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# USING IRREVOCABLE TRUSTS FOR MEDICAID PLANNING IN TEXAS

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**USING IRREVOCABLE INCOME-ONLY TRUSTS**

## I. INTRODUCTION

The prospect of an extended stay in a long-term care facility is a serious threat to the financial security of today's seniors. As more individuals are impacted by the costs of care, families increasingly seek planning options. To that extent, the elder law attorney should have a thorough grasp of the advantages and disadvantages of using irrevocable trusts as planning tools to shelter and preserve assets.

This article explores when and how irrevocable trusts can be strategically employed for Medicaid qualification in Texas. As a result of this limited scope, the use of trusts for purposes of general asset protection or to obtain eligibility for other government benefits such as Veteran Affairs benefits are not addressed. Additionally, the use of trusts in connection with Medicaid eligibility is based on federal rules and not the interpretation or administration of these rules by the individual state agencies although where relevant, Texas particulars will be identified.

## II. WHY SHOULD AN ELDER LAW PRACTITIONER OFFER TOOLS IN FURTHERANCE OF MEDICAID PLANNING SUCH AS IRREVOCABLE TRUSTS?

No one questions the value or the legitimacy of individuals seeking tax planning advice from tax professionals to minimize taxes owed (or maximize available tax benefits) within the scope of the applicable tax laws. However, some are not as receptive to clients seeking similar advice from elder law practitioners in connection with protecting assets and utilizing applicable laws in anticipation of the crushing costs of long-term care. Many older individuals are acutely aware of the financial devastation that can be wrought by a medical crisis or chronic health condition. This awareness often leads individuals to solicit advice regarding asset protection and long-term care planning from friends, neighbors, bankers, insurance agents, financial advisors and even general practice attorneys. This advice is usually inaccurate, always incomplete and, when implemented, ineffective at best. At worst, such well intentioned advice is more devastating than the financial long-term care crisis the individual was attempting to address. It is the professional obligation of the elder law practitioner to educate their client, offer various tools to address the client's concerns and execute any asset protection strategies the client chooses to implement. If elder law practitioners refuse to offer alternatives to clients concerned about long-term care costs and asset protection, clients will often act on the bad advice of others. One such common action seen by the author is that a parent will just "put everything in a child's name", thinking that this action has achieved some sort of asset protection. Unfortunately, what occurs too often is the child spends the assets, gets into trouble with their own creditors and loses the parent's assets, uses the assets as collateral for their own debt, loses the assets in a divorce, becomes disabled themselves and spends down the assets or simply lords their ownership of the assets over the parent in a power play. One alternative to the "put everything in child's name strategy" which should be discussed with inquiring clients in the use of irrevocable trusts.

## III. BACKGROUND

The usefulness of an irrevocable trust for any client begins with a thorough understanding of Medicaid eligibility requirements and the impact of those requirements on the client's individual assets. For example, the author is frequently presented with clients who own illiquid and often non-income producing assets such as unimproved real property, mineral interests and vacation homes. Additionally, in many late-life marriages, the parties to the marriage have brought into the union homes and other separate property that impact the other spouse's eligibility for future benefits. For purposes of future long-term care needs, these assets can wreak havoc on the

# Title search: Using Irrevocable Trusts for Medicaid Planning in Texas

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