How An Asset Protection Trust Can Protect Your Home & Savings

Written By: Attorney Matthew J. Parker

With the average cost of nursing home care nearly $9000 per month, families are concerned about how they will pay for that care.

The average family does not have the resources to pay the monthly cost of nursing home care. Retirees' typical monthly income does not even cover half of the nearly $9000 monthly charge. If a person with average retirement savings was to pay privately for their care; most of that savings would be consumed very quickly. In addition, the expense of nursing home costs would affect the money available to pay for household living expenses, such as heating oil and real estate taxes.

In Pennsylvania, the Medicaid (Medical Assistance) program helps a person pay for the cost of their care in a nursing home. However, an applicant for Medicaid must meet strict financial criteria. If they have savings in excess of the resource limits, the applicant will not qualify for benefits until the savings are spent down to the resource limits.

Families have been using Asset Protection Trusts for over twenty years to protect their home and savings from being consumed by the cost of nursing home care. In the early 1990s, the Federal government approved the use of these trusts. Since they are unique trusts, only the more experienced elder law attorneys properly prepare them for their clients.

A family trust is a legal arrangement between family members (typically parents and children) to manage the savings or home in a trust until the trust settlor's death. The Asset Protection Trusts discussed below are family trusts specifically designed to shelter real estate or savings from availability when applying for Medicaid. They are irrevocable trusts. They are not revocable "living trusts."

Here are some characteristics of the typical Asset Protection Trust:

Protecting the Home

Homes are very common assets to transfer to an Asset Protection Trust. As people age, they frequently want to downsize and sell their home. The risk is that the sale proceeds from the home will be used to pay for the cost of care in a nursing home. However, if the home is transferred to an Asset Protection Trust, the proceeds from the sale of the home are paid to the trust and cannot be used to pay for care in a nursing home. If the trust settlor needs to buy a smaller home, the trust can sell the existing home and buy a smaller house – also owned by the trust. The persons living in the home continue to be responsible for the taxes, insurance and utilities. These Asset Protection Trusts typically give the trust settlor the right to live in the home for the rest of their lives.

Protecting Investments

Any investments that are transferred to the trust do not leave the financial institution where the money or investments are located. There is simply a change of name on the account. Instead of "Mr. and Mrs. Jones", the account will read, "Mr. and Mrs. Jones Family Trust". Any income earned on the trust investments is taxed to the parents – the trust settlors, not the children.

Trusts are More Protective Than Outright Gifts to Children

One of the great benefits of using a trust is that the children do not own what is transferred to the trust. Therefore, the risks associated with gifting assets directly to children, such as a child's divorce and creditor problems, are not present when assets are transferred to the trust. The children only acquire ownership of the trust assets when the trust settlors are deceased.

Protection from Estate Recovery

Once an individual receives Medicaid, the government has the right to place a lien on the estate of the deceased person who received the Medicaid benefits. This process is called Medicaid Estate Recovery. With few exceptions, this lien is limited (in Pennsylvania) to the probate estate of the individual who received the benefits. Essentially, that means any money or property that was solely owned by the person who received the Medicaid. Currently, anything that is owned by an Asset Protection Trust at the death of the applicant is not subject to the Estate Recovery Program.

Family Trusts

These are family trusts; therefore no bank or financial institution is involved in managing the trust.

paelderlaw.com • 1-800-401-4552

Wilkes-Barre • Scranton • Williamsport • Jersey Shore

Marshall, Parker & Weber, LLC
Elder Law & Estate Planning
For Over 35 Years