

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

Michael B. Cohen
12201 Merit Drive, Suite 230
Dallas, Texas 75251
mike@dallaselderlawyer.com
Tel: (214) 720-0102 Fax: (214) 754-0936

By Michael B. Cohen

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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)]

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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 will 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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