

Expecting Medicaid or Government Benefits? Consider a Hybrid Trust

Is this your situation? You worked hard all your life. You saved for a rainy day and retirement. Now, you are at that time in your life where you need to consider what may happen to your assets if you must apply for government assistance for your medical needs.

Consider developing an estate plan to help protect your assets so you can still qualify for medical care such as Medicaid or other government benefits. One way is by using a hybrid trust.

Trust Basics

There are many different types of trusts. Here are two ways to categorize them based on distribution methods:

1. In a **fixed trust**, the grantor determines the exact distribution that each beneficiary will receive as set forth in the trust document.
2. In a **discretionary trust**, the trustee has the option to make various decisions. For example, the trustee may be able to select the beneficiaries using a certain criteria set forth in the trust instrument. Or the trustee may have discretion in the amount of money each beneficiary will receive, either as a principal or income distribution.

A hybrid trust combines elements of fixed and discretionary trusts. In a hybrid trust, the trust terms require the trustee to pay certain amounts of the assets to each beneficiary that the grantor determined when setting up the trust. However, the trustee has discretion in distributing other trust assets after making the fixed payments.

This can be an appropriate trust (among other possibilities) to use if an elderly person wants to receive government benefits. You must structure the trust properly and adhere to the rules pertaining to government benefits. If structured properly, the trust could help ensure you receive benefits. The rules are quite complicated if an individual is eligible for not only Medicaid, but also is receiving Social Security benefits and/or Medicare. Sometimes, in these situations, an estate plan requires a combination of trusts or a trust that is structured to help an individual qualify for the various governmental benefits.

When creating a hybrid trust, you must make it irrevocable, meaning you cannot change it. You give the trustee the title and control of property that you own so you can attempt to qualify for government benefits in the future and still be able to supplement your income. Usually, the restrictions are on use of the income and/or principal.

Veteran's Benefits

A hybrid trust is also a legitimate estate planning instrument to protect assets if you intend to receive veteran's benefits. The Veteran's Administration (VA) does not penalize people for transfers of assets. Thus, many people gift assets to a trust and still qualify for benefits. The VA has no "look-back" period. This allows a person to be eligible for VA benefits quickly.

The only limiting factors are:

- How the assets are held;
- How quickly you can transfer the assets; and
- Whether you are either competent to direct the transfers or have provided someone with a power of attorney that permits large gifts.

To qualify quickly, you may want to consider transferring your assets to another person directly and have that person transfer the money into a hybrid trust for your benefit.

If you create a hybrid trust properly, you can make your assets exempt from Medicaid and be allowed to keep current disability benefits. You must be aware of any "look back" periods, such as the Medicaid look back period. The Deficit Reduction Act of 2005 sets forth that the look back period is 5 years. However, each state must pass its own laws to conform to the federal statute or set another period of time. For example, in California, Medicaid is known as "Medi-Cal" and the current Medi-Cal look back period is 30 months. Any money transferred within the look back period of your application would result in a penalty of ineligibility up to the amount transferred.

Consult with your estate planning adviser for more information in your situation.

The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.comwww.gorrinlaw.com