Managing Your Residence as Trustee of Your Asset Protection Trust

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The following is a common scenario for clients who undertake an asset protection plan to protect their primary residence from long-term care costs.

As part of your plan, you signed a new deed which transferred ownership of your home to your irrevocable Asset Protection Trust ("Trust"). You are the Grantor, or creator, of the Trust. You are also named as the initial Trustee of your Trust. The new deed to the Trust has been recorded and the five-year lookback period for transfers made under the Medicaid eligibility rules began the date you signed the deed to the Trust. Now your plan is complete.

As Grantor of the Trust, you have the exclusive right to continue to live in the residence while you manage the residence as Trustee. Even if someone other than you is serving as Trustee, you are guaranteed the right to live in your home. Trust terms also dictate that although you reside in the residence you cannot be required to pay rent.

Clients often ask "What do I need to do as Trustee of my Trust?" This article summarizes your responsibilities as Trustee. However, if you have questions about the administration of your Trust at any time, we are available to advise you.

As Trustee, you have a fiduciary duty to maintain trust assets. One responsibility is to maintain adequate homeowners' insurance on the residence. As Trustee, you should change your homeowners' insurance policy to make the Trust the insured under the policy, because the Trust now owns your residence. If you were to remain the insured under your policy, the insurance company could deny any claim you make because you are not the property owner and therefore have no "insurable interest" in the property. We also recommend that you name yourself as an additional insured under the policy for your personal property that is located in your residence. We suggest you talk to your insurance agent to see if this is possible or whether a separate policy on the contents only would be available.

As part of maintaining Trust assets, the Trustee is responsible to ensure that property taxes are paid and that the home and yard are maintained. Additional Trust provisions permit you to pay all of the expenses of the normal maintenance of the house and lot, including taxes, insurance, utilities, mortgage payments and normal costs of maintenance and upkeep of the property because you reside in the residence. Examples of maintenance expenses include minor plumbing and electrical repairs, replacement of a washer, dryer and other appliances and lawn care.

Payment for major improvements to the house or for major maintenance costs such as replacement of a furnace or roof, should be paid from a Trust account. If you were to pay for such major expenses from your personal account within five-years of applying for Medicaid benefits, Medicaid could view the payment of these expenses as gifts (since the Trust owns your residence) which would create a period of ineligibility for Medicaid benefits. Because of the concern that Medicaid could count payment of larger expenditures, including possibly real estate taxes, as gifts that create an ineligibility period for Medicaid benefits, we recommend that such larger expenses be paid from Trust investments or from a Trust checking account in which funds to pay anticipated real estate expenses are held.

If you decide to sell your residence in the future, the Trustee will sign the sales agreement and the new deed selling your residence. Your permitted exemption from capital gains tax on the sale of your personal residence continues to apply even though the Trust owns the residence. Therefore, so long as you have resided in the residence for at least two of the past five years, under current law, when the Trustee sells your residence, no capital gains taxes should be owed on the difference between the purchase price and sale price of your residence. Another capital gains tax benefit of your Trust is that if the Trust owns your residence at your death, your beneficiaries will receive a step-up in cost basis to the sale price of your residence upon your death.

The Trust provisions additionally allow the Trustee to use the residence sale proceeds to purchase another residence which will be owned by your Trust. If there are excess sale proceeds after the purchase of the new residence, or if you decide not to purchase a new residence, the sale proceeds remain in a Trust account. The original five-year lookback, which started the date you transferred ownership of your residence to your Trust, continues to apply to any residence sale proceeds deposited into a Trust account.

Now that you have the peace of mind of knowing that you have protected your residence from the cost of long-term care through your Trust and you understand your responsibilities as Trustee, it is time to relax and enjoy living in your home.