



Using a Trust to Protect Assets from Long Term Care Costs

Contributed by Amber B. Woodland, Esquire

Let's start off by reviewing trusts in general. Simply put, a trust is a legal document, words on paper, drafted by an attorney. When signed by the maker of the trust, a legal entity is formed. That entity is managed by a trustee according to the terms of the trust. Typically, a trust is funded with assets during the trustmaker's lifetime. This ensures the trust works as intended.

If you Google search the term "trust," you'll quickly be overwhelmed by millions of results. That's because there are many different types of trusts all of which serve different purposes. In the context

**IT'S IMPERATIVE THAT ANYONE
INTERESTED IN CREATING A TRUST OF
ANY KIND RECEIVE GUIDANCE FROM A
SPECIALIZED ELDER LAW FIRM.**

of long term care planning, there are two trusts we use regularly, but they are often confused with one another.

A Miller Trust, also known as a Qualified Income Trust, is not the magic tool that protects assets from long term care. Rather, it is used strictly to achieve income eligibility for Long Term Care Medicaid benefits. Take Delaware, for instance, which has an "income cap" of approximately \$2,000 per month. This means that if a person seeking eligibility for Long Term Care Medicaid has income

(i.e. Social Security and/or pension benefits) that exceeds \$2,000 per month, then she is not eligible without creating and funding a Miller Trust.

Once signed, the Miller Trust is used to open a bank account in the name of the Trust. All of the applicant's income must be deposited into this new bank account each month. From there, the Trustee uses that income according to the Medicaid regulations.

Assets, like cash or real estate, should never be transferred to a Miller Trust. In other words, income is all that ever goes in to this type of trust, never assets. For this reason, a Miller Trust is not an asset protection planning tool. It is only ever used at the time of application for Long Term Care Medicaid benefits to satisfy the "income cap" rules.

An irrevocable Asset Protection Trust, on the other hand, is a highly effective tool to shelter assets from the costs of long term care. If you're thinking about deeding your house to your kids, consider this Trust instead.

Many seniors want to give assets away now. They

225 High Street
Seaford, Delaware 19973

1519 Savannah Road
Lewes, Delaware 19958

616 William Street
Berlin, Maryland 21811

www.pwwlaw.com



**PROCINO-WELLS
& WOODLAND, LLC**

Continued from previous page...

want to do this to protect those assets in case long term care, which can cost more than \$10,000 per month, is ever needed in the future. They figure that if those assets are no longer in their names, then they won't be available to pay for care and, thus, protected.

Giving assets outright to other individuals, though, can be very risky. What if those individuals get divorced, file for bankruptcy, or need long term care themselves? Those assets, now in someone else's name, are subject to those risks.

The better practice is to use an irrevocable Asset Protection Trust. Once signed, assets can be transferred to it. Five years later, those assets are protected and are completely "off the table" should long term care be needed in the future. Real property (i.e. your residence, beach house, or even rental property) is a great asset to transfer to this type of Trust. Many families are interested in protecting the equity in their real property if nothing else. Other assets, like cash accounts or life insurance policies with cash value, can be transferred to an Asset Protection Trust, too.

We cover the mechanics of an Asset Protection Trust in other articles. What's important to note here is that a Miller Trust has a purpose and a place, but an Asset Protection Trust is the primary tool that effectively protects assets from the future costs of long term care. It's imperative that anyone interested in creating a trust of any kind receive guidance from a specialized elder law firm. Misusing these legal tools can result in compromising benefits and spending more on care than necessary.

BELLA'S BRIEF

The Office from a Dog's Perspective



Until now I've kept my nose out of the political fray of this election year. I'm only a dog, a mixed breed at that, so what do I know? Well, let me tell you. I've heard time and time again how divided the people of this country are right now. It's said with shock as if it's news, which honestly just baffles me. Why is it surprising? You the people of the United States, have the freedom to have your own

thoughts, form your own opinions, and make your own decisions. Of course there are going to be disagreements and opposing views. Remember that dress a few years back? Not Monica's, the one that went viral because one person saw blue and another saw white. That's what makes this country great. It's okay to see things differently. It's not okay to be unkind or disrespectful because you do. I hope you will invoke your civil liberties this election year to vote!

xoxo Bella 

TIME OUT — STAFF PROFILE

Aubràa D. Jernigan, Legal Assistant

ON THE CLOCK: Aubràa, born and raised in Sussex county, traveled the country with her parents as her father served in the Army. Shortly after, she attended Harris School of Business to start a career in the health field where Aubràa graduated with her Medical Assistant Certificate. Then, in 2010 she accepted a position at a local Milford doctor's office. Thereafter, Aubràa joined Nanticoke Health Services as a floating medical assistant working in multiple different offices, which gave her a wealth of knowledge in the diverse medical community. Growing with the company she then transferred to become the Operating Room Coordinator and later transitioned to being a Case Management Coordinator where she enjoyed helping every patient in any way possible. Aubràa brought her love for human interaction and sunshine personality to PWW Law in 2019.



OFF THE CLOCK: Outside of the office, Aubràa enjoys spending a lot of time with her family and friends, reflecting and reading on the beach, and lots of fun spontaneous adventures.

UPCOMING EVENTS

- 14 Oct** Facts & Fixes: Cyber Security and Addressing Digital Assets in your Estate Plan
10:00 - 11:30 am
via Webinar
- 22* Oct** Three Part Elder Law Series
10:00 - 11:30 am
via Webinar
**Also on October 29th and November 5th*
- 23 Oct** CARES Member Exclusive Appreciation Event
3:00 - 6:00 pm
- 28* Oct** Estate & Retirement Planning Strategies Seminar
Lunch (12:00 pm) or Dinner (6:30 pm, *also on 10/27*)
Bear Trap Dunes, Ocean View, DE
**Hosted by Janney Montgomery Scott. Complimentary, but reservations are required. Please call 302-313-0408.*
- 10 Nov** Caring for Seniors at Home While Still Protecting Assets
10:00 - 11:30 am
via Webinar
- 3 Dec** CARES Member Exclusive Trustee School
5:30 - 7:00 pm
via Webinar

LEGAL MUMBO JUMBO

Legal Language in Layman's Terms

MEDICARE

A federal health insurance program for people 65 or older and people receiving Social Security disability benefits. While it helps with the cost of health care, it does not cover all medical expenses or the cost of most long term care.

A note from the attorneys...

This year has challenged us in ways we didn't think possible just months earlier. Yet, we feel blessed. We've learned through our struggles and we've embraced new forms of communication that have made us stronger. We've celebrated our successes and held each other up in moments of uncertainty and change. As we say goodbye to 2020 and look ahead to 2021, we'll remain optimistic and forward-thinking with our decisions and goals.



**PROCINO-WELLS
& WOODLAND, llc**

225 High Street
Seaford, Delaware 19973



Planning today to protect your family's tomorrow.



FF THE CLOCK

We would like to thank our featured referrer of the month:

Edward Jones®
MAKING SENSE OF INVESTING

MELINDA R. TINGLE, AAMS®
Edward Jones Financial Advisor
302-875-0355
204 East Front Street
Laurel, DE 19956

Procino-Wells & Woodland, LLC is a proud member of:



This newsletter is intended for informational purposes only and does not constitute legal advice. For legal advice, consult a licensed attorney. The examples used are simplified for ease of understanding and illustration of general concepts.