

All in the Planning

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Jarrett &
Luitjens
ESTATE & ELDER LAW

No Magic Carpet Ride for “Medicaid” Trusts

The road to eligibility for long-term care Medicaid benefits can be long and winding, so it can be tempting to board a magic carpet ride and try a so-called “Medicaid” trust, more descriptively referred to as an irrevocable income-only trust. The theory behind such a trust is that assets owned by the trust are protected from creditors, primarily in consideration of long-term care costs and the desire to become eligible for government benefits. However, there is no free ride, and transferring assets into an irrevocable trust comes with risks and costs.

IRREVOCABLE: As its name suggests, you cannot change the terms of the trust. If circumstances change requiring a modification, you would need Court approval and/or consents of all interested parties.

ASSETS UNAVAILABLE: That is the basis of the protection. If potential creditors cannot access it, neither can you. Once you place an asset in the trust – whether cash or real estate – you cannot benefit from the proceeds of that asset again. While it may be possible to enjoy trust income, you cannot tap into the principal.

5 YEAR PENALTY: Transferring assets into an irrevocable trust triggers five (5) years of ineligibility for long-term Medicaid (known as Choices for Care in Vermont). Unless there are other non-trust assets available to cover the private cost of care during such a penalty, an individual is risking health security. Without private funds or access to government benefits, there would be no means to pay for care (at an average rate of over

\$100,000/year in Vermont) should health decline earlier than expected.

UNCERTAINTY OF TRUST’S APPROVAL: Medicaid agencies and Court rulings in neighboring states have been inconsistent regarding which trust provisions successfully protect the assets in irrevocable trusts. There is no prescribed form of trust that Vermont has sanctioned, so there is no guaranty that a particular trust will be effective.

For these reasons appropriate circumstances for using irrevocable trusts are somewhat limited. They do not magically protect assets, nor is the ride to Medicaid eligibility as fun and easy as flying a magic carpet. To accomplish the latter, you should take in a movie – Disney’s live-action *Aladdin* hits theaters this spring!

Lawyer Joke

Q: What do you need when you have 3 lawyers up to their necks in cement?

A: More cement.

4th Annual Golfing4Life Tourney

Jarrett & Luitjens is proud to co-host its 4th Annual Golfing4Life Tournament on July 24th at the Links at Lang Farm. Last year we raised over \$10,000, funds which directly benefit the Cancer Patient Support Foundation of Williston’s Emergency Relief Fund. To join the fun and support this worthy cause, contact [Holly Keough](mailto:Holly.Keough) for more information.



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