

The IDIOT Trust: A tool to protect assets from nursing home costs

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When it comes to protecting assets from nursing home costs, many believe that the solution is to place those assets in a trust. In some

circumstances, establishing an irrevocable trust, which is required to obtain asset protection, may carry great risk. Nonetheless, in the right circumstances, a smart choice could be the IDIOT Trust.

What is an IDIOT trust?

An IDIOT Trust is an Intentionally Defective Income Only Trust. As the name of this trust suggests, this trust will provide you only with income. A home is the most common asset placed in a such a trust. When your home is placed in the trust, income may be received in the form of rents paid, or there may be no income generated at all. When other investments are placed in the trust, those accounts will usually generate interest income. All income is paid to you as the person who established the trust.

What's the 'defect'?

The intentional defect in this trust is that the trust will be ignored for income tax purposes. The income generated from the trust assets will be taxed on your personal income tax return, just as it was before you placed the asset into the trust. In addition, upon a sale of a home within the trust, you may be able to take advantage of beneficial capital

gains tax exclusions. Any assets placed within this trust will pass to your beneficiaries upon your death without probate. Further, if need be, the assets may continue to be held in an ongoing trust for your beneficiaries.

It's not amendable

An IDIOT Trust is an irrevocable trust that cannot be revoked or amended. Once an asset is placed in this type of trust, it can never be removed from the trust for less than fair market value. You could purchase the asset back from the trust, but again, never for less than fair market value. Here, it should also be noted that if you place your home into the trust, and you wish to sell the home and purchase another home in its place, you may do so, but only via trustee.

You need a trustee

The trustee is responsible for managing and investing the assets held in the trust. You cannot be the trustee of this trust. In order to reap the benefit of this type of trust, you must be willing to give up control of the assets placed in the trust. If you retain too much control, the asset protection feature of this trust will not be effective.

The nursing home advantage

An IDIOT Trust protects assets from nursing home costs by making the assets in the trust inaccessible. The income will be available to pay nursing home costs because it will always be paid to you. Since you have no right to receive any of the principal (the assets initially placed in the trust), the principal can be

protected. This rule intertwines with the rules of the MassHealth program, which pays nursing home costs for applicants who qualify for benefits.

In order to qualify for MassHealth benefits, specific asset limits must be met. Assets held in an IDIOT Trust will not be counted toward the asset limit because of their inaccessibility.

Prepare for the 'look back'

Note well, however, that MassHealth will "look back" five (5) years from the date of the application for MassHealth benefits to determine if any gifts have been made.

When assets are transferred to an IDIOT Trust, this is a gift. When gifts are found within the look back period, a disqualification period is incurred during which the applicant cannot obtain MassHealth benefits, even if they are otherwise eligible to obtain benefits.

If the gift was made outside of the look back period, meaning at least five (5) years and one (1) day prior to the application, that gift will not have to be reported and, as such, cannot be penalized.

During the five (5) year waiting period, you would need to privately pay for any needed long-term care. The cost of one month of nursing home care in Massachusetts is approximately \$13,000. As such, it is imperative that enough assets be retained outside of this trust so that you would be able to pay through the

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remainder of the five (5) year period if you were to unexpectedly enter a nursing home within five (5) years of transfer.

An IDIOT Trust is a sophisticated estate planning technique that should be utilized without the assistance of an elder law attorney. The IDIOT Trust is only a smart choice in very specific situations. Your elder law attorney can help you determine whether an IDIOT Trust is a smart choice for you.

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