Use of Irrevocable Retained Interest Trusts in Medicaid Planning: Is Your House Made of Sticks or Bricks?

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Revocable Living Trusts – Generally Undesirable for Medicaid Planning

- Governmental benefits (typically long-term care Medicaid and other Medicaid programs) are "means-tested"
- Since grantor can withdraw assets at any time or revoke the trust, government considers the assets in the revocable living trust (RLT) as "countable" [42 U.S.C. 1396p (d)(3)(A)

Revocable Living Trusts – Generally Undesirable for Medicaid Planning

- Homestead even loses its status as “non-countable” if deeded into RLT thus increasing countable resources. See Section F 3210 of Medicaid for the Elderly and People with Disabilities Handbook
- If Homestead is deeded out of trust to Grantor, then Homestead with be excluded provided there is an intent to return and equity value is less than $595,000 (if single). No limit if married.

RLT Planning Options in Connection with Long-Term Medicaid

- Then Grantee of Ladybird deed or transfer on death deed (to protect homestead from Medicaid estate recovery) could be RLT and designed with protections desired
- Useful if any beneficiaries cannot agree on sale, lease or mortgage, etc. of homestead
- Useful if unequal division of proceeds from home sale

RLT Planning Options in Connection with Long-Term Medicaid

- If only asset is homestead and either one of intended beneficiaries of RLT at death of Grantor:
  - Needs creditor protection
  - Is disabled
  - Is a spendthrift
  - Has marital issues or if there is a concern their spouse may remarry;
  - Is a minor; or
  - Is an addict

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RLT Planning Options in Connection with Long-Term Medicaid

- Reverse pour-over (generally if in individual RLT) to Decedent's Estate since spousal SNT can only be created by Will (SNT in Will of deceased spouse)

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