

MEDICAID PLANNING

The facts...

- Assets in a revocable living trust are not protected and must be used to pay for the costs of long-term care.
- If you are married, your home is exempt and cannot be taken when applying for Medicaid. If you are single or widowed, your home is exempt up to \$543,000. If you transfer your home to your children, not only will it result in immediate ineligibility for Medicaid, but it could also:
 - Trigger a gift tax,
 - Result in the loss of any property tax exemption, and,
 - Result in your child's spouse (the in-laws) inheriting your home.
- Giving your assets away means losing control. It's not safe even if you "trust" who you give it to. If that person divorces, goes bankrupt or is sued, all of the money you transferred is at risk. There are asset protection trusts that permit you to keep 100% control of your assets without the risk of losing them if long-term care is needed.
- You do not have to wait 60 months to qualify for Medicaid. Eligibility is calculated on a case-by-case basis. It is possible to have over \$250,000 in cash and qualify immediately. Get professional advice and learn the facts.
- It is never too late to protect your assets even if you are already in a nursing home. In fact, you can qualify for Medicaid sooner if you are already in a nursing home, than if you aren't.
- A nursing home or hospital that offers to file a Medicaid application for you has no obligation (and often can't) advise you on how to protect your assets. Only a qualified Medicaid planning attorney will be looking out for your interests.
- Applying for Medicaid prior to qualification could result in being disqualified for a longer period of time than you otherwise would have been (it's not limited to 60 months).
- Make sure the attorney you hire is experienced in Medicaid planning. Would you go to your regular doctor for a heart problem?
- Consider long-term care insurance. An annual premium for a couple is usually less expensive than one month of nursing home care and with proper planning; it may also enable you to stay home if you become ill.

WHO NEEDS ESTATE PLANNING?

The facts...

Estate planning isn't about how much money you have, it's about protecting what you have for you, during your lifetime and for those you love after you're gone. It ensures what you have gets to the people you love, the way you want, when you want.

If you were to die today, are you comfortable everything will be taken care of the way you wanted? Estate planning is legally ensuring things will be handled the way you want by providing sufficient instructions.

Estate Planning really is for everyone. It doesn't matter if you have \$40,000 or \$400,000. You still have to plan for the future. Whether it's to name a guardian for your minor children or ensure your children don't blow through your assets if you unexpectedly die or become disabled (Terri Schiavo case).

Estate planning can only be done by attorneys, and it can be as simple as a Will, Health Care Documents, Living Will and Power of Attorney. It can also include a revocable, probate-avoidance trust, asset protection trusts, multi-generational tax-saving trusts, tax-saving charitable trusts, private family foundations, and many other fact-specific strategies.

Keeping your Estate Plan Current...

Once completed, your estate plan should be reviewed and kept current with life events such as the birth, death, marriage or divorce of anyone included in your plan. In addition, you should review your plan if there is a significant increase or decrease in your finances or if the laws related to your estate plan change.

** offers a maintenance program that provides you regular access to us to make sure your estate plan stays current with your wishes, family, finances and law.

DO YOU NEED TO AVOID PROBATE?

The facts...

What is probate?

It is the legal process of presenting your Will to the Court after your death to authenticate it, and appoint your Executor. Your Executor must be appointed by the Court in order to collect and distribute your assets as stated in your Will. However, because it is a legal process, there are many steps that must be followed before your Executor can be appointed.

- The attorneys must obtain signatures from your heirs signifying they agree the Will is yours, and they will not contest it. Your heirs are your spouse and children and all must agree not to contest your Will before your Executor can be appointed. If you don't have a spouse or child, probate becomes even more complicated. Even if your heir is not a beneficiary, his waiver is still required. This can be very different in second-marriage situations, if you have minor children or if you have a child you have lost contact with. If a child dies before you, then all of your deceased child's children will have to agree not to contest your Will, but if they are under 18, the Court will need to appoint a separate attorney to represent them. The same is true if any of your heirs are legally incapacitated, such as a mentally disabled child or a spouse with Alzheimer's.
- The Executor will have to submit filing fees, a petition and affidavits from the individuals who witnessed your Will. Upon receipt of all of the appropriate information (and if no heirs contest it), the Court will appoint the Executor.
- After your Executor is appointed, estate administration begins. It is a period of time the law permits the Executor to accumulate the assets and report to the Court how he or she intends to distribute them. This period is a minimum of 2-3 months after the Executor is appointed. However, in many cases, it can take a year or more. If you die without a will, the process is similar, but the State decides who gets your assets, not you.
- Unfortunately, probate is unpredictable. That's why many people chose to avoid it, but if all of your heirs agree and your assets are centralized, it can go smoothly.

MEDICARE AND MEDICAID...

The facts...

Eligibility

Medicare is a health-care benefit provided by the federal government to individuals over age 65, or under age 65 and disabled. Medicare covers doctor visits, tests and care provided in a hospital and limited benefits in a nursing home (see below).

Medicaid is long term care insurance for those who cannot afford the high cost of Nursing Homes. To qualify, you must not exceed certain income and asset limits. If your income or assets exceed the qualifying limits, you will not be eligible. There is no age restriction to qualify.

Qualification

To qualify for Medicare, you must be over 65, and eligible for Social Security benefits. You may also qualify if you are under age 65 and have been disabled for two years. An application at the Social Security office will get your benefits started.

To qualify for Medicaid, you must submit a multiple-page application and provide detailed proof of all your financial transactions (banking, CDs, stocks, bonds, income, expenses, annuities, etc.) for the previous 60 months.

Nursing Home Costs

Medicare will only pay for 100 days in a nursing home for rehabilitation after a in patient hospital stay of at least 3 days. Medicare will pay 100% of the first 20 days and 80% of the next 80 days, while Medicaid will pay the entire cost of a nursing home less any applied income.

The laws around Medicaid qualification are extensive, and there are many exceptions. Often, hospitals and nursing homes will offer to do an application for you at no cost. Be careful, they do not represent you, but rather, the institution for which they work. Even with the best of intentions, they often do not have the legal knowledge necessary to determine whether or not your qualification is accurate. This is where a legal professional can really be of value and oftentimes, be able to get you benefits much sooner.

ESTATE PLANNING ATTORNEYS...

The facts...

Would you have your regular doctor do your heart surgery? Sounds like a stupid question right? However, the same could be said for choosing the right attorney for your estate planning. Unfortunately, the legal profession does not have specialties like the Medical profession. You have to guess whether your attorney is qualified to guide you on your estate planning options.

It seems every brochure or letter you receive from your bank, financial advisor, or brokerage firm asks if you have done your “estate plan.” The fact is, your bank, financial advisor or brokerage firm can only help you with the **financial** planning aspects of your estate. You need a qualified elder law/estate planning attorney to draft the legal documents that create an estate plan for you. A qualified elder law/estate planning attorney will work with your financial advisor and accountant to create the best plan for you.

Many attorneys attend a short seminar to learn a certain area of law and then immediately add it to their existing law practice. The intricacies around estate, Medicaid and tax planning are extensive. Not only does the attorney need a thorough knowledge of probate law, estate administration, trust, asset protection and Medicaid laws, they must also have an extensive knowledge of income tax, estate and gift tax.

While general attorneys may have some knowledge of the law and be able to guide you through certain parts of the estate or Medicaid planning processes, they will not be aware of the many exceptions and details an attorney who limits his practice to **only** estate planning will know.

An attorney, who does traffic court one day, divorce on another, business law on the third day and sues for personal injury on the fourth, will not have the experience and knowledge of the loopholes as an attorney who practices exclusively in elder law/estate planning. If you're looking for a divorce, find an attorney who focuses on divorce. If you want estate planning, utilize an attorney who focuses on elder law/estate planning.

C and get the experience you need.

PLANNING FOR THOSE WITH DISABILITIES OR SPECIAL NEEDS...

The facts...

In the past, families would disinherit disabled family members and leave assets to someone else who agreed to “take care” of them. If assets are left to a disabled beneficiary, it could disqualify them from state or federal programs under which they are receiving benefits. In 1993 Congress enacted new laws that entitled disabled individuals to derive the same estate planning benefits as non-disabled individuals **without** affecting their eligibility for state or federal benefits. The law made provision for Supplemental Needs Trusts, which enable you to leave any amount of money to a loved one who has special needs without affecting their eligibility for the state or federal benefits they receive.

The law further provides the trust proceeds must be used to provide luxuries for the disabled individual he or she would not otherwise receive under the state and federal programs. Luxuries can include trips, computers, power wheel chairs, prosthetics, or other comforts not generally provided by the government.

A Supplemental Needs Trust can be created by an individual with their own funds or be created by someone other than the disabled individual, typically a parent or relative.

There are different rights and restrictions to each of these trusts, but both ensure **immediate** qualification for federal and state benefits (i.e. Medicaid) and provide luxuries to the disabled beneficiary they otherwise, most likely, would be unable to have.

When Do I Need Guardianship for my Special Needs Child?

As a parent of a special needs child, you are the child's “natural guardian” and can make all decisions regarding the child. However, your rights as guardian do not allow you to have access or control of your child's assets (i.e., proceeds from a lawsuit or gifts from a family member). In addition, when your child reaches the age of 18, you lose your rights as the natural guardian to make healthcare and other life decisions for them. To maintain these rights, you must commence a guardianship proceeding or the State will assume legal authority over your disabled loved one. To avoid losing your authority, you should contact a qualified attorney to begin a guardianship proceeding at least six months prior to your child's 18th birthday.

C and let us guide you.

REVOCABLE LIVING TRUSTS...

The facts...

A trust is a contract between the Grantor (the person who creates the trust), the Trustee (one who controls the trust) and the beneficiaries (those entitled to benefit from the trust). You, as Grantor, determine how the trust will be operated by the Trustee and who benefits, how and when. You can create a trust that permits you to be Trustee and give yourself the right to receive full benefits from it. This type of trust is typically referred to as a Revocable Living Trust and is often used as a supplement to your Will and in many instances a RLT can avoid probate. It permits you to keep total control and access to all your assets during your lifetime, and provides for the distribution of your assets to your beneficiaries at your death. We often refer to a revocable living trust as your "Book of Instructions." A well-established advantage to Revocable Living Trusts is the avoidance of probate, which is required if you use a will to distribute your assets after death. Other advantages of Revocable Trusts, when properly drafted, can include:

- Asset protection for your spouse after your death.
- Special needs planning for disabled beneficiaries.
- Asset management and protection for children who are not proficient with handling money.
- Protection of assets from a spouse's subsequent remarriage after your death.
- Disability planning in the event you become disabled prior to death.
- Asset protection for your child if his or her marriage should fail to ensure your assets are not part of a divorce settlement.
- Keeping your affairs private (as opposed to open for public review in probate).
- No court intervention required (handled entirely by the Trustee you name in accordance with your detailed instructions).
- Plan for proper management of your business in your absence.

Very few revocable living trusts provide these benefits. Only a qualified elder law/estate planning attorney will know how to incorporate these protections into your plan. While a Revocable Living Trust has many advantages, it does not protect your assets from a nursing home, lawsuits, divorce, bankruptcy or other creditors.

IRREVOCABLE TRUSTS...

The facts...

A trust is a contract between the Grantor (the person who creates the trust), the Trustee (one who controls the trust) and the beneficiaries (those entitled to benefit from the trust). You, as Grantor, determine how the trust will be operated by the Trustee and who benefits, how and when.

While a Revocable Trust permits you to maintain full control (as Trustee) and have access to all your assets (as beneficiary), an Irrevocable Trust, once created, may prohibit your right to control the trust (as Trustee) or have access to your assets, but you get to decide to what extent.

It is a common misconception that irrevocable trusts, once created, cannot be changed. While that is true of many irrevocable trusts created to avoid taxes (tax reduction or avoidance trusts), it is not true of all irrevocable trusts. An irrevocable trust is a trust you create for the benefit of yourself or others and once created, you, as Grantor, must give up your right to something.

Debtor/Creditor law provides that whatever you can get, your creditors can get. You can have known creditors (i.e., bank/credit card debt) or unknown potential creditors (unforeseen lawsuits, nursing home, and divorce). A typical income-only irrevocable trust permits you to receive the income on your assets, but you must give up your right to your principal. In some irrevocable trusts, you can retain the right to change who gets your assets during your life and after your death, and maintain 100% control of your assets until your mental disability or death (asset protection trusts).

Tax reduction/avoidance trusts are much more restrictive than asset protection trusts. Typically, you cannot retain any right to control or access any of the assets in an irrevocable tax reduction/avoidance trust. There are many irrevocable trusts available that are quite flexible and grantor-friendly. You should consult a qualified elder law/estate planning attorney to get counseled on all your options before creating an irrevocable trust.

C see which of its 30+- trusts are best for you.

CHARITABLE PLANNING...

The facts...

Charitable giving techniques are typically used for those who have accumulated wealth that is subject to estate tax after death. The estate tax rates are as high as 50% and those who have worked hard to create and accumulate assets will opt to utilize charitable giving techniques to minimize taxation while creating a lasting legacy without necessarily depriving family from benefitting from your assets. Charitable planning is also utilized to minimize income taxes (which can exceed 40%), and you can retain full control of your assets.

Charitable planning can also be effective when selling your business. When properly utilized, you can avoid paying income taxes on the sale of your business when sold.

Utilizing a charitable giving plan enables the donor to direct the use of his or her assets that would otherwise go to the IRS. Your assets can pass to your family, charities, or the IRS, but you must choose two out of the three. If you don't, the IRS wins by default.

There are many ways to do charitable planning, including Charitable Remainder Trusts and Charitable Lead Trusts.

Charitable Remainder Trusts enable you to:

- Transfer highly appreciated assets,
- Liquidate them with no tax consequence,
- Receive a charitable tax deduction against your current income, and
- Still receive the benefits from your assets for the balance of your life.

At death, the remainder goes to the charity of your choice.

Charitable Lead Trusts:

- Provide income to a charity for a term of years, and at the end of the term, the remainder is paid to your family.
- A Charitable Lead Trust is primarily a gift-discounting technique that permits you to gift \$1 of assets to your family members, and the IRS will view it as less than \$1 (typically 30% - 60% less). This enables you to gift more than you otherwise would be able to.
- Other charitable strategies include:
 - Private Family Foundations.
 - Donor Advised Funds.
 - Special Funds as part of a Local Community Foundation.

A to determine what charitable strategy will work best for you.

LAST WILL AND TESTAMENT...

The facts...

If you own assets in your name alone, they may pass from you to the people you love, as long as you leave a Will. Without a Will, your assets pass according to the State's rules, also known as intestacy. The State may not pass your assets to the people you care about. You should be sure.

Also, you should know that...

- Assets will pass through your Will to your loved ones if the Will is written properly.
- You can reduce your estate tax liability by using a trust in a Will.
- You can protect the ones you love by creating a trust in your Will which can protect that person from creditors.
- You can protect you.
- It is important that you give your family the tools to help you if you cannot help yourself, your children from divorce, or you may protect your children who are not good with money, or those who have other problems, such as addiction or mental illness.
- You can protect disabled beneficiaries by creating a Supplemental Needs Trust for them, which preserves assets for the family, while keeping their eligibility for public benefits.
- Your Will must go through probate - using the courts to divide your property.

POWER OF ATTORNEY

The facts...

If you become sick or disabled, either temporarily or permanently, who will make decisions for you?

- A Power of Attorney allows you to appoint someone you trust to handle your affairs if you cannot do so.
- If you cannot pay bills, get records or make other decisions, your family will be prevented from helping you get treatment, pay doctors or for Medicare.
- Without a Power of Attorney, your family may have to file for guardianship of the disabled person. This process involves the Court, several lawyers and usually at least \$4,000 to \$50,000. A Power of Attorney might cost \$250.
- It is important that you give your family the tools to help you if you cannot help yourself.