

# **BOUMAN LAW FIRM**

ESTATE PLANNING & INHERITANCE PROTECTION

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## **What You Should Know About Arizona Medicaid Asset Protection Trusts**

### **1. What is an Arizona Medicaid Asset Protection Trust?**

An Arizona Medicaid Asset Protection trust (“MAPT”) is an irrevocable trust designed to exclude your primary residence from being counted as an available resource for Medicaid eligibility purposes. In Arizona, the technique works if you retitle your home into a MAPT at least five years prior to applying for long term care benefits administered by the Arizona Long Term Care System (“ALTCS”) also known as Medicaid. The home is excluded from your countable resource ledger, effectively preventing ALTCS from placing a lien on your home and attempting to recover money from the sale of your home after your death. The trust must be irrevocable with no possible way for you to regain control of the trust assets. However, you may retain an exclusive right to occupy your primary residence without restriction and, if desired, receive income payments from other investable assets you might contribute to the trust.

### **2. How does a Medicaid Asset Protection Trust work?**

Arizona residents can establish an asset protection trust by transferring certain types of assets into an irrevocable trust and naming other people as beneficiaries (excluding yourself).

The MAPT works to protect your home because you no longer *own* the home but instead retain an exclusive right to *occupy* the home without restriction. If the home is later sold, the net proceeds remain in the trust and may be distributed to the named beneficiaries at the discretion of the trustee (someone you choose). You may name your children, grandchildren, or other individuals as the beneficiaries.

The primary residence is usually the first asset contributed to a MAPT, but you may want to contribute other assets (cash accounts and non-retirement investments) to further accelerate the timing of your eligibility for ALTCS. But to reemphasize, the catch is that the assets must be contributed to the MAPT at least five years prior to applying for ALTCS. This makes it necessary to plan early by implementing the MAPT technique at a time when your health prognosis remains positive.

### **3. What if I want to be a trust beneficiary?**

To make the trust achieve its primary objective under ALTCS rules, the trust must prevent you regaining control of the trust assets. However, you are permitted to receive income payments from other investable assets held in the trust.

It is best to refrain from retitling assets into a MAPT unless you are confident that you will not need to liquidate them for your own spending needs. But keep in mind the purpose of the MAPT is to help you qualify for ALTCS long term care benefits, which will supplement the income and other resources that you are permitted to hold while remaining eligible for ALTCS. And nothing prevents your beneficiaries from choosing to use their own funds (including those received from the trust), to help pay for your care.

#### **4. Why not make an outright gift instead?**

The MAPT is superior to making an outright gift because the trust maintains your right to change who inherits the trust assets after your death, and the home will be protected from threats against you and the beneficiaries. For example, if you give your home to a child, then your home is at risk if the child is later sued or files for divorce. Also, your home will not qualify for a step-up in income tax basis at your death if you give the home to your child during your lifetime.

#### **5. What if the home is secured by a mortgage loan?**

Federal law permits you to retitle your primary residence into a MAPT without seeking permission from the lender. If you are still paying down your mortgage, the interest you pay remains tax deductible.

#### **6. Are there restrictions against selling the home?**

No, the trustee can sell the home without restriction. However, the net sale proceeds must be retained in a cash or investment account titled in the name of the trust. The trustee may use the sale proceeds to purchase a new home for you or distribute the funds to the lifetime beneficiaries (usually children, grandchildren, or other relatives).

#### **7. Can the beneficiaries be changed?**

Yes, you have the right to change the residual beneficiaries who inherit from the trust after your death.

#### **8. May I serve as trustee of the trust?**

No, ALTCS eligibility rules prevent you from naming yourself as the trustee of the trust. But you can retain the right to remove and replace the trustee with an independent trustee.

#### **9. May I contribute other types of assets into the trust?**

Yes, nothing prevents you from contributing other assets to the trust such as non-retirement brokerage accounts and rental properties. However, I choose to focus on protecting the primary residence because this is usually the asset that clients care most about protecting. The primary residence is a good candidate for placing into a MAPT because the client gives away indirect access to home equity but not direct access to any investable funds.

## **10. What are the disadvantages of a Medicaid Asset Protection Trust?**

The primary disadvantage of a MAPT is that you lose the ability to refinance an existing mortgage loan or qualify for a new mortgage. While an irrevocable trust technically permits its assets to be used as collateral for a loan, it is very difficult to find a mortgage company willing to lend money to an irrevocable trust. Thus, the MAPT works best if you own your home free and clear or if your existing mortgage has an interest rate low enough to dissuade you from the need to refinance. Similarly, you would not be able to secure a cash-out refinance for the same reason.

A secondary disadvantage of a MAPT is the hassle and cost of retaining a qualified lawyer to establish it. Any type of irrevocable trust requires extensive experience and specialized knowledge to draft properly. This limits the availability of MAPTs because not all estate lawyers know how to draft them and those that do will likely charge a high fee to establish one.

### **About the Author**

Thomas J. Bouman focuses his law practice on estate planning and inheritance protection. He brings a highly systematic approach to the practice of law, which is critically important when wading through the complex, and often bizarre, legal requirements associated with estate and trust law. Mr. Bouman is the author of the Arizona Estate Administration Answer Book and a prominent member of WealthCounsel, the nation's premiere organization of estate planning attorneys.