"Let our advance worrying become advance thinking and planning" – Sir Winston Churchill

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ELDER LAW TODAY

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As I sit at my computer this cold February day, I thought I would write about a type of trust that you might want to know about: The Legacy Trust. (This trust is also known as an "Intentionally Defective Grantor Trust" (IDGT).) It is particularly useful when a client is concerned about long term care issues. Say, a client has accumulated a "nest egg" and is worried if they should need long term care (ie: nursing home care) that his or her assets may be rapidly depleted because, let's face it: nursing home care is very expensive. And, if the client is a single person and would like to get on Medicaid, his "countable" assets (which is most everything except a house, furnishings and one vehicle) will have to be below $2000.00 before Medicaid will be available. In case of a married couple, with one spouse in the nursing home and the other spouse at home or in an assisted living facility, the rule is, the maximum "countable" assets are $25,728.00 While there are techniques that we can use when a client did no advance planning, the availability of the Legacy Trust is a beautiful solution for a client who wants to be "proactive" with the goal of protecting assets if nursing home care becomes necessary in the future.

Here is an example. Assume the client has a home; a car; financial assets of, say, $100K and a farm, rent house, etc. The home can be protected by means of a Ladybird Deed in the case of a single person. The car is automatically protected if the person is in a nursing home. But the other assets are not protected and until these other assets are below $2,000.00 (for a single person) or below $25,758.00 (for a couple) Medicaid will not be available. But, if the client had the desire to protect some of these other assets and felt that they would not need long term care for 5 years, we could prepare a Legacy Trust; have the client transfer the assets that he or she wanted to protect into the Trust; name someone (such as an adult child, sibling, close friend, etc.) as trustee and then "wait out" the 5 years before hopefully needing long term care (and Medicaid). Of course, no one knows the future when it comes to one's health. But this is a way to protect otherwise countable assets if nursing home care is needed in the future (beyond 5 years from the transferring of assets to the Legacy Trust).

The Legacy Trust has lots of advantages. Below you can read the detailed benefits of this unique trust that we have recommended for several of our clients. If you would like more details about this trust and how it might benefit you and your family, please give us a call.

In the meantime, enjoy the cool (cold) weather because, as we know, in North Texas the summers are long!!

Regards,

C. Dan Campbell

*****NEWS FLASH*****
For more information on estate planning and Medicaid check out our Blog on our website! Simply go to our website *cdancampbell.com* and click on the *Blog* tab. We are super excited to share this with you!

The "Legacy" Trust

1. What is a Legacy Trust?
2. Who would want to consider using this type of trust?
3. What kind of assets would typically be transferred into this trust?
4. What are the advantages of using this trust?

- Medicaid protection- assets protected after 5 years from date of transfer
- Assets are protected from MERP (Medicaid Estate Recovery Program)
- "Stepped up basis" on assets in the trust at death of the grantor for income tax purposes; compared to NO stepped-up basis if assets are gifted outright to intended beneficiaries
- Assets in the trust are protected from 3rd party creditors of a beneficiary in case of a law suit (or potential claims of a spouse of a child, for example) ; as compared to hazards of lifetime gifting to intended beneficiaries with no creditor protection and danger of child comingling "gifted" assets with his spouse's assets resulting in potential loss of separate property
- Assurance that assets will be kept intact as long as grantor is alive (or if married as long as one spouse is alive) compared to hazards of lifetime gifting to intended beneficiaries. Assets in the trust are protected; as compared to what could happen if an outright gift were made to a child, for example, and that child predeceased the parent leaving the gifted assets to that child's spouse, children, or someone else.
- Grantor selects who is to be the trustee of this trust and designate successor trustees if the first one is unable to serve due to illness, death, etc.
- Grantor can designate contingent beneficiaries if the first beneficiary named should die before the trust terminates

5. What are the tax considerations of using a Legacy Trust?

- For both income and estate tax purposes the trust is drafted to be a "grantor trust". This means that you as the "grantor" (sometimes called the "trustor" or "settlor") will pay any income tax on income that the trust earns and report it on your personal income tax return. A tremendous advantage of this trust is that upon your death, the assets in the trust will get a "stepped up basis" for income tax purposes. Example: You have 100 shares of Wal-Mart stock that you paid $10.00 per share years ago. If you made a lifetime gift of this stock to your children that would be their income tax basis – meaning if it sold for $100.00 per share they would pay income tax (capital gains tax) on $90.00 per share. However, if instead of "gifting" it to them during your lifetime, you had placed it in the Legacy trust, and it remained there until your death, the stock would be "re-valued" for income tax purposes at its value on the date of your death. (If it was worth $100.00 per share on your date of death, that would be the "stepped up basis" that the beneficiaries (your children in this example) would have –and if they sold it after your death when the trust terminated for $100.00 per share or less, there would be no income tax to pay!!

6. In order for this Legacy Trust to be legally effective there are a couple of "provisions" to choose from and one of them will need to be included in the trust:

- One provision would give you, the grantor of the trust, the power to reacquire the trust assets by substituting other assets of equal value (this is the one that we typically recommend) - this is the more desirable of the two options, because it also affords the opportunity to be able to take advantage of the income tax regulation that allows one to exclude from capital gains tax up to $250K if one's residence is sold and he lived in the residence at least 2 of the 5 years before the date of sale. If the individual is living in a nursing home, he must have lived in the residence for at least 1 year. A husband and wife can exclude up to $500K of gain upon the sale. By the way, this income tax advantage would not be available if the parent simply "gifted" the home to the child – instead the child would have to pay income tax on the difference between what the parent had paid for the home and what the child sold it for!! **<u>OR</u>**
- the other provision (although not nearly as common) is to give you, the grantor of the trust, the power to add additional beneficiaries (other than yourself of course) which may include a charitable beneficiary, along with the power held by a non-adverse party to make distributions among those beneficiaries

7. What is the disadvantage of using this trust?

- the principal is no longer available to the person creating the trust

8. If I decide on this trust, when should I set it up and when should I transfer assets into this trust?

- At least 5 years before you may need to apply for Medicaid.

9. Will I have to file a separate income tax return for this trust? Will a gift tax return be required?

- No – You will report the income earned by the trust on your personal tax return.

10. If and when I (or my spouse) need to apply for Medicaid, will the assets in this trust be "countable" for Medicaid?

- No – Provided these assets have been in the trust for at least 5 years.

11. Can I retain the right to receive income from this trust?

- Yes

12. What happens to the assets in the trust upon my death (or, if married, upon the death of the last to die of the two of us)?

- The assets will be distributed as your trust specifies—perhaps to your children or whoever you desire.

13. Who would I want to name as trustee of this trust?

- Someone in whom you have complete confidence (perhaps an adult child).

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. Visit our website at: www.cdancampbell.com

We are dedicated to providing solutions for seniors.

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