

Supplemental Needs Trusts

by Attorney Michael Hooker

I have written columns in the past discussing irrevocable trusts and living trusts. Irrevocable trusts are good devices for protecting assets in the event of nursing home placement because the asset is not titled in the name of the individual and cannot be accessed by the elder. Of course, you have to wait out the five year Medicaid ineligibility period triggered by the transfer. The irrevocable trust is also good for avoiding probate upon the death of the elder and for having a trusted family member etc. as trustee with formal authority over your assets.

Revocable trusts will also help you avoid probate court but they do not protect your assets in the event of nursing home placement. Why not? Because you can revoke it, and if you can revoke it, the state will mandate that you do so and spend what is in it on your care. This is why I generally do not recommend revocable trusts.

I have found, however, that irrevocable trusts can be quite useful, provided the client is willing to invest the time and money into creating a well-crafted trust. I have found irrevocable trusts to be especially helpful where the elder has a disabled child. The kind of trust I refer to is a supplemental needs trust. This trust will allow you to provide for your disabled child without that child being in charge of the money. A key component of the supplemental needs trust is that it allows the child to retain his/her governmental benefits such as SSI and Medicaid. The trust can pay for things that Medicaid won't; for example, vacations, special medical equipment, extra staffing, companions.