

ELDER LAW SEMINAR FOR  
TI ALUMNI ASSOCIATION  
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## **MILLER TRUSTS (INCOME-ONLY TRUSTS)**

- **IF GROSS INCOME IS OVER CAP  
  
(\$1737/MO. IN 2005)**
- **RESOURCES ARE NOT PLACED IN TRUST**
- **BENEFICIARY RECEIVES MONTHLY  
  
PERSONAL NEEDS ALLOWANCE (GENERALLY  
  
\$45)**
- **SPOUSE (IF ANY) MAY POSSIBLY RECEIVE  
  
INCOME FROM THE TRUST (MMMNA IS  
  
\$2377.50 IN 2005)**
- **BALANCE TO STATE**
- **IRREVOCABLE**

## MILLER TRUST EXAMPLE

### MONTHLY GROSS INCOME

	SOCIAL SECURITY	PENSION	
HUSBAND	\$1200	\$600	= \$1800
WIFE	\$ 400	0	= <u>\$ 400</u>
			\$2200

IF WIFE IS PATIENT, MILLER TRUST OR OTHER SHIFTING OF INCOME, IS NOT NEEDED

IF HUSBAND IS PATIENT, MILLER TRUST COULD BE USED FOR MEDICAID ELIGIBILITY (IF ALL OTHER REQUIREMENTS ARE MET)

HUSBAND WOULD RECEIVE \$45 (\$90 FOR SOME VETERANS), AND WIFE WOULD RECEIVE BALANCE (AFTER DEDUCTIONS FOR MEDICARE PART B, HEALTH INSURANCE PREMIUMS)

NURSING HOME AND MOST MEDICATION PAID BY MEDICAID

## PROTECTED RESOURCE AMOUNT (PRA)

MINIMUM - \$19,020 (2005)

MAXIMUM - \$95,100 (2005)

### EXAMPLES

1. MARRIED COUPLE HAS \$25,000 OF "COUNTABLE" RESOURCES.

\$25,000 DIVIDED BY 2 = \$12,500

\$12,500 < \$19,020          MINIMUM PRA - \$19,020

2. MARRIED HAS \$200,000 OF COUNTABLE RESOURCES

\$200,000 DIVIDED BY 2 = \$100,000

\$100,000 > \$95,100          MAXIMUM PRA - \$95,100\*

3. MARRIED COUPLE HAS \$100,000 OF COUNTABLE RESOURCES

\$100,000 DIVIDED BY 2 = \$50,000

PRA - \$50,000\*

\*UNLESS EXPANDED

## PRA INCREASE

COUNTABLE RESOURCES - \$500,000

INITIAL PRA - \$95,100

HUSBAND'S (NET) SOCIAL SECURITY INCOME - \$515

HUSBAND'S PENSION - \$345

WIFE'S (GROSS) SOCIAL SECURITY - \$700

\$1560

MINIMUM DIVERSION \$1 (PRIOR TO 9/1/04)  
FROM 9/1/04 ALL INCOME LESS PERSONAL NEEDS  
ALLOWANCE, MEDICARE PART B OF INS. SPOUSE  
AND MEDICARE SUPP. OF INST. SPOUSE)

IF HUSBAND IS IN A NURSING HOME AND WIFE IS  
IN COMMUNITY, THEN WIFE'S NON-COUNTABLE  
RESOURCE INCOME WOULD BE \$701 (BEFORE 9/1/04)

IF HUSBAND IS INSTITUTIONALIZED FOR 30  
CONSECUTIVE DAYS AFTER 9/1/04 AND HAS NO  
MEDICARE SUPP. THEN WIFE'S NON-COUNTABLE  
RESOURCE INCOME WOULD BE (\$1560-\$45) \$1515

## RESOURCE FIRST PRA EXPANSION

MMMNA (SPOUSAL ALLOWANCE) IN 2005 - \$2377.50  
LESS WIFE'S NON-COUNTABLE RESOURCES  
INCOME (INSTITUTIONALIZATION PRIOR  
TO 9/1/04) [ \$701 ]

\$ 1676.50/MO.

\$1676.50 X 12 = \$20,118/YEAR

PRA = \$20,118 X 100 = \$2,011,800 DIVIDED BY 2.5  
(REPRESENTING CURRENT INTEREST RATE) =  
\$804,720

COMMUNITY SPOUSE CAN KEEP UP TO \$800,000 +  
NONCOUNTABLE RESOURCES IF "RESOURCE FIRST"

MMMNA (SPOUSAL ALLOWANCE) IN 2005 - \$2377.50  
LESS WIFE'S NON-COUNTABLE RESOURCES  
INCOME (INSTITUTIONALIZATION PRIOR  
TO 9/1/04) [\$1515.00]

\$ 862.50/MO.

\$862.50 X 12 = \$10,350/YEAR

PRA = \$10,350 X 100 = \$1,035,000 DIVIDED BY 2.5  
(REPRESENTING CURRENT INTEREST RATE) =  
\$414,000

COMMUNITY SPOUSE CAN KEEP UP TO \$400,000 +  
NONCOUNTABLE RESOURCES IF "INCOME FIRST"

**QUALIFIED DOMESTIC RELATIONS  
ORDERS  
(QDROS)**

HUSBAND'S MONTHLY SOCIAL SECURITY	\$600
HUSBAND'S MONTHLY PENSION	\$2000
WIFE'S MONTHLY SOCIAL SECURITY	\$1300

CAN KEEP \$3300/MO. WITH QDRO VS. \$2377.50 (UP TO MMMNA) WITH MILLER TRUST.

IF HUSBAND HAS LARGE IRA, MIGHT ALSO USE QDRO TO POSSIBLY DEFER INCOME TAX.

**SHIFTING OF INCOME FIRST  
(INSTEAD OF SHIFTING OF RESOURCES FIRST)**

**EXAMPLE: HUSBAND AND WIFE'S COMBINED MONTHLY  
NON-INVESTMENT INCOME - \$2327.50  
COMBINED RESOURCES - \$120,000**

**INSTITUTIONALIZED SPOUSE MUST WITHHOLD ENOUGH  
INCOME SO THAT THE AMOUNT AVAILABLE TO  
COMMUNITY SPOUSE, INCLUDING INVESTMENT INCOME  
DOES NOT EXCEED MMMNA (\$2377.50 A MONTH IN  
2005)**

**INITIALLY, PRA IS DETERMINED AS \$60,000 (1/2  
OF \$120,000)**

**\$2377.50 (MMNA) - \$2327.50 = \$50 X 12 = 600 X  
100 = \$60,000 DIVIDED BY 2 (CURRENT INTEREST  
RATE) = \$30,000 (LESS THAN INITIAL PRA OF  
\$60,000) - SO NO EXPANSION UNDER "INCOME  
FIRST")**

**BUT IF INSTITUTIONALIZATION PRIOR TO 9/1/04  
AND IF HUSBAND'S INCOME IS \$1627.50 AND  
WIFE'S INCOME IS \$700, THEN HUSBAND REFUSES  
TO GIVE WIFE HIS INCOME (OTHER THAN \$1) AND  
THE PRA COULD BE INCREASED (\$2377.50 - 701 =  
1676.50 X 12 = 20,118 X 100 = 2,011,800/2 =  
\$1,005,900). CAN ONLY EXPAND TO AMOUNT  
RESOURCES AS OF FIRST DAY OF MONTH OF  
INSTITUTIONALIZATION.**

## HALF A LOAF STRATEGY

FORMULA:  $AX + BX = C$

A IS AVERAGE MONTHLY PRIVATE PAY FOR NURSING HOME  
(PRESENTLY \$2908 IN TEXAS)

B IS THE COST OF LIVING EXPENSES (INCLUDING  
COMMUNITY SPOUSE WHERE APPLICABLE) + NURSING HOME  
COST - INCOME (INCLUDING SPOUSE'S, IF APPLICABLE)

C IS EXCESS RESOURCES OVER RESOURCE LIMIT AND THE  
COMMUNITY SPOUSE RESOURCE ALLOWANCE (IF MARRIED)

X IS THE NUMBER OF MONTHS OF PRIVATE PAY BEFORE  
MEDICAID ELIGIBILITY

AX IS THE MAXIMUM AMOUNT THAT COULD BE SAFELY  
TRANSFERRED

BX IS THE AMOUNT OF SAVINGS THE CLIENT WOULD HAVE  
TO PAY FOR HIS CARE DURING THE PERIOD OF  
INELIGIBILITY RESULTING FROM THE TRANSFER

IF  $A = \$2000$ ,  $B = \$3000$ , AND  $C = \$150,000$ , THEN TO  
DETERMINE X,  $\$2000X + \$3000X = \$150,000$ , THUS

$\$5000 X = \$150,000$  THUS,  $X = 30$

THEREFORE  $AX \$2000 \text{ TIMES } 30 = \$60,000$

## UNCOMPENSTED TRANSFERS

GIFT - \$11,000 IN NOVEMBER 2004

\$11,000 DIVIDED BY 2908 (AVERAGE MONTHLY COST OF NURSING HOME IN TEXAS) = 3 + (ROUND DOWN)

THUS, INELIGIBILITY FOR NOVEMBER, DECEMBER, AND JANUARY

GIFT - \$200,000 DIVIDED BY 2908 IN NOVEMBER 2004= 68 +

IF APPLIED WITHIN 3 YEARS, THEN INELIGIBILITY UNTIL JULY 2010

IF DID NOT APPLY WITHIN 3 YEARS, THEN INELIGIBILITY UNTIL NOVEMBER 2007

## COMMON EXEMPT RESOURCES

HOMESTEAD (BEWARE OF ESTATE RECOVERY)

PREPAID BURIAL

BURIAL SPACES

AUTOMOBILE

MINERAL RIGHTS (LESS THAN \$6000 + 6%  
RETURN)

HOUSEHOLD GOODS AND PERSONAL EFFECTS  
(UNLESS COLLECTIBLE, ETC. OR ITEM  
OF UNUSUAL VALUE)

TERM LIFE INSURANCE

WHOLE OR UNIVERSAL LIFE (UP TO \$1500)

LIVESTOCK (BUSINESS OR CONSUMPTION)

CERTAIN ANNUITIES (BETTER IF MARRIED)

BUSINESS PROPERTY ESSENTIAL TO SELF-  
SUPPORT (BEWARE OF ESTATE RECOVERY)

# MEDICAID ELIGIBILITY REQUIREMENTS

NATIONALITY AND RESIDENCE

AGE, BLINDNESS OR DISABILITY

MEDICAL NECESSITY

INCOME (<\$1737/MO. IN 2005)

MEDICAID BED

NO EXISTING TRANSFER PENALTY  
(PRESENTLY \$2908 DIVISOR)

RESOURCES (\$2000 FOR INST. SPOUSE OR  
SINGLE PERSON)

PRA - \$19,020 (MINIMUM)  
\$95,100 (MAXIMUM)\*

\* PRA CAN BE EXPANDED IF NON-COUNTABLE  
RESOURCE INCOME OF COMMUNITY SPOUSE IS  
LOW ENOUGH (INST. BEFORE 9/1/04) OR BOTH  
SPOUSES NON-COUNTABLE RESOURCE INCOME IS  
LOW ENOUGH (AFTER 9/1/04)

# ESTATE RECOVERY

FINAL RULES PUBLISHED 2/18/05

EFFECTIVE DATE - 3/1/05 (APPLICATIONS BEFORE  
"GRANDFATHERED")

STATE HAS RIGHT TO RECOVER TO EXTENT MEDICAID  
BENEFITS WERE ADVANCED AGAINST NON-COUNTABLE  
RESOURCES (GENERALLY BIGGEST RESOURCE WILL BE  
THE HOMESTEAD)

CLAIMS WILL BE FILED AGAINST PROBATE ESTATE

RECIPIENT MUST BE > 55 AND APPLIED 3/1/05 OR  
LATER

NO CLAIM AGAINST:

1. SURVIVING SPOUSE
2. CHILD < 21
3. CHILD OF ANY AGE BLIND  
OR PERMANENTLY DISABLED
4. UNMARRIED ADULT CHILD  
LIVING IN RECIPIENT'S  
HOME AT LEAST 1 YEAR  
BEFORE RECIPIENT'S DEATH

## OTHER EXCEPTIONS FROM ESTATE RECOVERY

1. FOR HOMES \$100,000 OR LESS, SIBLINGS OR DIRECT DESCENDANTS BY SEEKING HARDSHIP WAIVER IF SUCH BENEFICIARY HAS GROSS FAMILY INCOME BELOW 300% OF FEDERAL POVERTY LEVEL

EXAMPLES:	FAMILY SIZE	ANNUAL INCOME
	1	\$27,930
	2	\$37,470
	3	\$47,010
	4	\$56,550
	5	\$66,090
	6	\$75,630

2. ACTIVE FAMILY BUSINESS, FARM OR RANCH FOR AT LEAST 1 YEAR BEFORE DEATH OF MEDICAID RECIPIENT AND PRODUCES AT LEAST 50% OF FAMILY'S LIVELIHOOD RESULTING IN LOSS OF PRIMARY SOURCE HEIRS INCOME

3. IF COST INVOLVED TO PROCESS CLAIM IS = OR > VALUE OF THE PROPERTY

4. IF RECIPIENT RECEIVED MEDICAL ASSISTANCE AS A RESULT OF CRIME AGAINST THE RECIPIENT

5. RESULTS IN BENEFICIARIES THEN BECOMING ELIGIBLE FOR PUBLIC ASSISTANCE

# UNCOMPENSATED TRANSFERS

\$9,000 GIFT IN OCTOBER 2004

NO GIFT TAX TO DONOR - NO NEED TO REPORT TO IRS (<\$11,000 ANNUAL EXCLUSION)

BUT MEDICAID INELIGIBILITY FOR MONTHS OF OCTOBER, NOVEMBER AND DECEMBER SINCE  $\$9000/2908 = 3.1$   
(TEXAS PRESENTLY ROUNDS DOWN - LAW CHANGE ANTICIPATED APPROXIMATELY IN 7/05)

UNCOMPENSATED TRANSFER GREATER  
THAN ANNUAL EXCLUSION (\$11,000)

GIFT OF \$110,000 IN NOVEMBER 2004

DONOR COULD BE SUBJECT TO:

1. GIFT TAX

2. TRANSFER PENALTY (IF YOU APPLY  
FOR MEDICAID WITHIN 3 YEARS)

AVOID GIFT TAX BY:

1. GIVE TO 10 DIFFERENT DONEES  
(5 IF COUPLE)

2. FILE GIFT TAX RETURN USING  
PORTION OF PERMITTED EXEMPTION  
FOR LIFETIME GIFTS (PRESENTLY  
\$1,000,000.00)

## EXEMPTION EQUIVALENT

DEATH YEAR    EXEMPTION  
EQUIVALENT

2005	\$1,500,000
2006	\$2,000,000
2007	\$2,000,000
2008	\$2,000,000
2009	\$3,500,000
2010	Repeal
2011	\$1,000,000

THUS, IF \$100,000 GIFT OVER ANNUAL EXCLUSION, YOU CAN FILE GIFT TAX RETURN (SO, INSTEAD OF GIVING \$1,000,000 AT DEATH WITHOUT ESTATE TAX, YOU CAN GIVE LESS AT DEATH WITHOUT ESTATE TAX AND WITHOUT GIFT TAX)

# CAPITAL GAINS TAX CONSEQUENCES

## CARRYOVER BASIS:

DONEE RECEIVES DONOR'S BASIS IF THERE IS A LIFETIME GIFT

INHERITANCE - STEP-UP OF BASIS TO VALUE AS OF DATE OF DEATH (SUBJECT TO LIMITED AGGREGATED BASIS INCREASE FOR LARGE ESTATES FOR ONE WHO DIES AFTER DECEMBER 31, 2009 - \$1.3 MILLION ADDITIONAL BASIS CAN BE ALLOCATED AFTER THAT DATE - PLUS \$3 MILLION FOR SURVIVING SPOUSE)

## MEDICAID PLANNING:

GIVE UNAPPRECIATED ASSETS SINCE:

1. INCOME OF DONOR SOMETIMES CAN BE OFFSET BY DEDUCTIONS (MEDICAL EXPENSES- I.E. IF ITEMIZE AND MEDICAL EXPENSES ARE  $> 7.5\%$  OF ADJUSTED GROSS INCOME)
2. DONOR OFTEN HAS LOWER TAX RATE THAN CAPITAL GAINS TAX RATE ( $<15\%$ )
3. LOSS OF STEPPED-UP BASIS IF DONOR DIES

## CAPITAL GAINS TAX CONSEQUENCES

AT DEATH, BASIS IS STEPPED UP TO FAIR MARKET VALUE OF ASSET AS OF DATE OF DEATH

EXAMPLE: IMA SICK BUYS TEXAS INSTRUMENTS STOCK WORTH \$10,000

THE VALUE OF THE STOCK AT HER DEATH IS \$120,000. HER BENEFICIARY, G. THANKS, LATER SELLS THE STOCK FOR \$150,000. G. THANKS CAPITAL GAINS TAX (PROBABLY 15%) ON \$30,000 = \$4,500

IF THE STOCK HAD BEEN GIVEN TO G. THANKS DURING IMA SICK'S LIFETIME AND G. THANKS SOLD FOR \$150,000, THEN G. THANKS WOULD PAY CAPITAL GAINS TAX OF  $(\$150,000 - \$10,000 = \$140,000 \times 15\%)$  \$21,000. RESULT, \$16,500 MORE CAPITAL GAINS TAX

# INCOME TAX CONSEQUENCES

## DISPOSAL OF RESIDENCE

FOR SALES OF PRINCIPAL RESIDENCE  
AFTER 5/7/97, NO TAX ON FIRST \$250,000  
GAIN FOR TAXPAYER FILING  
INDIVIDUALLY, OR FIRST \$500,000 FOR  
TAXPAYERS FILING JOINTLY (ANY AGE)

REPEALED - \$125,000 EXCLUSION ONLY FOR  
THOSE OVER 55 AND ROLLOVER IF ONE  
BUYS OR BUILDS ANOTHER HOME

### REQUIREMENTS –

1. MUST BE USED AS PRINCIPAL RESIDENCE
- 2 OF THE 5 YRS. PRECEDING DATE OF SALE.
2. USE OR OWNERSHIP CAN BE BY EITHER SPOUSE (EVEN IF SPOUSE DIES AND IS ONLY ONE WHO OWNED AND USED HOME DURING 2 OF THE 5 YRS).
3. ALSO APPLIES TO DIVORCE.
4. EVEN IF IN NURSING HOME.
5. EXTENDED TO ESTATE OR HEIRS

# MEDICAL EXPENSES DEDUCTION

DEDUCTION FOR PERSON INCURRING MEDICAL EXPENSES FOR QUALIFIED LONG-TERM CARE SERVICES IF:

1. EXPENSES ARE NOT REIMBURSED
2. LIMITED TO THE EXCESS OF 7.5% OF ADJUSTED GROSS INCOME

“QUALIFIED” - NECESSARY SERVICES REQUIRED BY (1) CHRONICALLY ILL PERSON (CAN'T DO 2 ADLs) (2) PURSUANT TO PLAN BY LICENSED HEALTH CARE PROVIDER (PERSONAL CARE SERVICES OF RELATIVE OR SPOUSE GENERALLY NOT DEDUCTIBLE)

CAPITAL EXPENSES, INCLUDING MAINTENANCE, DEDUCTIBLE IF DOESN'T INCREASE VALUE OF ASSET (I.E., WHEELCHAIR RAMP)

## PERSONAL EXEMPTION DEDUCTION

RELATIVE CAN GET DEDUCTION IF > 50% SUPPORT FROM RELATIVE, IF PERSON RECEIVING SUPPORT HAS NOMINAL INCOME (AROUND \$3000) ANNUAL INCOME (EXCLUDING TAX-EXEMPT INTEREST, DISABILITY INCOME AND SOCIAL SECURITY INCOME)

TAX-EXEMPT INTEREST INCOME, DISABILITY INCOME AND SOCIAL SECURITY INCOME ARE COUNTED IN DETERMINING IF SUPPORT IS > 50%

## DEDUCTION FOR RELATIVE WHO PAID MEDICAL EXPENSES

UNLIKE PERSONAL EXEMPTION  
DEDUCTION WHICH HAS INCOME LIMIT  
ON PERSON WHO RECEIVES SUPPORT  
TO TAKE DEDUCTION, RELATIVE WHO  
TAKES CARE OF  $> 50\%$  (OR IN  
COMBINATION WITH OTHERS) SUPPORT  
OF PERSON WITH MEDICAL EXPENSES  
CAN TAKE MEDICAL EXPENSE  
DEDUCTION ON OWN RETURN (USEFUL  
IN MEDICAID SITUATIONS WHICH  
THERE HAS BEEN LARGE GIFT AND  
DONEE ITEMIZES AND MEDICAL  
EXPENSES  $> 7.5\%$  OF ADJUSTED GI.

## DISPOSITION OF TAX-DEFERRED ASSETS

MEDICAID PROBLEM: IF THERE IS A COMMUNITY SPOUSE(“CS”), DHS REQUIRES ALL COUNTABLE RESOURCES BE TRANSFERRED TO SUCH PERSON FROM INSTITUTIONALIZED SPOUSE (“IS”) PRIOR TO 1 YEAR REASSESSMENT (SINCE CAN ONLY HAVE \$2000 OF COUNTABLE RESOURCES)

IF “IS” HAS LARGE IRA, THEN TRANSFER CREATES INCOME TAX, AT ORDINARY RATES, WHEN IRA IS RE-TITLED IN NAME OF CS.

POSSIBLE (NOT APPROVED BY IRS AT THIS TIME) SOLUTION: QUALIFIED DOMESTIC RELATIONS ORDER (“QDRO”)- COURT ORDER IN FAMILY COURT CHANGING TITLE INTO NAME OF CS (NO TAX UNTIL DISTRIBUTED).

# TAX CONSEQUENCES OF USING LONG-TERM CARE INSURANCE

BENEFITS GENERALLY EXCLUDED IF  
FROM INCOME TAX IF “QUALIFIED”  
LONG-TERM INSURANCE (LIKE  
ACCIDENT AND HEALTH)

QUALIFIED LONG-TERM CARE  
INSURANCE PREMIUMS HAVE INCOME  
TAX DEDUCTION (WHICH IS LIMITED) IF:

1. PROVIDES LONG-TERM CARE  
SERVICES FOR CHRONICALLY ILL
2. ITEMIZE - SUBJECT TO MEDICAL  
EXPENSE DEDUCTION OF 7.5% OF AGI