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Irrevocable Medicaid Asset Preservation Trust

Summary

This is an irrevocable trust created by the Grantor.

This trust is created as an intentionally Defective Grantor Trust for (IDGT). The purpose is to hold the assets so they are not available for Medicaid purposes. Assets placed in the trust 5 years before the need to apply for Medicaid are a completed gift outside of the 5 year lookback.

It is intentionally defective for tax purposes. The goal is that the assets are taxable to the Grantor. This is a better rate than being taxable at a trust rate, which is higher. Additionally, the assets get a step-up in basis at the death of the Grantor.

During the Grantor's lifetimes the income and principal are payable to the beneficiaries, ie the children. I do suggest a "Distribution Trustee" who will sign checks for the discretionary distributions from the principal.

Advantages

Can exclude assets from Medicaid lookback (need 5 years)

Step-up in basis for beneficiaries

Disadvantages

Can be used for Pre-planning only. No crisis planning. Rigid drafting and restrictions on distribution.

Trust cannot be amended by Grantors; Trust protector can amend in some situations.

No income is available to the Grantors.* Principal not available to Grantors.

*Trust can be structured to provide some income to the Grantors, but our firm does not do it this way because the Medicaid office will include the income and could try to include all assets in the trust, therefore defeating the entire purpose.

These materials are for general informational purposes only. Consult an attorney for legal advice about Medicaid and irrevocable trusts.

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