

Wills, Living Trusts, and Miller Trusts

Presented by Breanna Young¹

Wills

- Is thy will done?
 - Control disposition of assets
 - Nominate an executor
 - Nominate a legal guardian
- What if there's no will?
 - Property with named beneficiaries, joint-tenancy property
 - Everything else:

If the client is . . .	Then . . .
Unmarried, no issue*	The parent(s) take all. If no living parents, §633.219(3) applies.
Unmarried, with issue	Issue take all, per stirpes
Married, no issue	Surviving spouse takes all
Married, with issue, all of whom are the issue of the surviving spouse	Surviving spouse takes all
Married, with issue, at least some of whom are not the issue of the surviving spouse	<ul style="list-style-type: none">• Spouse gets all exempt personal property• Spouse gets the first \$50,000 worth of property• Everything else split 50/50 between spouse and issue

*"Issue" means "all lawful lineal descendants of a person, whether biological or adopted, except those who are the lineal descendants of the person's living descendants." Iowa Code §633.3(24).

Probate

- What's involved?
 - File documents to open the estate and obtain letters of appointment

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- Mail notice to heirs and reasonably ascertainable creditors, publish notice in the newspaper, and wait the statutory time period for the filing of claims or will contests
- File the estate inventory and tax returns
- Pay valid debts, charges, and administration costs, and distribute remaining property to devisees or heirs
- Discharge the personal representative and close the estate proceedings
- Why avoid probate?
 - To save time (maybe)
 - To save money
 - To avoid publicity
- How can probate be avoided?
 - Use the affidavit procedure in Iowa Code §633.356, if the probate-property value is (or has been at any time since death) \$25,000 or less, all real property passes to surviving joint tenant without inheritance tax, and at least 40 days have elapsed since death
 - Own property that is titled jointly, or has named beneficiaries
 - Establish and fund a revocable living trust

Revocable Living Trusts

- What's involved?
 - A settlor executes an agreement establishing a revocable living trust. (The agreement typically names the settlor as the initial trustee.)
 - The settlor transfers ownership of assets to the trustee.
 - When the settlor dies, the owner of the property—the trust—remains “alive,” so no probate is needed to transfer title to the beneficiaries. Instead, the successor trustee pays the trust's debts, charges, and costs, and then distributes the remaining assets as directed in the trust instrument.
- How does it work while the settlor is alive?
 - Typically, the settlor retains the right to receive all income and principal, and to revoke or modify the trust and hire or fire the trustee while the settlor is competent. (Same level of competency needed to create a trust; Iowa Code §633A.3101.)
 - The trust instrument may provide that if the settlor becomes incapacitated, the successor trustee will have authority to deal in the trust property.

- An agent under a power of attorney may create, amend, revoke, or terminate a revocable trust—but only if expressly authorized under the power of attorney and not prohibited under the trust instrument. Iowa Code §633B.201.
- Retitling of assets
 - The trust instrument only governs assets owned by the trust, and the trustee only has authority to deal in property owned by the trust.
 - Generally, the trustee should be named as the owner or beneficiary of assets.
- Special concerns
 - Qualified retirement assets. The bias is to name individuals as beneficiaries, but sometimes a client may have a good reason to name the trust as beneficiary. Special care should be taken to ensure the trust qualifies as a “designated beneficiary” for account-distribution purposes. *Life and Death Planning for Retirement Benefits* by Natalie B. Choate provides an in-depth discussion of drafting qualified-account beneficiary designations.
 - Beneficiaries with disabilities. Depending on the type of government benefits a beneficiary is receiving, an inheritance may cause the beneficiary to suffer a reduction or elimination of benefits without careful planning.
 - Beneficiaries who aren’t so great with money. A beneficiary’s share can be held in trust, and administered by the trustee, until the occurrence of a specified event (e.g., the beneficiary’s 35th birthday).

Source: www.iowa-medicaidtrusts.com



Iowa Department of Human Services

MEDICAID TRUST PROGRAM

MEDICAL ASSISTANCE INCOME TRUSTS

AN INCOME TRUST is an arrangement by which a trustee holds income for the benefit of another person (the beneficiary). Iowa law refers to these trusts as medical assistance income trusts. They are also known as income assignment trusts; Medicaid Income Trusts; qualified income trusts; “Miller” Trusts from Miller v. Ibarra, 746 F. Supp. 19 (Co. 1990); or d4B trusts from federal law as they were statutorily created by 42 USC 1396p(d)(4)(B).

When to Use

Income Trusts are established for Medicaid applicants or members when their income exceeds regular Medicaid eligibility criteria, but is insufficient to pay their medical expenses. The funds in an Income Trust consist of only income that is assigned to the trust by the Medicaid recipient who established the trust and is the beneficiary.

Requirements for an Income Trust

- the trust must be irrevocable or the state’s residual interest protected upon revocation, termination, or modification
- the grantor is also the beneficiary
- only income is assigned to the trust and the income must be the beneficiary’s income
- the state must be the residual beneficiary of the trust

If these provisions are in the trust, then state law will override all other terms of the trust that do not comply with state law.

Limitations on Income

The beneficiary’s total countable monthly income (including income assigned to the trust) must be less than the average statewide charge for a private pay resident or the beneficiary will not qualify for Medicaid.

Reimbursement to the State

Reimbursement must include all medical assistance provided and not just the medical assistance provided during the term of the trust.

Funeral and Burial Expenses

These may not be paid from the trust until after all medical assistance has been reimbursed to the state.

Income Assigned to the Trust

Income typically includes social security, IPERS, annuities, pension plans, or other retirement funds.

Distributions from an Income Trust

Distributions are prioritized in the following order:

1. reasonable administrative expenses not to exceed \$10 without a court order;
2. a monthly amount for the beneficiary's personal needs, a spouse's or dependent's needs, or for unmet medical needs, all in amounts to be determined by your caseworker;
3. services for your medical providers that reduces the amount paid by Medicaid;
4. kept in the trust.

A Spouse or Dependent's Needs

As a beneficiary of an Income Trust may be married or have a dependent, some of the income may be necessary for the support of that person. Funds from the Income Trust may be disbursed for the support of a spouse or dependent and should be done upon the receipt of the income to avoid accumulating other person's funds in the Income Trust.

Submitting an Income Trust for Approval

The trust document should be sent to the Department of Human Services caseworker for the Medicaid applicant or member who will send the trust document to the Medicaid Trust Program for review, approval, or denial.

Annual Reports

Yearly reports showing the monthly and total yearly income placed in the trust and the monthly and total yearly expenditures should be sent to the Medicaid Trust Program at the below address for review.

Report upon Death

Upon death of the beneficiary or other termination of the trust, the trustee is responsible for winding up the affairs of the trust and should send notice of the termination, and reason for termination, to the Medicaid Trust Program at the address below.

Final Payment

At the termination of the trust by death or otherwise, payment of the money left in the trust up to the amount of all medical assistance given to the beneficiary must be paid to "Iowa Department of Human Services." Payments should be mailed to the same address as the annual reports at:

**Medicaid Trust Program
PO Box 36565
Des Moines IA 50315**