

“Probate Assets Only” Versus “Expanded” Estate Recovery States and D.C.

Compiled by Martin C. Womer, Esq. from comments of colleagues from across the country. Complete as of 4/19/2016.

Note: Several states have pending changes by legislation or Medicaid agency policies/rules.

The legal authority for this distinction is as follows. (A) = probate assets only. (B) = expanded estate recovery. <https://www.law.cornell.edu/uscode/text/42/1396p>

(4) For purposes of this subsection, the term “estate”, with respect to a deceased individual--

(A) shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law; and

(B) may include, at the option of the State (and shall include, in the case of an individual to whom paragraph (1)(C)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

State	(A) Probate Assets Only	(B) Expanded Estate Recovery
Alabama	X	
Alaska	X	TOD deeds?
Arizona	X	
Arkansas	X	Potential bene deed
California		X
Colorado	X	
Connecticut	X	Annuities
Delaware		X
D. C.	X	
Florida	X	
Georgia	Statute “estate”	Regulation
Hawaii		X
Idaho		X
Illinois	X	LTC Initiative
Indiana		X
Iowa		X
Kansas		X
Kentucky		X
Louisiana	X	
Maine		X, not JTROS RE
Maryland	X	
Massachusetts	X	
Michigan	X	

State	(A) Probate Assets Only	(B) Expanded Estate Recovery
Minnesota		X
Mississippi	X	
Missouri		X
Montana		X
Nebraska	X	RLTs
Nevada		X
New Hampshire	Pre-7/1/2005 assets	X
New Jersey		X, not life estate
New Mexico	X	
New York	X	
North Carolina		X
North Dakota		X
Ohio		X
Oklahoma	X	
Oregon		X
Pennsylvania	X	
Rhode Island	X	
South Carolina	X	
South Dakota		X
Tennessee	Statute "estate"	RLTs by caselaw
Texas	X	
Utah		X
Vermont	X	
Virginia	Regulation "estate"	
Washington		X
West Virginia	X	
Wisconsin		X
Wyoming		X