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## ELDER LAW MINUTE

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Recently, I have been consulted by several long-term care malpractice attorneys about how to protect the settlement proceeds won by the plaintiff who is a nursing home resident and a Medicaid recipient (A/R). It used to be that the A/R would put the proceeds into a special needs trust or the Georgia Community Trust and the funds could be used to provide for all of A/R's needs not covered by Medicaid. Since 1993, it has been clear that a special needs trust can only be created for a person under 65. In Georgia, it was possible to contribute to a community pooled trust for a person over 65 until that policy was clarified in May 2006. Now it is clear that neither type of trust can be created for a person over 65.

Annuities are another popular settlement option. However, in Georgia, in order for an annuity to be an exempt resource, it has to be purchased as part of *legitimate retirement plan*. So what can the A/R do with his settlement proceeds?

Depending upon the size of the settlement, it may make sense for the A/R to purchase a homeplace. In one case I am working on the A/R's primary family caregiver is his sister. A/R could purchase an equity interest in his sister's home and move from the nursing home to the house. The sister retains an ownership interest in the house and cares for A/R for one year. After the year at home, A/R can return to the nursing home and can gift the home to his sister without a transfer penalty. MEDICAID MANUAL § 2342-3. The sister can then use the money paid to her for the house to provide extra care for A/R.

A similar plan can be developed for A/R to transfer a home to a child of his who provides care for A/R in the home for two years. MEDICAID MANUAL § 2342-3.

Notwithstanding the changes in the trust and annuity rules, there are still ways of protecting and preserving settlement proceeds. If you have such a case, I will be happy to discuss the options with you.

*Member of the National Academy of Elder Law Attorneys*