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MEMBER



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IRREVOCABLE INCOME ONLY TRUSTS BY LISA JOHNSON

Due to the high costs associated with long-term care, it is critical for many individuals to qualify for Medicaid assistance. The major concern for most individuals who anticipate future long-term care expenses is how to qualify for Medicaid. While there are various planning strategies used to qualify for Medicaid long-term care assistance, transferring assets into an Irrevocable Income Only Trust (“IIOT”, “trust”) is becoming increasingly popular. The purposes of the IIOT are (1) to provide a source of income, (2) to protect and manage assets, (3) to preserve Medicaid eligibility, and (4) to avoid the costs and time associated with probate.

IIOTs allow individuals to transfer their assets into a trust as protection in lieu of making outright transfers to their children. Under the terms of an IIOT, the transferor (“grantor”) will receive all of the income produced by the assets in the trust for the grantor’s lifetime. By transferring assets into an IIOT, the grantor will still reserve some control and retain some interest in the transferred assets – advantages that are not available when transfers are made outright to individuals. If the grantor places the grantor’s home into the trust, then the trust agreement can specifically provide for the grantor to continue to reside in the home for the grantor’s lifetime. Because IIOTs are irrevocable, the grantor cannot revoke the trust and reacquire the assets; therefore, the assets are not available for Medicaid eligibility purposes.

IIOTs are commonly used to permit Medicaid to pay for the high cost of long-term care, once the Medicaid look-back period has passed. The look-back period, which is currently set at five years, is the period prior to the Medicaid application during which Medicaid will penalize an applicant for transfers within such period. Assets transferred into a trust more than five years prior to the filing of a Medicaid application will not impact Medicaid

eligibility. If a penalty is imposed because of a transfer to an individual or a trust within five years of a Medicaid application, the period of ineligibility begins when the individual enters a nursing home and is otherwise eligible for Medicaid.

IOTs also offer tax advantages. The grantor is treated as the owner of the trust for income tax purposes. This is valuable because the trust's income tax rates are usually higher than the grantor's income tax rates. Additionally, the IOT can be drafted to include a special power of appointment for the limited purpose of including the trust assets in the grantor's "estate" for estate tax purposes. A special power of appointment will also permit a grantor to change his or her beneficiaries. Upon the grantor's death, the trust assets obtain a "step-up" in value. This means that when the assets are distributed to the grantor's chosen beneficiaries, the beneficiaries' bases in the assets for income tax purposes will be the value of the assets as of the grantor's date of death. As a result, the beneficiaries will avoid any capital gains taxes on the appreciation of the trust assets between the date of acquisition and the grantor's death if the property is sold after the grantor's death.

The elder law attorneys at Oast & Hook can assist clients with their estate, financial, insurance, and long-term care planning needs.

Lisa Johnson is an elder law attorney with Oast & Hook. She concentrates her practice in the area of estate planning.

Corrections

Oast & Hook has two corrections to last week's article on Social Security Spousal Benefits. First, the spousal benefit is 50% of the other spouse's full retirement benefit, not the other spouse's higher benefit if he or she delays retirement past the full retirement age. Second, in our example, the wife's survivor's benefits will be reduced only if her husband dies before she reaches her full retirement age. The age at which she receives her own benefits will not affect the survivor's benefits she will receive if her husband dies first. The process for deciding the optimal age at which to start receiving one's own benefit is beyond the scope of the article, but the process is one that individuals should discuss with their elder law attorneys and financial advisors. Oast & Hook thanks Ronald Pearson, CFP®, for his input on this issue.

Ask Allie

O&H: Allie, have you seen any good Christmas books this year?

Allie: As a matter of fact, I have. One great book is called "Dear Santa Claws, Letters to Santa from Cats," compiled by E. J. Sullivan. There are some fine missives in this book, and I'll share a few as we go through the holiday season. Here's a good post-Thanksgiving one: "Dear Santa: Do you only bring presents to good cats? I heard from Snickers next door that was how it worked with boys and girls. I have been mostly good, except that time I got on the dinner table and ate the leftovers. I don't know

how that happened, I honestly don't. One minute I was on the floor and the next I was gnawing turkey. It was a nightmare. I hope you can overlook this. Many thanks, Willow." Hmmm, that reminds me.... Time to see if the staff put any leftovers on the kitchen table.



Please feel free to e-mail your pet and animal-related questions to Allie at: allie@oasthook.com.

Announcement

The Hampton-Newport News Community Services Board and the Alzheimer's Association have joined forces to provide training and education to increase the skills and abilities of staff who work directly with seniors. The classes will be held in the conference room at the Hampton-Newport News Community Services Board at 300 Medical Drive, Hampton, Virginia. Registration begins at 8:30 a.m. and the classes will run from 9:00 a.m. to 1:00 p.m. The first class is entitled "Basics of Dementia Care" and will be held on December 16th. The second class is entitled "Making Connections and Enhancing Mealtime" and will be held on January 14th, and the last class is entitled "Understanding Wandering and Reducing Falls" and will be held on February 17th. These classes are free for professional caregivers, nurses and social workers in Hampton and Newport News. Pre-registration is required. To register, please either call Renee Davenport at 757-788-0005 or e-mail her at reneed@hnncsb.org.

Speakers

If you are interested in having an elder law attorney from Oast & Hook speak at an event, then please call Jennifer Lantz at 757-399-7506.

Distribution of This Newsletter

Oast & Hook encourages you to share this newsletter with anyone who is interested in issues pertaining to the elderly, the disabled and their advocates. The information in this newsletter may be copied and distributed, without charge and without permission, but with appropriate citation to Oast & Hook, P.C. If you are interested in a free subscription to the *Oast & Hook News*, then please e-mail us at mail@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

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