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The Five-Year Trust

For Medicaid Asset Protection Planning By, April D. Hill, Esq.

A Five-Year Trust, also known as a "Legacy Trust" or "Medicaid Asset Protection Trust," can be established to protect assets from being spent down on long term care in a nursing home. The assets you place in the Legacy Trust will become exempt from the Medicaid spend down requirements after a 5 year look back period.

What is the 5 Year Look-Back?
During the five years before applying for Medicaid a person cannot give away assets to become eligible for benefits. If the applicant has given away assets during that time, Medicaid will impose a period of ineligibility based on the amount he gave away he will have to wait the entire time before he can receive benefits. While there are asset protection planning tools we use for people who are within the lookback, nothing is as convenient and cost effective as planning early with the Five-Year Trust.

THE FIVE-YEAR TRUST IS BENEFICIAL FOR:

Protects Assets
The assets you place in a Five-Year will no longer belong to you since you must turn control and beneficial interest of them to a trustworthy loved one. The Five-Year is not for everyone since the loved ones you name in the Trust have no obligation to return the Trust assets to you. The trust is irrevocable however, you will hold back a special power of appointment that allows you to change the ultimate trust beneficiaries after you pass.

Avoids Estate Recovery
Most people wish to protect assets not only during life, but after death so that the assets can be passed on to their beneficiaries. The Five-Year avoids creditors including our state's Medicaid Estate Recovery efforts. Medicaid estate recovery happens when the state attempts to be paid back for Medicaid services provided to you. They may go after your property after you have passed away. A well drafted and funded Five-Year will ensure that your assets remain out of the state's reach after your death.

Avoids the 5 "D" issues that your loved ones may experience
Some people have asked, "Wouldn't it be better to make outright gifts directly to your loved ones without restrictions?" These kinds of outright gifts are subject to the 5 "D's" your loved ones may experience in their lives: divorce, debt, disability, disharmony and death. Outright gifts provide no protection to you. A properly drafted Five-Year will minimize the risks of the 5"D's."

Preserves the Stepped-up Basis

The stepped-up basis tax advantage is one of the great tax breaks for the middle class. It allows loved ones to inherit land, stocks or other capital assets at the date of death value, not your basis, or date of purchase value. Your beneficiaries could then sell the property while avoiding the income tax that would normally be due. This is one of the best tax benefits today. The Five-Year retains this tax advantage through the use of a special power of appointment. Outright gifts would not qualify for this tax break

Saves on Income Taxes

The special power of appointment in the Five-Year allows you to be taxed individually on any income earned on trust assets rather than being taxed at the higher grantor trust tax bracket.

Alternative VA Aid & Attendance Trust

There is an alternate version of the Five-Year for those who wish to apply for the Aid & Attendance benefit. Due to special VA rules, a non-grantor version of the Five-Year is recommended.

As you can see, even if a person never used Medicaid (because we all hope we will never need to) the trust can provide huge estate planning benefits to the individual and his family. Five Year Trusts are unique and beneficial planning tools to consider.

To further explore the Five-Year or Medicaid asset protection strategies, please call our office at 727-343-8959 to go to https://www.hilllawgroup.com/contact-us/ to schedule a consultation.

This handout is for information and education purposes only and should not be considered legal advice. Each person's situation is unique and each should seek legal advice form a qualified attorney.