

William J. Kovatch, Jr.

Attorney at Law, PLLC

Estate Planning
Special Needs Planning

Newsletter



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Protecting Your Assets with an Income-Only Trust

If protecting your assets from creditors, Medicaid or future nursing home costs is a concern for you, then an asset protection trust may be the solution.

A trust is simply a legal arrangement where one person, called a trustee, holds property for the benefit of another person, called the beneficiary. Trusts can be revocable, meaning the person creating the trust (the grantor) can terminate the arrangement. Or, a trust can be irrevocable, meaning the grantor cannot terminate the trust.

An asset protection trust is an irrevocable trust, where the beneficiary is entitled to receive only the income of the trust. That is, the grantor permanently gives the property away to the trust, and grants the beneficiary (which can also be the grantor) the right to receive any income generated from the trust property. The grantor can also grant the beneficiary the right to use the trust property, provided that the property remains legally owned by the trust.

Creditors can only reach the property and ownership rights of their debtors. By transferring all ownership rights to the trust irrevocably, the grantor's creditors cannot reach the assets in the trust. If the trust is set-up as an income-only trust, creditors can only reach the income generated by the assets in the trust.

Likewise, an irrevocable income-only trust may assist a person in qualifying for Medicaid. To qualify for Medicaid because of being medically needy, a person's income must be less than his or her medical expenses, AND that person cannot have more than \$2,000 worth of countable resources. If the

William J. Kovatch, Jr., Attorney at Law, PLLC provides elder law services. The practice of elder law includes the representation of the elderly and the disabled in connection with:

- estate planning (wills and trusts)
- estate administration
- the application for public benefits such as Medicaid
- advance medical directives
- the creation of powers of attorney
- guardianship
- conservatorship,
- disability planning
- long-term care planning.

William J. Kovatch, Jr. is a member of the National Academy of Elder Law Attorneys, and admitted to practice law in:

- The District of Columbia
- New Jersey
- New York
- Pennsylvania
- Virginia

grantor retains no ownership interest in the assets transferred to the trust, then those assets are not countable resources.

One caveat to using an income-only trust to protect assets to protect assets from Medicaid is that a person cannot give assets away in order to qualify for Medicaid. When a person submits an application for benefits, Medicaid will look back over the past five years to see if the applicant made any transfers of assets without compensation. If there are any such transfers, the applicant is ineligible for Medicaid benefits for five years from the date of the transfer. Thus, in order for an asset protection trust to work, the grantor cannot apply for Medicaid for five years after the assets have been transferred into the trust.

Asset protection trusts can be useful in a number of situations. Take, for example, an older couple who have been dating for some time, and who have had prior marriages with children. Assume the couple wants to get married. The potential wife owns a home and a vacation home. The potential husband is older and has some health concerns. If the potential wife is concerned about losing the home and vacation home due to future nursing home expenses, she can establish an irrevocable income only trust, and transfer her real property into the trust. If this is done before the marriage, the property will not be considered marital property. The property would then be protected from creditors and any future nursing home expenses of the potential husband. Moreover, the property in the trust would not be considered available resources to the husband if the husband applies for Medicaid.

For these reasons, asset protection trusts can be a valuable part of your estate planning, and can protect your person's assets from creditors and establish a means of providing for future health care. There are several legal instruments that you can use in arranging your affairs.■

FDIC Insurance Coverage Extended Through 2013

The temporary FDIC insurance coverage of \$250,000 was extended through December 31, 2013. Up until October of 2008, the FDIC provided insurance for depository accounts, such as savings accounts, for up to \$100,000. If the bank were to fail, the owner of the account would still be protected up to that amount. In October of 2008, with the stock market crumbling, the FDIC insurance limits were raised to \$250,000. The larger insurance protection was set to expire on December 31, 2009. In response, Congress passed the Helping Families Save Their Homes Act, extending the deadline for the expanded coverage. President Obama signed the act into law on May 20, 2009.■

Upcoming Speaking Engagements

How to Create Your Own Comprehensive Family Protection Plan

Tuesday, June 16, 2009 starting at 7:00pm

Bethany Lutheran Church, 2501 Beacon Hill Road, Alexandria, VA 22306

Learn how to choose the appropriate guardians for your children if something were to happen to you, how to structure the funding for your guardian, how to put in place a temporary plan while waiting for your guardian to be appointed, and how to communicate your plan effectively.

This newsletter is for informational purposes only, and not meant to constitute legal advice. Quality legal advice requires a thorough look at the facts and circumstances surrounding your situation.