SESSION TWO

- PROTECTING MARITAL ASSETS UPON THE DEATH OF A SPOUSE AGAINST THE REMARRIAGE OF A SURVIVING SPOUSE.
- THE USE OF TRUST PROTECTORS AND ADVISORS.
- TOP QUESTIONS AND MISCONCEPTIONS OF A REVOCABLE LIVING TRUST.
- WHAT IS ELDER LAW & HOW DOES IT RELATE TO TRUSTS?
- THE IRREVOCABLE ASSET PROTECTION TRUST

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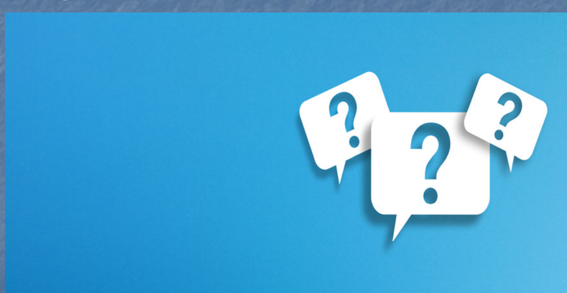
Q&A Review From Session One



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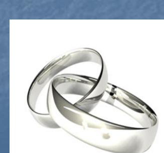
Protecting Marital Assets After the Death of a Spouse

- Most trusts do not protect against the future remarriage of a surviving spouse.
- 61 percent of men and 19 percent of women were remarried or in a romantic relationship by 25 months after a spouse's death.



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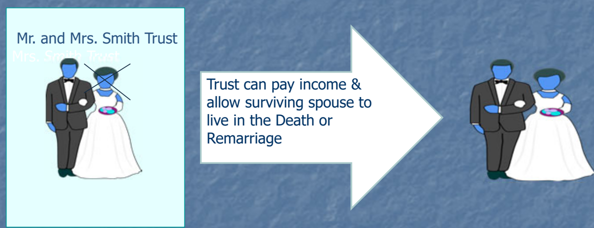
Protecting Marital Assets After the Death of a Spouse



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ADDING A TRUST PROTECTOR

- Trust Protector: A Trust Protector (TP) is an independent third party which oversees the Successor Trustee(s). A TP usually has the following powers:
  - Provide general oversight & guidance to the Successor Trustee(s);
  - Remove and Replace a Successor Trustee (with or without cause).

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ADDING A TRUST INVESTMENT ADVISOR

- Trust Investment Advisor: A Trust Investment Advisor (TA) is an independent third party who is usually a financial advisor or investment broker who oversees the Successor Trustee(s) investment decisions.

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Top Questions Concerning The Revocable Living Trust

- Top 4 questions:
  - Does this trust protect my assets from *Lawsuits*?
  - Does this trust protect my assets from the Remarriage?
  - Does this trust protect my assets from *Creditor Claims*?
  - Does this trust protect my assets if I ever need to go on *Medicaid*?

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The Revocable Living Trust

- *DOES NOT* PROTECT AGAINST LAWSUITS, CREDITOR LAIMS OR MEDICAID SPEND DOWNS!

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LAWSUIT AND CREDITOR ATTACKS

- Creditor Claims;
- Auto Accidents;
- Tenants in Rental Property;
- Nursing Home Abuse

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LAWSUIT AND CREDITOR ATTACKS

- Did you know that as an older American you have a 33% chance in your lifetime of being sued?
- In any given year, you face a 10% chance of being named in a lawsuit? Source: American Insurance Institute

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WHAT IS ELDER LAW?

- **Elder law** is a legal term coined to cover an area of legal practice that places an emphasis on those issues that affect the growing aging population.
  - Estate Planning Documents Targeted and Designed for Seniors;
  - Asset Protection;
  - Qualifying for certain Governmental Benefits.

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ATTACKS FROM LONG-TERM COSTS

- 70% of us will need long-term care services at some point in our lives;
- Nationally speaking, the average annual cost of a nursing home is a little over $95,000.00 a year just for one person!

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LONG-TERM CARE STATS COMPARED WITH OTHER RISKS

- Consider your likelihood of other types of future risks:
  - 2.4% chance that you will experience a major house fire;
  - 16.8% chance that you will be involved in a severe auto accident.

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HOW TO PAY FOR LONG-TERM CARE EXPENSES?

- With your own assets;
- With long-term care insurance;
- Leveraging governmental benefits like Medicaid and Veteran’s pension(s).

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OPTION 1: WITH YOUR OWN MONEY

- AVERAGE IN HOME CARE COST: $19.00 to $50.00 PER HOUR;
- AVERAGE COST OF ASSISTED LIVING: $4,200.00 PER MONTH;
- AVERAGE COST OF A NURSING HOME: $10,000.00 PER MONTH (Depending on Region)

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OPTION 2: WITH LONG-TERM CARE INSURANCE

- Long-term Care Insurance
  - If the client qualifies.
  - Raising premium rates as clients age.
  - Obtaining Governmental Benefits (i.e. Medicaid or VA Pension Awards).

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LONG-TERM CARE INSURANCE COMPANIES ASKING FOR MORE MONEY.

- MANY COMPANIES ARE SENDING LETTERS TO LONG-TIME POLICY HOLDERS ASKING:
  - PAY INCREASED PREMIUMS.
  - DECREASE BENEFITS.
  - CANCEL POLICY.

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OPTION 3: WITH GOVERNMENT ASSISTANCE
Medicare vs. Medicaid

- Medicare is a national health insurance program primarily for people 65 years of age and older;
- Medicare provides around 100 days of skilled nursing care after MEDICAID steps in.

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WHAT IS MEDCIAD? WHAT IS THE DIFFERENCE BETWEEN MEDICAID AND MEDICARE

- Medicaid pays for permanent nursing home care

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MEDICAID BENEFITS

- Married couple allowed to keep up to $120,900.00 in the wells spouse's name once they divide in half. <u>Must spend down the other half</u>. (Home exempt if community well spouse still resides there).
- Single applicant must have less than $2,000.00 in assets to qualify.
- Income of applicant is absorbed in calculation with Medicaid paying the difference to the nursing home directly.

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MEDICAID LEGALLY CAN BE DIFFICULT TO QUALIFY

- <u>Medicaid Complexity</u>!

- U.S. Supreme Court calls the Medicaid laws "*an aggravated assault on the English language, resistant to attempts to understand it.*"
- U.S. Court of Appeals for the 4th Circuit calls the Medicaid Act one of the "*most completely impenetrable texts within human experience" and "dense reading of the most tortuous kind.*" 42 F.3d 1444.

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BENEFITS WITH THE VETERAN'S ADMINISTRATION (VA)

If you are a wartime Veteran or widow(er) of a Veteran, and are disabled or at least age 65, you may qualify for a Veterans Pension to help pay for the expenses of long-term care.

Today - or will be in the future.

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USING VETERANS PENSION BENEFITS FOR LONG-TERM CARE EXPENSES

- Did you know that a U.S. Veteran who is married may be eligible to receive around $2,100.00 of additional income per month?
- Did you know that the widowed spouse of a Veteran may be eligible around $1,200.00 of additional monthly income?
- A Single Veteran may be eligible to receive around $1,800.00 of additional monthly income?

ALL OF WHICH IS "TAX FREE."

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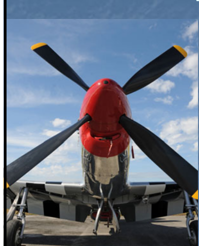
WHO QUALIFIES?



- Veteran or Widower of Veteran;
- No Dishonorable Discharge;
- 90 days of active duty with at least one day served during a declared state of war;
- Disabled or at least age 65;
- Must meet Asset and Income Threshold.

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WHAT ARE THE TESTS FOR QUALIFICATION?

- Disabled or over age 65;
- Must meet service requirements;
- Must need the Aid and Attendance of another;
- Cannot have assets over a calculated

Amount:

- 2020 Net Worth Limit = $129.094.
  - FMV of all non-exempt property owned by the

  Claimant and his or her spouse, less encumbrances,

  mortgages and annual unreimbursed medical expenses.
  - Does not include a home up to two acres.

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LEVERAGE PLANNING

HOW DOES A SENIOR LEGALLY LEVERAGE & LEVEL THE PLANNING FIELD FOR THEIR ABILITY TO RIGHTFULLY USE MEDICAID AND / OR VA BENEFITS TO ASSIST IN PAYING FOR THEIR LONG-TERM CARE EXEPENSES?

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INTRODUCING THE IRREVOCABLE ASSET PROTECTION TRUSTS

- An Irrevocable Asset Protection Trust acts very much like a Revocable Living Trust. However, it has the following additional benefits:
  - Lawsuit Protection;
  - Creditor Protection;
  - Medicaid Qualifying.

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WHAT IS AN IRREVOCABLE TRUST?

- Irrevocable trusts come in a variety of flavors.
- Legal Concept? The is some part of the trust that cannot be changed.
  - Restriction to fully access principal.
  - Limiting the ability to change beneficiaries.

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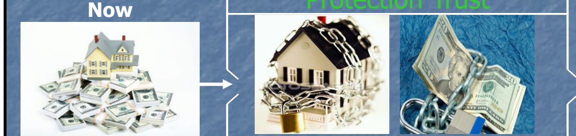
Unprotected Now

The Irrevocable Asset Protection Trust



PROTECTS YOUR ESTATE FROM MEDICAID SPEND-DOWNS AND MAY HELP YOU QUALIFY FOR CERTAIN GOVERNMENTAL BENEFITS IN THE FUTURE.

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How It Works:

- Like the Revocable Living Trust (RLT): You create the trust to avoid probate, provide for incapacity and save on estate taxes;
- Like the RLT, you in many instances can be your own Trustee (i.e. has full control to pick investments and manage money.

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How It Works:

- Like the RLT, you have a right to receive and use all ordinary income that the trust may produce;
- Like the RLT, you can change your beneficiaries of the trust at any time;
- Like the RLT, you can change Trustees at any time.

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WHAT MAKES THE TRUST IRREVOCABLE?

- The Grantor (you) *cannot* have direct access to the principal inside the trust thus securing and protecting your assets.

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How Can the Grantor Get Access to the Principal?

- If the Grantor /Trustee needs access to the principal of the Trust, the Trustee makes a distribution to a beneficiary.
- Once a distribution to the beneficiary has been made, the beneficiary can give the money back to the Grantor.

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TAX EFFECTS OF MAKING BENEFICAIRY TRANSFERS FROM THE IRREVOCABLE ASSET PROTECTION TRUST

- Tax Effects of Transfer?
- A Distribution to the Beneficiary is a gift for federal gift tax purposes and a gift tax return may need to be filed from both the Settlor and Beneficiary.

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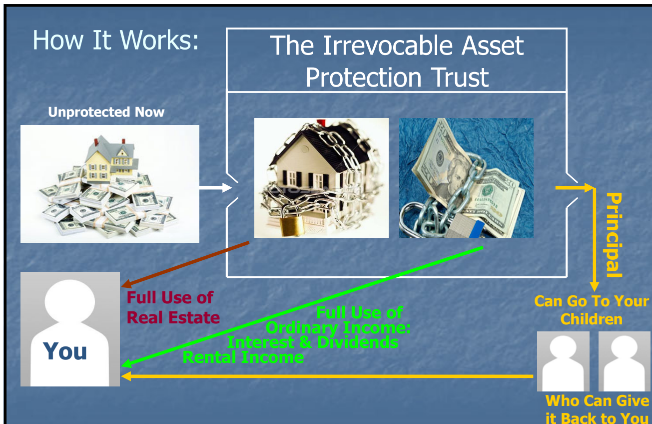
How It Works:



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Having Your Cake and Eating It Too! What Are The Practical Benefits?

- You Receive All Ordinary Income;
- No Change to Your Checking Account;
- Indirect Access to Principal;
- The Trust Is Taxed At Your Individual Tax Rate;
- Your Beneficiaries Still Get A Step-Up In Basis at Your Death;
- Principal Protected Immediately from Creditors and Lawsuits (*so long as you are not under threat or currently being sued);
- You Remain in Control Because:
  - You Can Be The Trustee if Desired
  - You Can Change the Successor Trustee(s)
  - You Can Change the Beneficiaries

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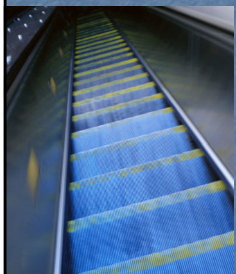
What Are the Downsides?



- All assets in the trust are still in the Grantor's estate (i.e. Yours) for estate tax purposes;
- Failure to fund the trust will lead to unprotected assets and probate;
- If a Grantor/Trustee inadvertently makes a distribution of principal to himself, the asset protection benefit could be *diminished.*

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Virginia Domestic Asset Protection Laws

- What makes these trusts different?
  - The State Legislature has removed the long-time honored trust laws which used to that state that a *person cannot create their own trust and also receive asset protection*.

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How Is This Legal?

- Historical Perspective - Virginia Restatement of Trusts, Section 156:
  - "…where a person creates for his own benefit, his creditors can only reach the maximum amount which the trustee, under the terms of the trust, could pay to him or apply for his benefit.
- Uniform Trust Code:
  - §64.2-747(2): "…with respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that *can be distributed* to or for the *settlor's benefit.*

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What About the Money / Assets Left Outside the Trust?

- Option 1: List the Asset Protection Trust as the Beneficiary.
- Option 2: Let the Pour-Over Will take care of it by pouring the asset (typically real estate) into the Asset Protection Trust.

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What If I Already Have A Revocable Living Trust?

- A pre-existing RLT *cannot* be amended to become an Irrevocable Asset Protection Trust.
- It is recommended that the client keep the existing trust to take care of "key money" assets and have the Living Protection Trust dump assets into the RLT at death.

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Why Should Someone Consider An Irrevocable Asset Protection Trust?

- Who cares about the Medicaid Changes!
  - Once a Grantor creates the Irrevocable Asset Protection Trust, the trust assets are protected from Medicaid inclusion within five *(5) years after signing*.
  - Once a Grantor creates the Irrevocable Asset Protection Trust, the trust assets are protected from Veteran's Aid & Attendance Pension Planning inclusion within three *(3) years after signing.*
- Perfect for clients concerned about long-term nursing home costs.
- Perfect for seniors that are starting to suffer from health problems or who have been rejected for long-term care insurance.

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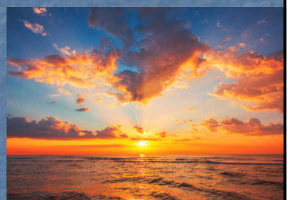
Irrevocable Asset Protection Trust

- The Asset Protection Trust is a Special Type of Irrevocable Asset Protection Trust.
  - Protects Your Assets From Probate;
  - Provides Estate Tax Savings;
  - Secures Your Assets From Creditors and Lawsuit Plaintiffs;
  - Automatically Plans for Long-Term Care By Protecting Assets From Future Medicaid Inclusion and Can Help Obtain Veteran’s Pension Benefits.



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END OF SESSION TWO
&
END OF THE CLASS

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