

ELDER LAW TODAY

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The Spousal Care Protection Trust

The topic for this quarterly newsletter is the "Spousal Care Protection Trust". In this letter, I assume it is the husband who dies first but, as the saying goes, "What's good for the goose is good for the gander". In other words, the fact situation is the same regardless of which spouse dies first.

This is the scenario: A couple has been married for many years. The husband dies first and the will leaves all of his property (his half of the community property and any separate property) to his wife outright. Or, if he dies without a will, in most cases the result is the same, because by intestate succession all of his assets pass to his wife.

The potential problem: Should the wife need long term nursing home care, practically all of "their combined assets" will have to be used to pay her nursing home bill before she will be eligible for Medicaid assistance (and all that she can have left and be eligible for Medicaid will be \$2000.00). Consequently, money to pay for many goods and services that might have been highly desirable in terms of improving her quality of life, will not be available.

The solution: The husband creates in his will a Spousal Care Protection Trust for his wife and, in so doing, he provides for her future support and protection as follows:

* The wife's ability to have her quality of life significantly enhanced should long term care become necessary (by having the

husband's "half" in the Spousal Care Protection Trust) with it being available to pay for goods and services for which Medicaid will not pay.

* The Spousal Care Protection Trust is available for her benefit even if she never needs long-term care (this could include travel, entertainment, and room and board in an assisted living facility, as well as providing for her needs in her own home).

* The wife's potential for losing all of the assets attributable to the husband due to scams or poor investments is significantly reduced (if not eliminated).

Therefore, where both spouses are still alive, including Spousal Care Protection Trusts for the surviving spouse in the wills of both spouses can significantly protect long-term quality-of-care and housing options for the surviving spouse. When couples create such trusts in their Wills, then, when the first spouse dies, the assets in the Spousal Care Protection Trust are available for the surviving spouse, whether that surviving spouse is in a nursing home, still independent with care at home, or pursuing other housing options (such as in an assisted living facility). Properly drafted, the assets in the Spousal Care Protection Trust are not countable resources for Medicaid eligibility purposes.

If the surviving spouse needs nursing home care after the death of the first spouse (and there is, unfortunately, a high likelihood that that will be the case) then, rather than requiring that all assets be spent down before Medicaid will

pay for services, the surviving spouse must spend down only what was her share of the couple's assets in order to meet the countable resources ("assets") test for Medicaid. After Medicaid qualification, she will have the benefit of property in the Spousal Care Protection Trust established under the deceased spouse's Will. And if the wife does not need nursing home care, the Spousal Care Protection Trust can be used for many goods and services that will protect her health, well-being, and continued independence.

Misconceptions and Mistakes. One

significant and common misconception is that nursing home residents who are on Medicaid need nothing else. However, most individuals could benefit by having "extras". By having the Spousal Care Protection Trust in place, there are many outings, many goods and many services that could be provided to the individual in the nursing home on an on-going basis after her final \$2000.00 in resources is gone. Also, the trust could pay for travel expenses of family members (who might not have the money to pay for plane tickets etc.) but who would like to come to visit. **The singular most common mistake is that clients do not establish Spousal Care Protection Trusts when both spouses are alive. Many, many couples will miss this unique planning option.**

So, the lesson to be learned from this edition of Elder Law Today? If you are married set up an appointment with a lawyer who knows about Spousal Care Protection Trusts to find out if it is right for you.

ELDER LAW TODAY is written by **C. Dan Campbell, Attorney at Law**, who is **Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and Civil Trial Law**. This newsletter is not intended to be nor should it be construed as the giving of legal advice. Before taking any action referred to in this newsletter, you should consult with an attorney who is knowledgeable in this area of law. This newsletter is published as a service of C. Dan Campbell, P.C., 4245 Kemp Blvd., Suite 800, Wichita Falls, Texas 76308. Our website: www.cdancampbell.com

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Upcoming seminars:

“Health Care Providers Seminar” (Social Workers, Activity Directors, Nurses, Discharge Planners, Hospital and Nursing Home Administrators) at Luby’s Cafeteria on September 25th from 11:30 to 1:00 (reservations required)

“Farmers and Ranchers Asset Preservation Seminar” at MPEC on October 9th from 3:30 to 5:30 (reservations required seating is limited)

“Women and Money Seminar”, This special seminar will cover a myriad of topics including: financial planning, estate planning, retirement planning and personal life planning. Speakers will be Benay Ayers, Certified Public Accountant; Diane Cunningham, Life Planning Coach; Gary Silverman, CFP, Personal Money Planning and C. Dan Campbell. The Moderator and M.C will be Gail Cunningham, Vice President, Consumer Credit Counseling Services. This seminar will be 4 hours over two evenings: Tuesday, October 30 & Thursday, November 1, from 6:45 – 9:00 p.m. Location will be the Woman’s Forum, 2120 Speedway, Wichita Falls, Texas. Fee for the seminar is \$35.00. You will also receive a copy of Suze Orman’s best selling book, “*Women and Money*”. Reservations are required. Please call Gary Silverman’s office at (940) 692-6885 to make reservations.

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