

YourMoney

Keeping home for their father

My father-in-law just went into a Veterans Administration home in Florida. My husband and his two brothers have been advised by an attorney to keep paying the mortgage on their dad's house, plus taxes and monthly utility bills. (The attorney talked with only one of the brothers, who can't explain the reasoning.) The attorney said we must keep up the payments as if dad were coming back. Sadly, he won't be. All I can see is a feud coming: all three brothers paying all these bills each and every month? What about when one says he "just can't pay this month, or two or three"? Two brothers handing money over to the third and trusting him to pay all this? It seems like there has to be a better way. Please let us know our alternatives. This sounds way too complicated.

S.M., via e-mail

Your first step should be to set up a family meeting or conference call with the lawyer so everyone can hear the same information and has a chance to ask questions.

In the meantime, let's try to explain the reason for the advice you describe.

You have two options with your father-in-law's

house: You can maintain it or – assuming you have his agreement or his power-of-attorney – you can sell it.

It sounds as if

the VA is paying your father-in-law's nursing home expenses. His VA coverage may be limited, depending on the length of his stay and / or whether his disability is service-related. If that's the case, he eventually may have to apply for Medicaid to supplement or replace it. If you sell his house, the sale proceeds must be used to

pay for his care before he's eligible for Medicaid. (He might also be required to use them to pay for some of the services the VA currently covers.)

But if you maintain the house as his principal residence and he expresses the intention of returning there, it's an asset that won't affect his Medicaid eligibility, says [Howard S. Krooks, a Boca Raton, Fla. elder law attorney](#) and former chairman of the New York State Bar Association's Elder Law section.

The same rule applies in New York.

But in New York, Medicaid could put a lien on the house and force a sale after your father-in-law's death to recover the benefits it paid for his care. That's not so in Florida, which gives "homestead protection" against creditors, says Krooks. "If the only asset in an estate is the decedent's principal residence, it is homestead property, and his creditors can't claim anything from the sale proceeds after he dies," he explains. Krooks says it's your father-in-law's intention to return to the house, not his physical ability to do so, that's essential to maintain its homestead status.

In other words: Your husband and his brothers have to maintain the house if they want to inherit it.

To minimize disputes, Krooks says your family should negotiate a written agreement delineating everybody's rights and responsibilities. The agreement should spell out how you'll handle every contingency you anticipate: If one brother misses a payment, will his siblings chip in his share? If so, how long will he have to repay them? Will they charge him interest? Alternatively, will his missed payments simply be subtracted from his share of the inheritance when your father-in-law dies?

And, instead of handing money to one sibling who's responsible for paying your father-in-law's bills, have everyone contribute to a bank account that pays them automatically every month.



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