INTEGRATED TRUST SYSTEMS

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Medicaid Qualifying Trust

The Medicaid Qualifying Trust (MQT) is an ***income-only*** "subtrust" of a Revocable Living Trust. It must be funded on a timely basis during the trust grantor's lifetime to be effective.

Asset protection strategies do not come with ironclad guarantees. However, properly crafted language in a trust can utilize what is currently available under law to help protect (to the extent possible) certain assets from a Medicaid "spend down". A Medicaid Qualifying Trust (MQT) utilizes the beneficial terms codified under the Consolidated Omnibus Budget Reduction Act (COBRA) of June 1, 1986 to help avoid a spend down in the event of a long-term nursing home stay. (Under normal circumstances, an institutionalized person's estate will be spent down until he becomes "legally indigent" [impoverished] for purposes of qualifying for Medicaid; only at that point will Medicaid intervene and pay for the occupant's nursing home costs.)

The MQT functions primarily as an "income-only", non-reversionary trust. It is a "defective irrevocable grantor trust" for transfer tax purposes. That means that although the MQT is technically irrevocable, it is still a grantor trust for tax purposes. Therefore the taxable income of the MQT is taxable to the grantor (as a K1 item in a 1041 Fiduciary Return) but the principal will, however, receive a beneficiary step-up in basis upon the grantor's decease.

Under federal law, assets transferred to the MQT will be deemed as an available resource to spend down for Medicaid qualifying purposes if the asset was transferred to the MQT within 60 months of applying for Medicaid. The effect is that the Medicaid petitioner would have to "self-pay" relative to the time of that asset being transferred (as a gift) with the 60-month window. So, the effectiveness of the MQT is directly predicated on the timing of the funding of the MQT. It should be noted that long-term care insurance can help fund the cost of nursing home care and thus be a bridge over the partial, time-frame qualification window. In any event, assets deemed not available for nursing home care payments must have been given away or transferred to a type of MQT beyond 60 months from applying for Medicaid in order to be deemed "unavailable" as a resource to spend down.

The MQT Addendum also includes a Personal (Care) Services Contract (PSC). Where allowed by jurisdiction, a PSC can be entered into through the terms provided in the MQT allowing the grantor to "pre-purchase" personal care services from a provider, who may even be a family member. Under state law recognizing PSCs, the PSC transaction would be deemed a purchase of service - for fair market value - and not as a gift (that may prevent qualification for Medicaid).