still had when they made the appointment.

# The Pieces That Touch This Decision

The conversation with your attorney is going to be longer than you think. The home sale doesn't sit alone — it touches the marriage, the VA, the tax picture, and a set of Texas-specific tools that don't exist in most states. Each of the pieces below is one your attorney will look at. None of them is optional if it applies to your family.

## **THE SPOUSAL EXEMPTION (AND WHAT COMMUNITY PROPERTY DOES, AND DOESN'T DO)**

When one spouse needs long-term care and the other remains in the home, Medicaid law protects the spouse staying behind — the community spouse in Medicaid language. The home itself is exempt while the community spouse lives in it. A portion of savings is also exempt under the Community Spouse Resource Allowance (CSRA), which has federal floors and ceilings (in 2025, a minimum of approximately \$30,800 and a maximum of approximately \$154,000) and is calculated case-by-case. Texas is a community property state, which is significant for estate planning and especially for taxes (the double step-up discussed below). For Medicaid eligibility, however, the picture is different from what most families assume. Both spouses' assets are generally treated as available to the spouse needing care, regardless of whether the assets are characterized as community or separate property. The CSRA then protects a defined amount for the community spouse on top of that aggregated picture. Community property characterization doesn't carve up Medicaid resources 50/50 the way it carves up other things.

**Add to your list:** "If my parent is married, walk us through how the spousal exemption and the CSRA work in our situation — and where Texas community property does and doesn't change the analysis."

## **VA AID & ATTENDANCE — A SEPARATE CLOCK, AND A CAPPED MONTHLY BENEFIT**

If your parent is receiving Aid & Attendance, or may apply for it, the home sale interacts with VA rules on a different timeline than Medicaid. VA has its own thirty-six-month look-back (separate from Medicaid's sixty-month) and a net-worth limit (approximately \$159,000 in 2025, adjusted annually with Social Security COLA — verify the current figure at [va.gov](http://va.gov)).

The two look-backs also work differently in mechanics. Medicaid penalizes most uncompensated transfers in the sixty-month window. VA penalizes only transfers that would have pushed the veteran above the net worth threshold, calculated against the maximum monthly pension rate. A move that is safe under one program can disqualify under the other — and the analysis has to be run under both rules separately.

The benefit itself is helpful but capped. In 2025, the maximum Aid & Attendance benefit is approximately \$2,727/month for a married veteran (or surviving veteran with a sick spouse) and approximately \$2,358/month for a single veteran. For a family staring at \$7,000–\$10,000/month memory care costs, A&A is meaningful but is not a substitute for the broader funding plan.

Add to your list: "If my parent has — or may apply for — VA Aid & Attendance, how does the 36-month VA rule change the timing and structure of the sale?"

# THE TAX QUESTION (AND THE STEP-UP TRAP)

When a parent sells the home during their lifetime, capital gains apply to the appreciation above their basis (typically the original purchase price plus improvements). The personal residence exclusion under §121 of the tax code allows \$250,000 of gain for a single filer or \$500,000 for a married couple to be excluded — if the parent has owned and used the home as their principal residence for at least two of the last five years before the sale. For a parent who has been in a community for more than three years, the use test may not be met and the full gain becomes taxable. A disability/care exception under §121(d)(7) may help, but it has its own conditions and isn't automatic. Confirm with the CPA before assuming the exclusion applies.

When the home transfers at death instead, the heirs receive a step-up in basis — the home is treated as if purchased at fair market value on the date of death, and the historical appreciation disappears for tax purposes.

Some Medicaid planning strategies that transfer the home during life are brilliant from the Medicaid side and disastrous from the tax side. A concrete example: a home bought for \$80,000 in 1985 and worth \$400,000 today. Transferred to an adult child during the parent's life, the child takes the parent's basis (\$80,000). When the child later sells for \$400,000, they owe capital gains on \$320,000 of appreciation. The same home held until the parent's death and then sold by the heirs has a stepped-up basis of \$400,000 — virtually no taxable gain. The Medicaid-side benefit of the lifetime transfer is real; so is the tax-side cost. The attorney plans both at once, or coordinates with a CPA who can. Add to your list: "Walk us through the tax implications of any planning step you're recommending — particularly any move that would transfer the home before death."

## **THE TEXAS DOUBLE STEP-UP** — A MAJOR TEXAS-SPECIFIC ADVANTAGE

This is the piece of tax law most worth knowing for Texas families: because Texas is a community property state, when one spouse dies the entire community property — not just the deceased spouse's half — receives a stepped-up basis to fair market value. In separate-property states, only the deceased spouse's half steps up; in Texas (and the small number of other community property states), both halves do. This is the "double step-up."

For a long-held Texas home that has significantly appreciated, the double step-up can mean hundreds of thousands of dollars of capital gains exposure avoided. The same \$80,000-basis, \$400,000-value home from the previous example: when the first spouse dies, the surviving spouse's full basis becomes \$400,000. The surviving spouse can sell the home with virtually no capital gains exposure beyond appreciation that occurs between the date of death and the sale date.

The double step-up is preserved only if the home is held until the first spouse's death rather than transferred during life. A Medicaid-planning move that transfers the home during life — even one that works on the Medicaid side — eliminates the double step-up. This is the single most consequential tax interaction in Texas elder law planning, and it deserves to be on the agenda of the attorney meeting.

**Add to your list:** "Are we preserving the Texas double step-up in any planning strategy you're recommending?"

# THE TAX QUESTION (cont)

## TEXAS-SPECIFIC PLANNING TOOLS

Texas recognizes the Lady Bird Deed (Enhanced Life Estate Deed) — a transfer-on-death deed that allows the home to pass to named beneficiaries at the parent's death without probate, without triggering the Medicaid look-back, and while preserving the step-up in basis (and, where applicable, the double step-up above). Most states don't recognize this tool; in Texas, it's the planning move families have most often heard about. Medicaid Asset Protection Trusts (MAPTs) are also available — properly drafted irrevocable trusts that move assets out of the parent's name with a sixty-month maturation period. Life estates are a more conventional option, though one with significant trade-offs the attorney can map. Each has a different fit, different timing, and different tax and Medicaid consequences. The attorney chooses; the family executes.

**Add to your list:** "Which Texas planning tools fit our situation, and what's the timing and tax implication of each?"

## THE CAREGIVER CHILD EXCEPTION

This one most families don't know exists. If an adult child lived with the parent and provided care that delayed institutionalization for at least two years immediately before the parent moved to a community, the home can be transferred to that child without triggering the look-back. The standard is real, but the documentation is stringent — it typically requires medical records, a physician's letter, and dates that confirm the level of care provided. If a sibling has been the live-in caregiver for years, this exception is one of the first things the attorney should look at.

**Add to your list:** "Does the caregiver child exception apply to anyone in our family?"

The pieces above are the ones every attorney will at least consider.

One more piece deserves its own page — because it's increasingly common, it's specifically tied to families who used a HECM to fund earlier modifications, and it has a clock running on it from the moment the parent leaves the home.

# When There's a Reverse Mortgage in the Picture

**The HECM-and-Medicaid scenario is increasingly common** — because reverse mortgages funded a wave of aging-in-place modifications in the late 2010s and early 2020s, and many of those parents are now moving to communities while the HECM is still on the home. Both clocks start ticking at once, in different directions, and the family has roughly twelve months to coordinate the response.

**A typical scenario:** Three years ago, Mom and Dad took out a HECM to fund a \$35,000 bathroom remodel and a first-floor primary suite. The modifications worked — they bought another two years at home together. Dad has since passed. Mom stayed in the home with paid help. Six months ago, after a series of falls, Mom moved to a memory care community. Her savings are depleting faster than expected, and the family is preparing a Medicaid application. Last week, the HECM lender sent a notice that the loan will become due in six months. Now what?

**THE TWELVE-MONTH OCCUPANCY CLOCK** — AND THE ANNUAL CERTIFICATION  
A HECM becomes due when the parent has not lived in the home as their primary residence for twelve consecutive months. The clock starts the day they leave — not the day the lender finds out, not the day the family acknowledges it. In the scenario above, Mom left the home six months ago, which means the family has roughly six months to either sell the home, refinance the HECM into a conventional mortgage, or pay it off from other funds. Most families sell. The HECM repayment then comes out of the sale proceeds before anything reaches the family.

There is also a parallel requirement **most families miss**: HECM borrowers (or their representatives) must complete annual occupancy certifications. If the certification isn't returned by the deadline, the lender can call the loan even before the twelve-month clock has run. Confirm the certification deadline with the servicer alongside everything else.

# When There's a Reverse Mortgage in the Picture

## WHAT THE HECM DOES TO HOME EQUITY (AND MEDICAID)

While the parent is still in the home, the home remains an exempt asset under Medicaid rules regardless of the HECM. Once the parent has moved out and the HECM is in repayment mode, the analysis shifts. The home equity available after the loan is repaid is what's left for the family — and how those proceeds get treated under Medicaid depends entirely on the timing of the sale, the parent's Medicaid status at closing, and the structure of how the proceeds are used or held after the sale.

**The HECM is also a non-recourse loan** — meaning the borrower (or their estate) is obligated to repay only the lesser of the loan balance or 95% of the home's appraised value. If the loan balance has grown to or above the home's value at the time it becomes due, the family is not personally liable for the difference. But the home is sold to satisfy the lender, and the family won't see any equity above the 95% threshold. For HECMs where the balance has climbed significantly, the family needs the current payoff statement and an updated appraisal in the same week — the gap between them is what's at stake.

## THE NON-BORROWING SPOUSE SITUATION

A separate note for families where only one spouse was named as the HECM borrower at origination — usually because the other spouse was under 62 at the time, or wasn't on title. The rules for the non-borrowing spouse's right to remain in the home have changed multiple times since HUD's 2014 reforms, and they depend on when the HECM was originated and how the loan was structured. This is one of the most consequential and least understood scenarios in HECM-and-Medicaid planning. If your parents' HECM had only one borrower on it, this needs to be on the first agenda of the elder law attorney meeting — and ideally also reviewed with a HUD-approved housing counselor.

# When There's a Reverse Mortgage in the Picture

## THE COORDINATED RESPONSE

Four professionals need to be in the conversation, and one of them needs to lead. The HECM servicer is the source of the current loan balance, the certification deadlines, and the timing of when the loan becomes due. The HUD-approved housing counselor (independent of the lender, \$0–\$125) can map the HECM-side options in a way the servicer typically won't. The elder law attorney is the source of the planning around how the sale interacts with Medicaid (and any VA benefits). The senior-focused real estate specialist handles the sale itself.

In families who get this right, the elder law attorney usually leads — they're the ones who can see both clocks and structure the sequence. In families who get this wrong, the real estate agent gets called first, the home is listed without the Medicaid planning, and the family discovers the consequences after closing.

## IF THERE'S A HECM AND MEDICAID IS — OR MAY BE — IN THE PICTURE, YOUR FIRST FIVE CALLS:

- Call the HECM servicer and request a current payoff statement, an updated occupancy verification, and the next annual certification deadline.
- Mark the calendar with the date your parent left the home as primary residence. Twelve months from that date is your hard deadline.
- Schedule a HUD-approved housing counselor session for an independent review of the HECM-side options (find one at [hud.gov/findacounselor](http://hud.gov/findacounselor), or call 800.569.4287).
- Bring the HECM paperwork, the payoff statement, and the counselor's notes to the elder law attorney meeting from earlier in this guide.
- Don't list the home until the attorney has confirmed the timing and the structure.

# Finding the Right Texas Elder Law Attorney

## WHAT TO LOOK FOR

The strongest single credential is the CELA designation — Certified Elder Law Attorney, granted by the National Elder Law Foundation (NELF). Approximately 450 attorneys in the United States hold it, and it requires demonstrated experience, peer references, and a rigorous exam. Texas has a meaningful but limited group of CELA-designated attorneys. NAELA membership (National Academy of Elder Law Attorneys) is a less rigorous filter but still meaningful — NAELA members are practicing elder law as a focus rather than as a side practice. The State Bar of Texas Elder Law Section is another reasonable filter for Texas-specific practice. What matters underneath the credentials is whether the attorney handles Medicaid planning specifically and whether they've handled cases similar to yours.

## WHAT TO EXPECT ON COST

An initial consultation typically runs \$300 to \$1,000 in Texas markets, depending on the firm and the complexity of the situation. Longer engagements — a complete Medicaid planning case with document preparation, transfers, and application support — typically run \$3,000 to \$10,000, with more complex cases higher. Hourly rates in Texas elder law practice typically run \$300 to \$600. Some firms offer flat-fee packages for common Medicaid planning scenarios. Ask up front; reputable firms will quote you a range before you commit.

## THREE QUESTIONS TO ASK BEFORE YOU HIRE

"What percentage of your practice is Medicaid planning specifically?" A firm that does 5% elder law and 95% estate planning might not be the right fit for a Medicaid case.

"Have you handled cases like ours — specifically [describe your situation in one sentence]?" The answer should be specific. "Yes, regularly" is a good answer. "I'm sure we can figure it out" is not.

"What is your fee structure for the work we likely need?" A clear answer is a good sign. A vague answer is information about how the engagement will go.

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## WHERE TO FIND CANDIDATES

- National Elder Law Foundation directory at [nelf.org](http://nelf.org) — for CELA-designated attorneys.
- National Academy of Elder Law Attorneys directory at [naela.org](http://naela.org) — broader, less filtered, larger pool.
- State Bar of Texas Elder Law Section at [texasbar.com](http://texasbar.com) — Texas-specific.
- Referrals from professionals who already work with elder law attorneys — your parent's CPA, financial planner, geriatric care manager, hospice social worker, or hospital discharge planner often have specific names. These referrals tend to be high-signal because the referring professional has seen the attorney's work.

## THE CLOSING ARGUMENT

An hour with a Texas elder law attorney before you list — typically \$300 to \$600 — is the cheapest insurance in this whole process. The hundreds of thousands of dollars at stake make this not a place to save money. The families who skip this step almost always wish they hadn't. The families who take it almost always describe the consultation as the single highest-leverage hour they spent during the entire transition.

### **"THE REAL ESTATE AGENT SAID THEY HANDLE EVERYTHING."**

Real estate agents handle real estate. The best of them — including those with the SRES (Seniors Real Estate Specialist) designation — handle the transaction itself with skill, sensitivity, and care for the family's situation. None of them are licensed to advise on Medicaid eligibility, the look-back, MERP exposure, or the planning tools that protect the family. That isn't the agent's job, and a good agent will tell you so directly.

The right model is the two professionals working together: the elder law attorney plans the sale; the real estate agent executes it. Either one acting alone leaves the family exposed. Together, they protect what your parent built.

# You received this for a reason

## **FOR THE ELDER LAW ATTORNEY WHO HANDED YOU THIS —**

You gave this guide to a family because they were preparing to sell a home, and you wanted them walking into your office ready to use the hour well rather than starting from zero.

This guide doesn't compete with what you do — it credentials you. The questions, the documents, the planning tools, the order of operations — all of it points back to the conversation only you are licensed to have. The guide tells the family one thing repeatedly: don't list until you've talked to the attorney. That's the message it carries into every household it reaches.

When the family is ready to sell — and the timing, structure, and proceeds-handling fit the plan you built — Daniel handles the real estate side and coordinates with you on the closing, the title work, and any specific structural needs the plan requires. He understands that the legal conversation happens first. He won't compromise your plan to close a deal.

For the family who also needs real estate help — when the time comes, the right specialist coordinates with your elder law attorney's plan rather than around it. Two professionals, one outcome.

Daniel Stine is the architect of the Senior Move Roadmap™, a free guide system used by families navigating senior transitions and recommended by senior care professionals nationwide. He is also a Houston-area real estate agent specializing in senior transitions, with the SRES designation — Seniors Real Estate Specialist. He understands both sides of this moment: the legal conversation that protects the family, and the real estate work that actually sells the home. He doesn't replace your elder law attorney. He works alongside them.

When the legal planning is complete and the home is ready to list, Daniel handles the sale with the timing and structure the attorney's plan requires. The two professionals working together is the protective combination this guide is built around.

# Tools to Move you Forward

## THE LEGAL CONVERSATION HAPPENS FIRST. EVERYTHING ELSE FOLLOWS.

This was the caution-flag guide. If your family is preparing to sell a parent's home where Medicaid is — or might become — part of the funding picture, the meeting with a Texas elder law attorney is the conversation that should happen before any other. Not because every family will hit the mistakes this guide describes, but because the families who do hit them rarely see it coming.

The questions and documents in this guide are designed to make that meeting efficient and useful. The rest of the work belongs to the attorney.

## WHAT TO READ NEXT — FROM THE SENIOR MOVE ROADMAP™

**Where Does the Money Come From** — the funding map. Every way a senior transition is paid for, plotted against the care-cost timeline. The home sale is one piece; this guide shows the rest.

**Step 6** — Prepare the Home and Selling Your Parents' Home — the operational sale guides. Once the elder law attorney has cleared the timing and structure, these are the pieces that walk the family through the sale itself.

**Before It's Needed and What You Need to Know (the Planning Workbook and Companion)** — for families gathering critical information to help smooth the transition and understand what your parent wants.



## This is one part of The Senior Move Roadmap



Is it Time?



Have the Conversation



Make the Plan



Understand the Costs



Choose the Right Place



Prepare the Home



Make the Move

If you're in Houston and need help figuring out next steps, I'm happy to walk through your situation and help you create a simple plan.

Call or Text 281.845.1260

dan@movemomtx.com



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