



## **VETERANS BENEFITS IRREVOCABLE TRUST**

This trust is created by client and permits the client full control over their assets while protecting the assets from being considered when the client applies for VA pension benefits. The client does not have the right to the income or principal from the trust. This trust is utilized when client's assets and/or income exceed the Medicaid exemptions and qualifying amounts and the client does not direct access to the income or excess assets to maintain their lifestyle. The client can have access to the trust income and principal indirectly by distributing it to anyone in the "class" of people they select to be beneficiaries. Assets retained in the trust are not considered available resource for Medicaid qualification after the expiration of the penalty period for the transfer of the funds to the trust.

### **FEATURES**

- Irrevocable Trust created by client (individual or joint).
- Client can be either sole or co-trustee, but it is better to name another person.
- Client retains 100% control of all trust assets if named as trustee.
- Client has no direct access to income or principal from the trust.
- Client can provide discretionary distribution of income or principal to a "class" of people using "ascertainable standards".
- Grantor Trust under IRC §671-678.

### **USES**

- Client applies for VA benefits to protect their assets but does not give up control.
- Client with a spouse in a nursing home or who expect to be in a nursing home and client does not want to give up investment income to Medicaid.
- Client does not need direct access to excess income or principal.
- Client whose excess assets are more than 60 times the average monthly cost of nursing home care (\$8,060.00 per month in 2015).

## **BENEFITS**

- Allows the veteran and/or surviving spouse to lower countable assets and obtain pension benefits.
- Protects income and assets from the nursing home but keeps it available to family.
- Client retains full control and management of all assets.
- Client's affairs kept private (does not have to share information with children).
- Permits distribution to client's beneficiaries in an asset protection trust.

## **COUNSELING ISSUES**

- Transfer penalty assessed on all transfers to trust.
- Client gives up access to income and principal and can only access it through someone in the "class of beneficiaries" (those who would "give back").
- Creates a look-back period of 60 months and can create a penalty period of greater than 60 months if not funded properly or if application for Medicaid is made before the penalty period has expired.
- All income taxed to client even though he or she does not receive it.
- Included in client's estate at death (step-up in basis).

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