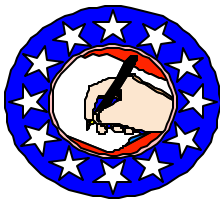


Using Supplemental Needs Trusts

What is it? Before you can use it, you need to know what it is. Prior to 1993, a disabled person who had assets and income needed to spend those assets and that income on care, become impoverished in the process and then apply for Medicaid to pay for any and all remaining care needs. Not a happy conclusion.



like those suffering with MS or other malady that requires the assistance of a third party with what is called “activities of daily living.” Custodial care is also provided to folks who suffer from cognitive problems, like some form of dementia.

Personal Injury

The legislation allows a disabled person who may have been in an automobile accident or may have been injured at or near the time of birth, to place assets resulting from the injury into a supplemental needs trust, including the proceeds of any settlement. The trust must be

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Legislation

Now federal and New York legislation assist people with disabilities who have the need for medical or custodial care. Custodial care is required by people with motor difficulties,

Bronx Needs Elder Law Attorneys

It has become painfully obvious that the Bronx needs lawyers skilled in the Elder Law Discipline. There are many individuals who will over the next few years be facing the prospects of long term care. They are at risk. Unless they receive the needed advice regarding how best to protect their homes and savings, many will lose assets to the costs of care-assets which could have been protected with the right advice. As with many other matters, people with less, lose more. They fail to seek counsel because they are



unaware of what can be done to protect assets or they do not have the funds to pay for an attorney.

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established by a parent or grandparent. If no parent or grandparent is alive, court permission must be obtained. The courts will allow the creating of such trusts.

What is the Benefit of Such Trusts?

The benefit is that the assets placed into the trust will be protected so that they need not be spent on care if the Medicaid program would otherwise pay for the care. That is, the trust property may be used for anything which the government will not pay for. Thus, trust funds could be spent on a car,

hoist, lift, motorized wheel chair, improvements to a residence or the purchase of a residence itself. Certain capital items should be purchased in a way that the trust will own the asset and the monies paid should be paid directly to the vendor or supplier of services. Experimental surgery or medication, not available through a government program, may also be paid for by the trust. If an expenditure is reasonable, the trust can pay for it.

The Payback Obligation

Once the disabled person dies, the trust assets must first be used to repay the Medicaid

program; anything left over could go to relatives. The idea is: we want to protect the disabled but we do not want to provide the family with a wind-fall unless Medicaid has been repaid.

Conclusion

The supplemental needs trust is a very useful tool for the right person and in the right circumstances. What is important is that you know what can be done. You may know of people who may benefit by learning of these new methods to protect assets.

New IRA And Retirement Distributions Simplified

The IRS has released proposed regulations dealing with distributions from IRA's and retirement plans. The regulations, while proposed, are effective for year 2001. Previous proposed regulations on which we relied were never actually finalized. And for those of you who found the old rules complex and boring, the new rules are like a sweet rose from heaven.

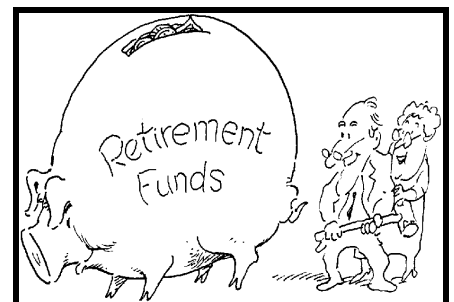
Remember that by the Required Beginning Date (April 1 of the calendar year after the calendar year in which a person turns 70 1/2), a designated beneficiary needed to be determined and once that was done, you could not change the ulti-

mate method for distribution once the account owner died. Well, that has changed. Now you need not even have a person as a designated beneficiary at the time of your Required Beginning Date. Moreover, you can now change your mind during your lifetime.

Lets just see a little about the way it can now work. Say a person is 72 and has a spouse who is 68. Also, say the IRA is worth \$200,000 as of December 31 of the previous year. The Required Minimum Distribution for the year would have been \$9,615.38. Now the spouse is treated as being automatically 10 years younger (unless the spouse is more than 10 years

younger in which case the tables can be used) and the distribution now will be \$8,196.72, a difference of almost \$1,500 for the year which may continue to grow tax free. The name of the game is to defer as long as possible the need to take the money out and pay taxes. By leaving the money in the account as opposed to being required to take it out, means that the amount

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remaining in the account continues to build and grow tax free until distributed. Compounding will produce a larger and larger build up of the IRA account.

Here is just how simple distributions will be in the future:

<u>Age of Account Owner</u>	<u>Divisor</u>
70	26.2
71	25.3
72	24.4
73	23.5
74	22.7
75	21.8
76	20.9
77	20.1
78	19.2
79	18.4
80	17.6
81	16.8
82	16.0
83	15.3
84	14.5
85	13.8
86	13.1
87	12.4
88	11.8
89	11.1
*90	10.5

**The table goes to age 110 and the divisor is reduced accordingly.*

The only variation from this schedule will be in a situation where a spouse is designated as the beneficiary and that spouse is more than 10 years younger. In that case, resorting to another table will be necessary.

Spousal Support Suits on the Rise

As you know, much of our legal services relate to assisting the elderly and the disabled to obtain or retain governmental benefits. Frequently, while we are able to access the Medicaid program by transferring assets to a spouse (spousal gifts or transfers are exempt from the Medicaid transfer penalty rules), the well spouse is now burdened with assets. Burdened because a spouse has a duty of support. That is, a duty to provide support for an ill spouse who may be at home or in a nursing home. What's worse is that the protections available to a spouse when the other spouse is in a nursing home are not available to the well spouse when the ill spouse is able to remain at home. Thus, one might say that a spouse is penalized when he or she wishes to keep the ill spouse out of a nursing home for as long as possible.

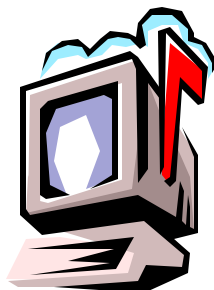


when one spouse is in the nursing home and the other spouse is at home -- and those suits are usually because the spouse at home has excess assets. Excess assets means assets which exceed approximately \$87,000 plus the home and other exempt property. The \$87,000 is referred to a spouse resource allowance. Many times the assets in the hands of the spouse at home exceeds \$87,000. Are there ways to protect those assets and avoid the spousal lawsuit for support?

We have always advocated for the **private annuity** as the best method to avoid lawsuits against the spouse living at home when the other spouse is in a nursing home. Essentially, it is a transfer of assets in return for a lifetime annuity. This reduces the assets the spouse at home has but increases that spouse's income. Yet, it is N.Y. Medicaid policy to accept a 25% contribution of any income

Nevertheless, that is the law and we need to live with it. Most spousal suits are initiated

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Visit us on the Web. . .

We try to make our Web site at www.bresslaw.com relevant to what is going on and relevant to our clients. We will continue to do so, therefore, we invite client ideas about matters which they believe our Web site should cover. We also try to keep an updated list of our future seminars. Visit us. We would like to know what your views are.

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of the well spouse in excess of \$2,175 (as of this writing). Say the well spouse has income of \$6,175 a month after considering the monthly annuity payments received by the well spouse. The contribution to the cost of the nursing home for the ill spouse is calculated as follows: $\$6,175 - \$2,175 = \$4,000 \times 25\% = \$1,000$. That means that the spouse at home keeps \$5,175 of the income and there will be no support lawsuit. Not a bad deal considering the situation. Of course, the balance of the nursing home cost is paid by the Medicaid program. See our Website (www.bresslaw.com) for a further discussion of the use of a private annuity in a situation where a couple has a taxable estate.

Powers of Attorney Revisited

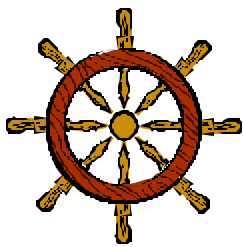
I can't say enough about the importance of a comprehensive power of attorney. When we need to protect assets for a person who may evidence signs of dementia, we need to move assets (gifting) out of the person's name. If the ill person is suffering from a form of dementia, there is always the issue of whether the assets could be transferred from the ownership of the ill person to someone else. The reason for the transfer is that Medicaid will not be available to pay for the costs of that person's care. Medicaid is needed because a



person with dementia needs custodial type care. That care is not available under the Medicare program. Thus, the person in need of the care pays or Medicaid pays.

But if you want Medicaid to pay, you must be poor. You become poor after gifting assets. A person with dementia cannot gift assets if at the time of the gift the person is legally incapacitated. Thus, we need the Comprehensive Power of Attorney if we have any hope of protecting assets (without a need to resort to a Guardianship Proceeding) after the dementia has been established.

Chris at the Helm



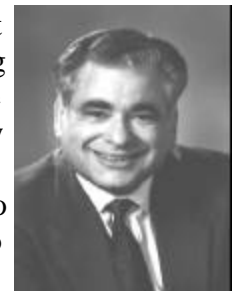
It is important to complete our questionnaire before coming to our office for a consult. It allows us to better provide you with relevant information.

When you telephone our office, Chris usually picks up the telephone. Frequently, you are discussing a matter that she will not be able to assist you with. Please feel free to FAX (914-428-5663) or E-MAIL (dsbress@bresslaw.com) us your questions. Sometimes your questions are easy to answer and sometimes another consult will be necessary. Use the technology that is available today to make our responses more efficient.

Seminars - Your Group



Jeanmarie Gonnella is in charge of marketing efforts at Bress Law Firm. She creates and chooses seminars for us to do. Unfortunately, many of our seminars are not open to the public since they are done for specific groups. If you would like us to do a seminar for your group, we will be happy to arrange it with certain conditions. We require at least 15 attendees and the seminar will not be conducted while food is being served to attendees (our seminars are not good for your digestion). You may even pick a topic which you believe, for good reason, would be of interest to your group. We will look forward to hearing from you.



Dean S. Bress