Irrevocable Trust

IRREVOCABLE TRUST CAN AVOID MEDI-CAL REIMBURSEMENT CLAIM
Medi-Cal reimbursement avoidance techniques guide. Covering Joint Tenancy, Life Estate, Outright Transfer, Inheritance, Irrevocable Trust.

Update--As of 1/1/17, many of the below techniques will now work to avoid Medi-Cal recovery. However, they may not work to help qualify for Medi-Cal or avoid tax problems. What is stated below about the Irrevocable Trust is still accurate.

Dear Mr. Miller: I have read your columns on qualifying for Medi-Cal while keeping all of your assets. I am happy to say that by following your advice my husband is now receiving Medi-Cal to pay for his long term convalescent care. Better, we still have all of our $200,000 and our house. Thank you. But my question is how we protect our house from the Medi-Cal authorities when both my husband and I pass on. We want our two children to inherit this property. I understand that holding title in joint tenancy no longer works. Is there a way to keep this property safe.--**Faithful Reader**

Dear Faithful: Congratulations on having obtained the needed long term convalescent care for your husband while having protected your own nest egg and future ability to provide for yourself.

Joint Tenancy & Life Estate: You are right, holding title to the house in joint tenancy (or probably even reserving a life estate) will no longer work. It will not prevent Medi-Cal from forcing its sale to obtain reimbursement once both of you die. This may come as a shock to many couples or individuals who are still relying on this simple approach to pass the property on to their children or other heirs. Worse, those who implemented this approach prior to the law change last year receive no extra protection.

Outright Transfer: One approach to avoid Medi-Cal is to transfer the house away prior to the death of the Medi-Cal recipient. Usually the transfer would be to the children. Assuming you trust your children, the only disadvantage would be that when the children eventually sell the property (probably after you and your husband have died) they will have a huge capital gains income tax to pay. The tax will generally be figured on the difference between the price for which you bought the property and the price for which they sold it.

Inheritance: If, on the other hand, the children inherited it from you, when they sold it, the tax would be figured on the difference between its value when you died and the price for which they sold it. If you bought it in the early 70's for $50,000, they sell it for $350,000 five years from now, and assuming you die this year and it is worth $300,000, a huge difference exists. The gift will result in a capital gain of $300,000 (350,000 - 50,000) and a tax in the 28% tax bracket of $84,000. The inheritance will result in a far lower capital gain of $50,000 (350,000 -300,000 and a tax of only $14,000. This is a tax savings of $70,000.

Irrevocable Trust: So our goal is to find a technique that will result in the property being treated as inherited for capital gains tax purposes but transferred for Medi-Cal reimbursement purposes. Such a technique exists and is known as an Irrevocable Trust.

You would transfer all title to the house to this trust and retain no legal rights of use to it. So when you and your Husband are gone, there is nothing for Medi-Cal to come after. However, you would retain the right to name the ultimate beneficiary in your Will. This retention would cause the property to be treated as inherited for tax purposes and, thereby, obtain the favorable tax treatment.

This is a very powerful technique and, in some cases, can be used with the other assets also. But it requires the assistance of an attorney skilled in the Medi-Cal rules as well as the tax rules.

Please keep in mind that no two sets of circumstances are identical and that the answer to any legal problem may change drastically based on even a slight change in the circumstances. Furthermore, Merwyn J. Miller is not recommending that you necessarily take the action discussed in this column. That decision would have to be made based on numerous factors and the state of the law at the time that decision was made.

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