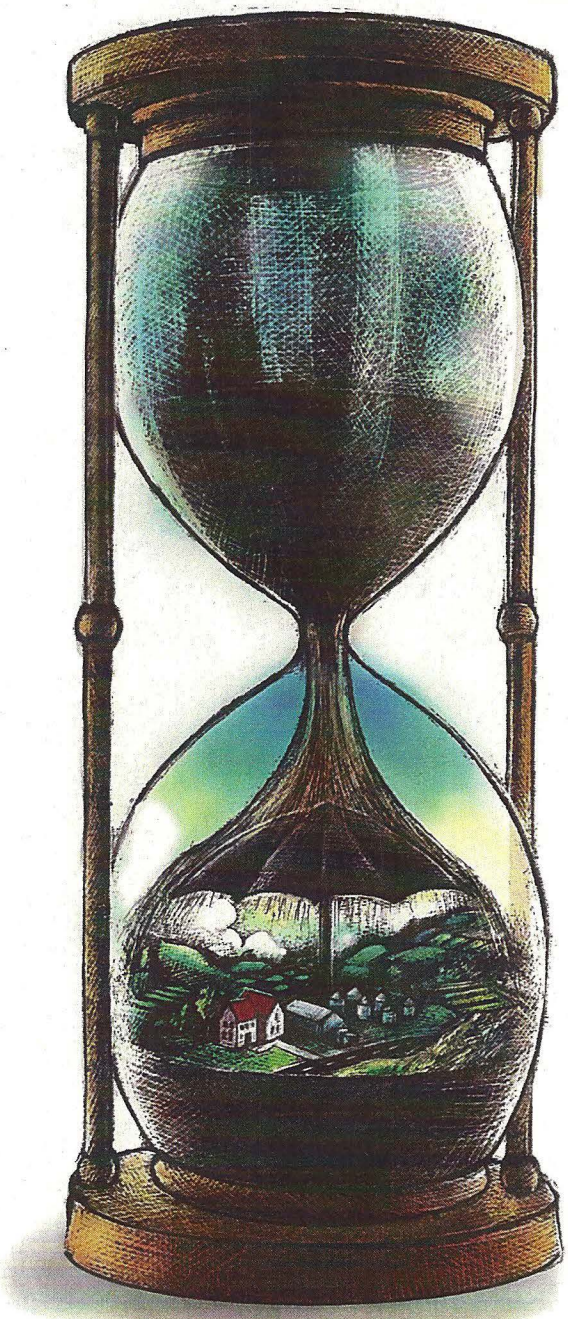

ILLUSTRATION: CHRIS VAN ES

A Trust Against Tragedy

Worried about long-term health care? Here's one way to keep the farm safe when the worst happens.

BY VICTORIA G. MYERS

Today's high land values have made once-modest farms into million-dollar land holdings. With more to lose, it's a good time to think about the future—and ways to protect what you've already built for the next generation.

Texas attorney C. Dan Campbell says one of the biggest worries he sees among farmers and ranchers concerns what will happen if their health fails and they need nursing home care. He believes an old tool, the "irrevocable intentionally defective grantor trust," can be the answer in many cases. But you have to use it in a new way.

This particular trust can be used to protect farms or ranches for future generations. It has several advantages, explains Campbell.

1 The people who create the trust, the "grantors" (typically the parents), retain the right to income from the assets in that trust for life.

2 If these parents go to a nursing home, the farm is in a trust, so it will not have to be sold to pay for their health care.

3 When the trust terminates and the assets pass to the beneficiaries, or "remaindermen," the basis used is a stepped-up basis—a significant tax advantage should the property be sold. This means that if the assets received from the trust are sold at or below the fair market value established the day the grantors die, no income tax is paid.

If the farm is merely "gifted" to the children, they would pay taxes on the difference between what the asset is valued at when they sell it, minus the original purchase price.

4 The grantors of the trust can substitute assets equal in value to what they originally put in the trust. This gives them flexibility to sell off acreage, for example, replacing that part of the trust with something of equal value—perhaps stock, or cash from the sale.

5 As long as the trust is in place, assets in the trust cannot be attached by creditors of the remaindermen, should they have creditor problems. That protection ceases when the trust terminates and the remaindermen receive the trust assets.

With all these advantages, what's the downside?

Campbell says the biggest disadvantage of this trust is the grantor no longer has control or ownership of the trust assets—in this case, the farm or ranch. Once in this trust, the assets can't be taken back out. They can be substituted for, with something of equal value, but the trust remains.

It is, as the name implies, "irrevocable."

Setting up **the trust**

Here's how attorney C. Dan Campbell explains the process of setting up the irrevocable intentionally defective grantor trust, using a farm as the main asset:

1. The trust is created with the help of an attorney who is very knowledgeable in the areas of Medicaid law and the Internal Revenue Code.

2. The farm is deeded to the trust. Cash, stocks, mutual funds and practically any other asset can be transferred to the trust.

3. The trust is set up to pay distributions on a regular basis. It is essentially income for life.

4. For five years any nursing home care will have to be paid for privately. This is the period Medicaid dictates before assets are no longer considered "countable." If there are concerns that income from the trust won't be enough to cover the costs of nursing home care, it would be prudent for the grantor to keep enough assets out of the trust to cover these projected costs.

MORE INFO: Attorney C. Dan Campbell is board certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law. His offices are in Wichita Falls, Texas. Reach him at cdancampbell@aol.com or 940-696-5015.

Terms to know

When establishing an irrevocable intentionally defective grantor trust, you will need to understand the following:

GRANTOR. The person or persons who create the trust and transfer assets to the trust.

TRUSTEE. The person or persons who will manage the trust assets. The trustees can be anyone, even a bank or a CPA. Usually, however, trustees are the children. The grantors cannot be trustees.

REMAINDERMEN. This is whomever gets what remains in the trust when the trust terminates. This typically happens when the grantor of the trust dies. If the parents were the grantors of the trust, usually their children will be the remaindermen.

TRUST PROTECTOR. This is the "watchdog" of the trust, appointed when it is created. This person (not the grantor, trustee or remaindermen) can remove the original trustee and appoint someone else, if he feels they are not doing their job.

SPECIAL POWER OF APPOINTMENT. This means the grantors of the trust have the right to change who will receive the trust principal when they are both deceased. ●

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