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WHAT IS AN INCOME ONLY TRUST?

Under the terms of an Income Only Trust, the assets are transferred to a third party Trustee (such as your children). The trust pays *only income* to you. The *principal can not* be distributed to you and will not be deemed an available resource for Medicaid eligibility purposes. The Trust can provide the principal to be paid to other beneficiaries (such as your children) during your lifetime. After the Five (5) Year Look Back, only the income of the trust will be considered for purposes of your Medicaid qualification.

Medicaid

❖ The funding of an Income Only Trust is considered an uncompensated transfer for Medicaid purposes, and will result in a Penalty Period if the Medicaid application is filed within the 5 Year Look Back Period. The uncompensated transfer is deemed to occur at the time the funds are transferred to the trust.

Tax

❖ Although irrevocable, an Income Only Trust can be structured as a “grantor trust” if the grantor retains ownership or control. In these specific circumstances, the income is treated as “owned by” and taxed back to the Grantor. Grantor tax treatment allows the income to be taxed at the Grantor’s individual income tax rate, which is usually less compressed than trust income tax rates and typically in a lower income bracket than the Grantor’s children.

❖ An Income Only Trust can be structured so that the assets receive a step-up in basis on the death of the Grantor (for deaths in 2011 and going forward).

❖ Funding an Income Only Trust does not create a taxable gift, since the principal of the trust will be included in your taxable estate at your death. However, a distribution from the Trust to a beneficiary other than you (such as your children) will be a gift at the time the distribution is made.

❖ An Income Only Trust addresses concerns sometimes raised in outright gifting. For example, an Income Only Trust generally provides protection from creditor claims and matrimonial actions of the trust beneficiaries.

The Tax, Trusts & Estates and Elder Law Department of FSK&S consists of attorneys, paralegals and support staff experienced with the legal needs of the elderly. Our attorneys work with a variety of legal tools and techniques to meet the goals and objectives of the older client. We represent clients in Elder Law matters from our offices in *Parsippany* and *Toms River*. Henry H. Fein, Esq. and Deirdre R. Wheatley-Liss, LL.M. (Taxation), CELA* are shareholders of our Tax Trusts & Estate and Elder Law Department and work together with Stacey Crowell Maiden, Esq., of counsel to the firm, Steven A. Loeb, Esq. to help families with questions about “What happens to my assets as I age.”

*Certified Elder Law Attorney by the American Bar Association accredited National Elder Law Foundation.