

## PLANNING FOR YOUR FUTURE

**Irrevocable Income Only Trusts**

By Bernard A. Krooks, Certified Elder Law Attorney

In the New York metropolitan area, long-term care can cost in excess of \$15,000 a month. Unfortunately, this cost is not covered by Medicare to any great extent. Thus, it is critical for many individuals to plan ahead to qualify for Medicaid to pay for their long-term care. To qualify for Medicaid, you must meet strict income and asset requirements.

While there are various planning strategies used to qualify for Medicaid long-term care assistance, transferring assets into an Irrevocable Income Only Trust (“IIOT”) is becoming increasingly popular. The purposes of the IIOT are (1) to provide a source of income to you and your spouse during your lifetimes, (2) to protect and manage assets, (3) to qualify for Medicaid at some point in the future, (4) to avoid the costs and time associated with probate, and (5) to preserve certain tax benefits with respect to your assets.



Transferring assets into an IIOT is an alternative to gifting your assets to your children or other family members during your lifetime. Under the terms of an IIOT, you will receive all of the income produced by the assets in the trust during your lifetime. If you had given those assets away to other family members, they would be the ones entitled to the income from those assets. By transferring assets into an IIOT, you reserve some control and retain some interest in the transferred assets – advantages that are not available when transfers are made outright to individuals. If you transfer ownership of your home into the IIOT, then the trust agreement can specifically provide for you to continue to reside in the home during your lifetime. If the IIOT is properly drafted, then the home will not be considered an available resource for Medicaid eligibility purposes. On your death, title to the home will pass to your children and grandchildren, according to your wishes.

IIOTs are commonly used to allow seniors to qualify for Medicaid to pay for the high cost of long-term care once the Medicaid look-back period has passed. The look-back period, which is currently set at five years, is the period prior to the Medicaid application during which Medicaid will penalize an applicant for transfers within such period. Assets transferred into a trust more than five years prior to the filing of a Medicaid application will not impact Medicaid eligibility. If a penalty is imposed because of a transfer to an individual or a trust within five years of a Medicaid application, the period of ineligibility begins when the individual enters a nursing home and is otherwise eligible for Medicaid.

IIOTs also offer tax advantages. If drafted as a grantor trust, then the trust income is taxed at the individual income tax rates as opposed to the higher trust tax rates. Additionally, the IIOT can be drafted so that upon your death your heirs will be able to sell the trust assets without incurring capital gains taxes. This is a result of a tax rule which allows for a fair market value basis of IIOT assets upon your death. Moreover, since the IIOT assets are in trust, they pass according to the terms of the IIOT without the need for probate.

While no one planning technique works for everyone, an IIOT is something you should consider as part of your overall estate and elder law plan.

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