How To Protect Your Assets From Medi-Cal Spend Down

And Other Estate Planning Questions Answered

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This Pamphlet entitles holder to a FREE consultation

How to Protect your Home and Life Savings from Medi-Cal Spend Down

Long Term Care. Medi-Cal. Skilled Nursing. It seems that questions about how to pay for costs and expenses for Care Home living is constantly on our minds. As of 2020, the average cost to be cared for in a nursing home is ranging from Nine Thousand Dollars (9,000.00) and Fifteen Thousand Dollars ($15,000,00) per month. I have personally evidenced payments of as much as Nineteen Thousand required in a month.

This could amount to over One Hundred Thousand Dollars ($100,000.00) per year. It could even come up to $200,000.00, $700,000.00 or more over a lifetime, leaving nothing for your posterity or even enough to live on for the rest of your life.

So, how does a family pay such costs? Is it even possible? Yes, it is possible. There are several ways to pay this extortionate cost. Here are some possibilities:

1. Become financially wealthy so that you can pay hundreds of thousands of dollars to take care of the nursing home care costs. Or:
2. Purchase insurance to pay for the care. Many times you can pay pennies for the dollar of health care costs. Unfortunately, many are already too old, or too sick to be able to qualify for Long Term Care insurance. And, many times, it the premiums become too high to continue to pay. Or:
3. Qualify to obtain Medi-Cal benefits, which you have been paying taxes all your life for.

This pamphlet is to discuss the 3rd option. Here we will discuss the basics of obtaining Medi-Cal Benefits to help pay for your loved one's Long Term Care costs.

What is Medi-Cal Long Term Care?

There are different levels of care as we age. We could of course, live on our own and care for ourselves. Then, we could live with a family member and they could help take care of us. Then there is community living, where we live in a community environment, and no longer have the requirement to take care of yards or even clean our houses in some cases. Then we may need a little more help and live in an assisted living home or have someone come into hour home a few hours

per week to help with some of the menial labor or shopping or cleaning or cooking needs.
After that, as we need more care we may need to move into a home that helps with dementia patients or even Skilled Nursing. Benefits are only available for some in home care (IHHS) or Skilled Nursing Home care through Medi-Cal's Long-Term Care Program.

So, what is Medi-Cal - Long Term Care is a program that helps our seniors when their health deteriorates to a point where they are no longer able to take care of their needs. We all have certain life activities, or functions, which allow us to care for ourselves either totally or at least partially: such as the ability to feed ourselves, get out of bed, use the restroom, clean ourselves, take our medications, etc. When our loved one loses the ability to take care of enough of these life activities themselves, our loved one will need to be transferred to a long-term care facility, a Skilled Nursing Facility, or a care home. This is a home that offers care beyond what an assisted living home can do.
Unfortunately, the cost of a Long-Term Care facility is fairly expensive – generally ranging in this area between $9,000.00 and $15,000.00 per month. There are several ways our loved one can pay for long term care. First, they can pay these costs from the monies they have earned and saved during their lives. If they are well to do and have the ability to pay these costs, this is probably the best choice. If they are not well to do, then the family can help pay for these costs, or Long-Term Care insurance may be able to take care of these costs, if they purchased this insurance before they needed the care, and if they could afford the insurance. More likely than not, however, there is no insurance, or if there is, it does not cover the total costs of Long Term Care, the family members do not have the resources to help out and our loved one is not "well to do". In such case your loved one's assets will be depleted long before their long-term care needs are over.

There is, however, a federal program, administered by the state of California called "Medi-Cal – long term care. (In other States, it is called Medicaid) This is a program that our loved one can apply for to help with these exorbitant costs. This is a healthcare program and not an indigent program. As will be discussed below, there are two things Medi-Cal looks at to see if we will receive any benefits from this program. First, they look at our loved ones assets so see if they are "Well Off". Your loved one can have certain items and certain amounts of money and still be accepted for help. However, sometimes, certain assets or accounts could cause them to be disqualified for the program, unless these assets and accounts are removed from their name, in a proper manner, and under proper procedures, in order for them to qualify. The law office of Beyer, Pongratz & Rosen can help you do this in a way that is legal, ethical, and so that the transfers do not disqualify

your loved one for this much needed help. We follow the rules as outlined in the statutes of the State of California to accomplish these transfers so that Medi-Cal rules are complied with, but while also making sure that the family will not need to start paying for your loved one's needs because you were forced to Spend Down their estate when this was not actually necessary or wise.

In addition, we are able to use special trusts, such as Intentionally Defective Grantor Trusts, Medi-Cal revocable trusts, Family Needs Trust and Special Needs Trusts, in conjunction with specially prepared Powers of Attorney over Assets and Healthcare matters to help your loved one to qualify for help sooner and to protect their assets quicker. Although our office does not actually fill out Medi-Cal – Long Term Care applications (we leave these to Specially Qualified Benefits Advocates who we work closely with), we can also help with transfers of property and bring the protection of your loved one's assets so they do not need to worry about losing their house to the state, or being forced into insolvency in order to obtain these benefits.

This part of the law is very specific and very detail oriented. You need to understand what a Divestment Penalty Divisor is and why the amount of $10,298.00 makes a difference. Terms such as Individual Resource Allowance, Community Spouse Resource Allowance, and Monthly Personal Needs Allowance must be understood and utilized correctly. What is a Monthly Maintenance Needs Allowance, and why is it $3,216.00? Can this Change? By checking the wrong box on the application, or using the wrong trust, or transferring assets in the wrong way, you could be forever keeping your loved one from obtaining benefits or could be forcing the loss of their home. Use only qualified personnel who have experience in these areas to do this type of work, and who know what they are doing. Make sure that what your advisor is doing is legal so that you will not have to answer to the state later when they are asking for money back because what you did was not allowed. Our office has 18 years of experience in helping clients with these matters; we understand how to help you in this area. We are now ready to help you and your loved one.

In 2017, the law in California about reimbursement or recovery changed to state that whether a home or other assets, these will not be taken the state to reimburse itself after paying out long term care benefits as long as they are not probateable. Thus, the importance of having a Living Trust to hold all exempt assets of the estate.

What are the Chances a person will need Long-Terms Care?

40% of all people over 65 will enter a nursing home at some point in time.

7 out of 10 couples (ages 65 or older) will need nursing home care for at least one of the spouses.

1 in 3 men and 1 in 2 women (over age 65) are expected to spend at least one year in a nursing home.

The state will consider 2 things as you are applying for Long Term Care Benefits. First, they will look at the type of asset the applicant has and categorize them into Three different categories. The categories are 1. Exempt Assets, 2. Unavailable Assets and 3. Available assets. The type of assets you have will determine whether you qualify for Long Term Care Benefits or not.

Second: the state will consider the income of the Applicant and the Applicant's Spouse. The income is not considered for qualifying for benefits, but rather to determine what the Applicant's Share of Cost, or, in other words, what the applicant will need to pay each month for the long-term care services. So, it could be that an Applicant may have $10,000.00 of income and still, because of the types of assets owned by the Applicant, qualify for Long Term care Benefits. The problem in this case would be that the Share of Cost the Applicant would have to pay would be ALL of the cost, thus, it may not be as beneficial to obtain the Long-Term Care Benefits. (it, however, this may still be beneficial in some cases)

2020 Requirements

Exempt Assets (property that is generally exempt and therefore not counted in determining Long Term Care Medi-Cal eligibility)

- Individual Resource Allowance: $2,000.00 (if only one spouse is institutionalized)
- Community Spouse Resource Allowance: $128,640.00
- Personal Residence (no equity limit)
- Household Goods
- Personal Property
- One Car (unlimited value)
- Irrevocable Burial Plan
- Wedding & Engagement Ring
- Rental Property ($6,000 of Equity) *

*Rental Property may be exempt if used to provide income for the well spouse of an increased CSRA

NOTES ON EXEMPT ASSETS

- **The home:** totally excluded if it is the principal residence. The applicant must state an "intent to return to the home." Includes mobile home, houseboat, or an entire multi-unit dwelling as long as any portion serves as the principal residence of the applicant. Will not be taken in recovery if not probatable.
- **Other real property:** may be excluded if it is used in whole or in part as a business or means of self-support (you should see an attorney if you have other real property).
- **Household goods and personal effects:** are totally exempt.
- **Jewelry:** for a single person, wedding, engagement rings and heirlooms, and items of jewelry with a net market value of $100 or less are totally exempt; for spouses, there is no limit on exempt jewelry for determining the institutionalized spouse's eligibility.
- **One car** is generally exempt if used for the benefit of the applicant or if needed for medical reasons.
- **Whole life insurance policies with a total face value** (also called "combined death benefit") of $1,500 or less.
- **Term life insurance:** totally excluded.
- **Burial plots:** totally excluded, includes headstone, crypts, etc.
- **Prepaid irrevocable burial plan** of **any** amount **and** $1,500 in designated burial funds. These designated funds must be kept separate from all other accounts.
- Up to $2,000 in **cash reserve, e.g**. in savings, checking, etc., for the Medi-Cal applicant.
- **Community Spouse Resource Allowance** (CSRA) for 2020: the spouse at home can keep the first $128,640 in assets and may be able to keep more if his/her income is below the **Minimum Monthly Maintenance Needs**

Allowance (MMMNA). For 2020 this amount is $3,216. APPR (private pay rate or disqualification rate) is $10,298.00 for 2020.

Unavailable Assets

- Spousal Pension Plan
- Spousal IRA, 403 (b), 401 (k)
- Applicant IRA (if under Distribution)
- Annualized Annuities *
- Limited Partnership interests (in some cases)
- Structured Notes
- Rental Property **
- Tools of the Trade if needed for Spousal income
- Unsellable Property

*Must comply with OBRA '93 Rules and Regulations
** Unavailable as part of an expanded CRSA

NOTES ON UNAVAILABLE ASSETS

- **IRAs and work-related pensions:** if in applicant's name, the balance of the IRA or the pension is considered unavailable if the applicant is receiving periodic payments of interest and principal. If in the spouse's name, the balance of the IRA or pension is totally exempt.
- **Non-work related annuities:** the balance of certain types of annuities may be exempt

Available Assets (this is the "bad" category and must be void of assets to obtain benefits)

- Passbook Savings
- Checking Account
- Certificates of Deposit
- Stocks and Bonds
- Mutual Funds
- Government Funds
- Government Savings Bonds
- Deferred Annuities
- Interment Real Estate
- Vacation Home
- Boats, Planes, etc.
- Anything Else

NOTES ON AVAILABLE ASSETS

As stated above, this category must be empty or emptied before a successful benefits application can be made.

What Motivates Seniors to Resolve Their Long-Terms Care Problems?

- Avoid Dependence 25%
- Protect Assets 23%
- Protect Living Standard 15%
- Guarantee Long-Term Care 12%

Does my Living Trust protect my assets from Nursing Home "Spend Down"?

No. Assets retained within a revocable living trust are always considered an available asset. Living Trusts do not allow a well spouse to retain assets in his/her own name to qualify an exempt asset under Medi-Cal.

What is OBRA 93-Title 42 United States Code 1396 (p)?

OBRA 93 became effective in California's March 1, 1996 for Medi-Cal qualification. "All payments distributed from the annuity are considered income in accordance with section 505507, Title 22, CCR. The Undistributed balance of the Annuity shall be unavailable if the annuity contract is annualized on the life expectancy of the individual or spouse or for a shorter period of time. The life expectancy of the annuitant shall be determined in accordance with life expectancy tables specified by the Secretary of the Department of Health and Human Services. Any payment scheduled to occur beyond the life expectancy of the individual or spouse, as determined in accordance with the above shall be considered a transfer of assets."

Can I Transfer my Assets to my Children?

Yes. You must complete all transfers 30 months (36 months under OBRA93, 60 Months for irrevocable trusts) prior to applying for Medi-Cal. This is called the "Look Back" period. Transfers between spouses have no limitations.

How can Beyer, Pongratz, & Rosen help me solve this problem?

Greg Beyer and the Law Offices of Beyer, Pongratz & Rosen are experienced in helping seniors protect their life savings without giving away their assets. He will help you determine which solutions are best for you. Of course, planning in advance is always best, however it can help even after a loved one has entered Long-Term Care.

Why use a Certified Senior Advisor (CSA) & Certified Estate Planner? (CEP-L) What is a Certified Senior Advisor?

History:

In 1996, a select group of Geriatric MDs, Gerontologists, Elder Law Attorneys, CPAs, Financial Planners and other experts on Senior issues assisted with the formations of the Society of Certified Senior Advisors. Based on a report from AARP, 1,500,000 professionals work full time with seniors but only 8,000 have gerontology degrees. It was evident that professionals working with seniors needs a training program which had an emphasis on senior issues, how to work with seniors, understanding seniors needs, and the use of ethical practices when working with seniors.

Nationally recognized Faculty:

The Society of Certified Senior Advisors fill the educational void by teaching its members, though a qualified, professional staff, about concerns facing seniors and how a Certified Senior Advisor (CSA) can best meet senior's needs.

CSA Educational Requirements:

Each Certified Senior Advisor must go through a rigorous training on the following topics:

- Principals of Aging
- Social Aspects of Aging
- Senior Demographics
- Social Security and Taxes
- Financial Planning
- Estate Planning
- Care giving

- Health, Nutrition and Fitness
- Alzheimer 's disease and Dementia
- Hearing language & Speech Disorders
- Medicare, HMO's and Health Insurance
- Ethical Marketing to Seniors
- Senior Housing & Assisted Living
- Long Term Care- Medi-Cal
- Death, Dying and Living Wills
- Senior Spirituality

On completing the multiple day long courses, candidates take a comprehensive exam to determine if they are qualified for the Certified Senior Advisor Designation.

What is a Certified Estate Planner?

The California Estate Planning Council, which was formed in 1993, set up a training program for its members to better qualify them for working with seniors and others who were interested in providing estate planning services for the communities in which they lived. Thus, in order to afford their members these opportunities for "more than required learning opportunities" it began to bringing in speakers from all over the country to speak to the members.

Because of these special training opportunities, the members began to perform above the average Estate planning Providers.

The California Estate Planning Council then authorized specialized training in certain areas of Estate Planning, ie: Legal, Taxation and other areas, with candidates who qualified able to obtain the status of Certified Estate Planner, under the Several sub- categories.

In order to become a Certified Estate Planner in Legal Principals (CEP-L) the candidate had to attend special Classes over a 10 month period, studying topics such as:

- Trusts, Wills, Probate
- Powers Of Attorney
- Charitable Remainder Trusts
- Family Limited Partnerships
- Corporations and Other business Entities
- Multiple Entity Structuring
- Asset Protection Planning
- Complexity of Planning vs Benefits received

- And other similar courses

Only upon completing the 10 months of training, being personally involved with implementing a certain number of estate plans for individuals, and passing a comprehensive test, would the candidate acquire the designation of Certified Estate Planner (CEP-L)

Gregory R. Beyer, Esq., is both a CSA and CEP-E. When the Society of office was asked, they responded that they were only about 20 CSA attorneys in the United States.

As a CSA and CEP-L, Elder Law Attorney, Mr. Beyer is able to provide services in the following areas:

Estate Planning: We can help your estate pass easily and inexpensively to your family or other intended beneficiaries without unwanted or unneeded court or probate supervision, through use of Specialized and customized trusts and estate documents.

Estate Tax Planning: We can show you how to avoid paying Excessive estate taxes. Even if you have a living trust you may still pay estate taxes unless you take certain and specific steps to exempt your estate from these taxes. In addition, Capital Gains taxes may also be avoided through proper planning.

Medi-Cal Long Term Care Planning: Our office is equipped and knowledgeable in helping a person to qualify for Medi-Cal help in Long term care situations, and also is able to protect your assets from being taken by the state after the long term care has been provided.

Asset Protection-Business Structuring: Familiarity with many legal methods to protect your asset from unwanted creditors, taxes, bankruptcy, etc. and to ensure your business is receiving tax benefits and liability protection benefits available under law. Services in this area are in demand statewide. Correct planning now can insure your business will transfer to the next generation without problems.

How can Mr. Beyer help me with my estate needs?

As a person ages and at his or her demise there are certain typical problems which, if not planned for, create a burden on those who are left behind. These can easily be eliminated, but if not planned for, could present difficult problems for your family, including the following:

Financial Burdens

- Estate Settlement Costs Are Too High: These consist primarily of Probate fees and taxes
    - Probate Fees: These are generally paid to the executor of the estate and the attorney who assists with the probate.
    - Taxes: Estates which exceed certain amounts may be subject to federal estate taxes, capitol gains taxes, as well as other taxes.

- Estate Assets Are Improperly Arranged:
    - Liquidity: There are not enough liquid (cash type) assets to pay estate settlement costs, thus estate assets may need to be sold at a discount to obtain immediate cash.
    - Cash Flow: There is not enough cash to care for loved ones left behind; e.g., Spouse and children.

Transfer of Assets

- Estate assets may be subject to probate delays of up to 2 years or more and probate expenses which could reach 10% of your gross estate value.
- Assets transferred to Minors may be in guardianship accounts which are untouchable without a court order until they attain age 18 and are then distributed outright to the minor children without supervision.
- Additional taxes may need to be paid because there was no pre-death planning.

Care of Minors

- Guardians: Parents can nominate a guardian for their minor children in estate documents, but if not nominated, the state will decide what is best for your children.

- Asset Management: If the wrong persons are chosen to manage the assets left for the minors, the assets may be lost or unnecessarily reduced.

Through Proper Estate Planning one can eliminate or minimize these problems by determining beforehand, who will raise minor children, and how assets are to be distributed upon your demise. If you don't do the planning for your estate, the state will do it for you.

How often should Legal Documents be reviewed?

Once a legal document is completed and signed, it is often carefully laid to rest is a safe deposit box or file drawer and comes out again only when a party dies or conflict arises.

Prudent Persons periodically review and update their legal documents. Just how often depends, of course, on the document and which circumstances have changed.

The following list sets forth some events which may require the updating of estate planning documents:

- Marriage
- Dissolution of Marriage (divorce)
- Death of Spouse
- A Substantial change in estate size
- A move to another state
- Death or Change of Executor, Trustee, or guardian
- Birth or Adoption
- Serious illness of Family member
- Change in business interest
- Retirement
- Change in Health
- Change in insurability for life insurance
- Acquisition of property in another state
- Changes in tax, property or Probate and trust law
- A Change in beneficiary attitudes
- Financial irresponsibility of Minor Children

Estate Planning FAQ

(Q) When should a person begin to look into a Trust verses a Will?

(A) When a person's estate is over $150,000.00, owns real estate, and has assets in more than one state. Or for protection of the home or other assets when a person enters a long term care home, a trust will be beneficial.

(Q) How much are estate taxes?

(A) At this time, estate taxes are 40% of any estate larger than $11,000,000. This will change in 2024 to be approximately ½ of that amount. This exempt amount can, however, be doubled if the correct estate planning is used.

(Q) If my estate goes through Probate with a Will, how long could it take, and how much could it cost?

(A) The average Probate in California takes 2 years and costs between 4% and 12% of the gross estate depending on the circumstances.

(Q) If I already have had a Trust or Will drafted for me, do I need to do anything else to insure it will work?

(A) YES. All estate documents should be reviewed at least every 4 years to insure the laws have not changed and all circumstances are the same. If this is not done, it is very likely, your estate documents will not work when they are needed.

(Q) Will Mr. Beyer Charge me to review my documents if someone else drafted them?

(A) NO. Mr. Beyer will review your document at no charge no matter who drafted them.

What is the Best way to Hold Title on your Property?

(This brochure addresses the "typical" situation. However, your selection of the best way to hold title may be influenced by facts or relationships unique to your particular situation. Buyers with special circumstances would seek legal counsel prior to deciding how to take title.)

How you hold title can affect many matters- Most Importantly:

- Your Future tax liability
- The need for Probate
- The Vulnerability of your property to creditor claims

GENERAL RECOMMENDATIONS:

If you are married:

John Doe and Mary Doe, husband and wife as community property with Rights of Survivorship

-OR-

John Doe and Mary Doe, as trustees of the Doe Family Trust dated January 01, 2001
If you are not married and will contribute all of the money to purchase the property(ie you are the onl owner of the property):

Mary Doe, an unmarried woman, as her sole and separate property

-OR-

Mary Doe, as Trustee of the Mary Doe Trust dated January 01, 2001

If you are not married and will contribute only a portion of the money to purchase your property with a co-owner contributing the balance:

John Doe a Married man and Bill Smith, an unmarried man, as tenants-in common

-OR-

John Doe, as Trustee of the John Doe Family Trust dated January 01, 2001 as to its 10% percent interest

TAX CONSIDERATIONS:

- If you are not married, all forms of holding title are tax-neutral
- If you are married, the significant tax benefits of community property probably override all other considerations and make community property the best way to hold title.
- In 2010, new tax savings rules came about for properties co-owned in community property states where total step-up in basis can eliminate all capital gains tax on said properties.

**** REMEMBER, if you gift or transfer real property to another, there could be dire tax consequences as it has to do with gift tax, medical reimbursement, property tax, estate tax, income tax and other taxes. Always check with your attorney before transferring property.***

The following hypothetical case illustrates the tax benefits of holding title as community property:

Mary and John Doe purchased a rental home for $50,000 in 2000. Over the years, they added $10,000 in permanent improvements. In 2010 John died with the house held jointly in trust. The value of the home when John died was $200,000, receiving a step-up in basis of 4200,000. The taxable appreciation in the value of the home prior to John's Death was $200,000 minus $60,000, or $140,000. Mary continued to rent the home until 2018 when she sold the home for $300,000. Assume 15% federal and 8% state Capital gains tax.

Tax if held as community Property: $23,000. Taxable appreciation in the value of the home after John's death was $300,000 minus $200,000 or $100,000. 23% of the $100,000 in appreciation after the death of husband = $23,000. (No tax if Mary uses her $250,000 capital gains exception that is available for a home only, if she has lived in the home 2 out of the last 5 years. These exclusions are available only for property which is principal residence.)

Tax if held in Joint Tenancy: $42,250 23% of the $100,000 in appreciation after the death of her husband plus tax on the half of the $140,000 in appreciation prior to John's death = $42,250.00.

To save taxes, married couples should hold title as community property or in trust.

AVOIDING PROBATE:

Many people erroneously believe that holding title in joint tenancy is the only way to avoid probate. This is not true. Community property which passes to a surviving spouse is also exempt from probate. Property held in the name of a trust is exempt from probate.

Unfortunately, joint tenancy can produce adverse tax consequences and create ill will among family members following death, and can make it available to creditors. These problems are avoided if title is not held in joint tenancy.

The following Hypothetical example illiterates' problems joint tenancy can create:

Mary Doe, a widow has three adult children. At her death, Mary wants her property to be divided equally among her three children.

To avoid probate, Mary added her oldest child, Susan as a joint tenant on the title to Mary's home. Mary's will direct Susan to sell the home after Mary's death and divide the proceeds equally among her children Mary died in 1985 when her home was worth $200,000. Susan sold the home for $240,000 in 1987 and split the sales proceeds with her two sisters.

PROBLEMS WITH JOINT TENANCY:

- Due to the "right of survivorship" aspect of joint tenancy, Susan became the 100% owner of the home at her mother's death.
- Susan 100% liable for the $40,000 in taxable appreciation between her mother's death and the date of sale.
- When Susan splits the $240,000 sales price and distributes $80,000 to each of her two sisters, gift tax is triggered by those transfers. Susan is 100% liable for that gift tax. Gift tax would not have been due had Mary not created the joint tenancy with Susan.
- If Susan had creditors, those creditors can attach the property before and after her mother's death.
- Susan could transfer her interest to anyone without the consent of her mother or her sisters both before and after her mother's death.

The best way to avoid probate is to establish a revocable trust.

OTHER CONSIDERATIONS:

Creditor Claims: If you are married and your spouse has debts incurred without your consent, and you are concerned that his or her creditors may make claims against your property after your spouse's death, joint tenancy may be a better way to hold title than community property. However, most married couples benefit more from the tax advantages of community property than the creditor shield advantages of joint tenancy

Divorce: In the event of divorce, it typically will make no difference whether title is held as community property, in joint tenancy or in co-tenancy. Irrespective of how title is held, jointly held property is typically added to the "Community Pot" and is divided equally at divorce (subject to many exceptions which do not relate to how title is held).

In certain circumstances, property held by married person as separate property will be except from the normal equal division rule at divorce, consult an attorney for the proper way to maintain separate property during marriage.

THE MOST COMMON WAYS TO HOLD TITLE IN CALIFORNIA:

Joint Tenancy:

"John Doe and Mary Doe, husband and wife, as joint tenants." Two or more individuals can hold title in joint tenancy. The property automatically passes at the death of a joint tenant to the surviving joint tenant(s) without the need for probate and without regard to the desires of the deceased joint tenant expressed in his or her will.

Community Property:

"John Doe and Mary Doe, husband and wife as community Property." Only married couples can hold property as community. At a death, the surviving spouse typically takes full title without the need for probates. Probate typically occurs only if the first to die willed his or her half interest in the community property to someone other than the surviving spouse. Real Property held as community property will have a raise in basis when upon the death of the spouse. This will eliminate any capital gains tax required if the spouse sells the property. This may change in 2011 under current California Law.

Community Property with Rights of Survivorship:

"John Doe and Mary Doe, Husband and wife, as Community Property with Rights of Survivorship." In 2002 a new method of holding real property was approved by the Legislature called "Community Property with Rights of Survivorship." This method of holding real property affords the tax benefits of community property as well as the transferability of joint tenancy with out probate.

Tenants-In-Common:

"John Doe and Mary Doe, husband and wife, as tenants- in common." Two or more individuals can hold title as tenants-in common. At the death of a co-tenant, his or her interest passes to whoever he or she has named in his or her will. If there is no will, his or her share passes to the closest relative, as defined by state intestacy laws.

Revocable Trust:

"John Doe and Mary Doe, as trustees of the Doe Family Trust." Any individual or group of individuals can hold property in trust. The trust must have been formally created by execution of a trust document prior to the transfer of any property to the trust. A trust can be drafted to preserve the tax advantages of community property. Use of a trust is usually the best way to avoid probate at both deaths. Other ways of holding title typically avoid probate only at the first death.

Separate Property:

"Mary Doe, an unmarried (or married) woman, as her separate property." This is the most common way for one person to hold title.

Life Insurance Trusts
A Legal method of reducing or eliminating taxes

What does a Life Insurance Trust Do?

An Irrevocable Life Insurance Trust Lets you reduce or even eliminate estate taxes, so more of your estate can go to your loved ones. It also provides more control over insurance policies and the money that is paid from them.

Who will be required to Pay Estate Taxes?

Anyone who has a net estate over the current exemption amount, which since 2018 is $11,000,000, will be required to pay 40% of the excess in Estate Taxes, unless proper tax and estate planning is undertaken.

What makes up my net Estate?

To determine your current net estate, add your assets and then subtract your debts. The assets that count include Life Insurance, IRAs, 401-K and other retirement accounts, investment accounts, bank accounts, personal property, real property and business interests.

How does an Insurance Trust reduce estate taxes?

The insurance trust will own your insurance policies. Since the policies are not personally owned, it will not be included in your estate-thus, there are no estate taxes levied.

For example, if you have an estate which is worth $11,500,000, and $600,000 of that is Life Insurance, without other tax planning, your estate is $500,000 over the "non- taxable" amount, and there would be a tax bill of approximately $200,000. By placing your insurance into a life insurance trust the $600,000 policy is no longer part of your estate, thus, your taxable estate is now only $10,900,000 ($11,500,000 -$600,000) which is under the taxable amount and you just saved approximately $200,000 in taxes.

How does the Life Insurance Trust Work?

An insurance trust has three parts. First, the Grantor creating the Trust. Second, the Trustee, is the Person selected to manage the trust. Third, the trusts Beneficiaries are those named in the trust to receive the benefits of the trust after you are gone.

The Trustee purchases an insurance policy, with you as the insured, and the trust as owner and usually beneficiary. When the insurance benefit is paid after your demise, the trustee will collect the funds and distribute them to your named beneficiaries making them available to pay estate taxes, other expenses, or for the sole benefit of the beneficiaries.

You are able to keep control because it is your trust, working under the rules you decided that owns the trust and the trustee must follow those rules.

Can I make changes to my Trust?

An insurance trust is irrevocable, so you cannot make changes after it is set up. Be sure to read the documents carefully and be sure it is exactly what you want before signing it.

Who can be Trustee of the Trust?

First the Trustee cannot be you, or anyone you can control, thus it is best if this person is a non-blood related person to eliminate the potential of the control over to him or her. Friend, in-laws, CPA, Financial Planners, etc. are potential choices. Spouses and children are generally not good choices. When the IRS looks to see if you have a proper Trustee, they will look to see if the trustee allowed the grantor to have control or benefit from the trust, either of which could disqualify the trust for tax purposes.

How does the trust get the money to make premium payment or purchase the policy?

The money for premiums and purchase are gifts from you to the trust for the benefit of your named beneficiaries in the trust, though a simple plan called Crummy Procedures, you are able, when premiums come up, to make the payment to the trust, the trust will then eventually pay the premium as required. This will all be set up when the trust is executed.

(Q) I heard there was not a tax on life insurance, then why do I need a trust to eliminate tax on my insurance?
(A) When a person dies, and a life insurance policy pays out, there is no income tax on the proceeds; however, there is estate tax. This is the IRS's #1 income source when a person dies.

(Q) How can the mere use of a trust eliminate estate taxes on my insurance proceeds?
(A) The trust takes the insurance out of your estate so there is no estate tax on it.

(Q) Is it difficult to use the trust?
(A) NO. The trust has easy rules to follow, however it will require a yearly tax return, which is simple to prepare yourself.

WARNING

This packet must not be construed as legal advice by the reader. This information is only a brief outline of how Estate Planning can be an important part in some people's business structuring and estate planning plans. Actual business structuring and estate planning can only be recommended after analyzing your type of business, present material status, family structure, age, general health, present wealth and asset ownership, type of major assets owned, abilities, present tax levels, present structuring or estate planning already in effect, employee status, personal income needs and other important and vital information. Speak to your attorney before attempting to anything mentioned in this packet. Remember, there may be some tax consequences from the use of a Limited Partnership and there can never be any guarantee as to results with any entity.

Biography of
GREGORY R. BEYER, Esq.;

Gregory R. Beyer is a Practicing California Attorney and for over 27 years has had as the emphasis of his personal practice of law issues primarily revolving around Estate Planning, Elder Law, Medi-Cal Planning, Asset Protection Planning, and Business Structuring. Mr. Beyer was the Salutatorian, Parliamentarian, and Honor Graduate of his class, and is authorized to practice law before the courts of the State of California and Federal District Courts. He is a Certified Estate Planner in Legal Concepts (CEP-L) and one of a very few select Certified Senior Advisor Attorneys (CSA) in the United States. He has been listed in Who's Who and was President of the California Estate Planning Council for 2 terms. He is a member of the J. Reuben Clark Law Society and is a member of the National Association of Elder Law Attorneys. Mr. Beyer enjoys speaking on Elder Law and Estate Planning principles to small groups as well as a speaker for national legal seminar providers. The Law Offices of Beyer, Pongratz, and Rosen have been a member of the Lincoln Chamber of Commerce, the Rancho Cordova Chamber of Commerce and the United State Chamber of Commerce. He loves music, family and teaching other to increase their peace, understanding and knowledge on a multitude of topics. He speaks fluent Mandarin Chinese and seeks for opportunities to serve his community.