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Is an IDIOT Trust Ever a Smart Choice?

By Gina M. Barry, Esq.

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 the type of trust required to obtain asset protection may carry great risk. Nonetheless, in the right circumstances, a smart choice could be the 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 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 generate interest income. All income is paid to you as the person who established the trust.

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, the

assets may continue to be held in ongoing trust for your beneficiaries if so desire.

An IDIOT Trust is an irrevocable trust that can not 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 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 the trustee.

The trustee is responsible for managing and investing the assets held in the trust. You should not 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.

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 there is 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 Medicaid program, which pays nursing

home costs for applicants that qualify for benefits.

In order to qualify for Medicaid 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. Note well, however, that the Division of Medical Assistance ("DMA") will "look back" five (5) years from the date of an application for Medicaid 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 can not obtain Medicaid 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, can not 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 \$9,000. As such, it is imperative that enough assets be retained outside of this trust so that you would be able to pay through the remainder of the five (5) year period if you were to unexpectedly enter a nursing home within five (5) years of the transfer.

An IDIOT Trust is a sophisticated estate planning technique that should not be utilized without the assistance of an attorney who specializes in this area of law. The IDIOT Trust is only a smart choice in very specific situations. Your estate planning specialist can help you determine whether an IDIOT Trust is a smart choice for you.

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