

Are Miller Trusts ethical?

Dear Mr. Premack: My friend is 69 and has a condition that is life ending but could last for some time. He is not married nor does he have any children. He owns a house that the Bexar County appraisal district says has a total market value of about \$135,000. His individual monthly income is about \$4,000 per month. He also has about \$150,000 in a savings account. Can he use a Miller Trust to qualify for Medicaid? Was the original intent of the Miller Trust to protect a spouse or child - in other words, would it be ethical to do this? Would a Revocable Living Trust be a better option? Can he protect his house so it passes to the person named in his Will? - SM

There are five fundamental requirements in order to qualify for Medicaid's assistance with paying for a nursing home. The applicant must: 1) be 65 or older, blind or disabled; 2) be a US Citizen or legal resident alien; 3) be certified by a doctor as needing intermediate or skilled nursing care; 4) have less than \$2,199 in monthly income; and 5) have no more than \$2,000 in countable resources.

Most people who need nursing home care readily meet the first three conditions. The third and fourth conditions are based on finances and can be more complex.

Condition four, the monthly income limit, used to be absolute. If you had a dollar of income beyond the limit there was no way to qualify for benefits. The courts and Congress changed the law to allow use of a Miller Trust (formally called a Qualified Income Trust) to bypass the limit. A Miller Trust, which must be written by a qualified attorney, creates the fiction that income is below the limit by shifting some income into the trust's account. After benefits are granted, the entire income stream must still be applied per the regulations. An at-home spouse will be allowed to keep up to \$2980.50/month and any excess is paid to the nursing home.

The original intent of the Miller Trust idea was to help people whose income exceeded the limit qualify for Medicaid. It was never intended as a benefit for the spouse or children, and thus properly using one when there is no spouse and are no minor children is perfectly legal and ethical.

Since your friend is unmarried, there is no spousal allowance. As a single person, when his Miller Trust is created, funded and approved, his \$4,000 monthly income will all be paid to offset his nursing home bill (with the exception of \$60 for his personal needs). A Revocable Living Trust is not the same as a Miller Trust and will not provide any assistance in qualifying for Medicaid.

Remember that all five conditions must be satisfied to qualify for benefits. Condition five deals with assets. Your friend's cash is a countable asset which exceeds \$2000 in value, so he will not be approved for benefits. He cannot hide the money in a Revocable Living Trust, nor can he give away the money (gifts within five years of a Medicaid application disqualify the giver). He should discuss with a Certified Elder Law Attorney how to effectively handle these excess funds.

His house, on the other hand, is a non-countable asset and will not interfere with qualifying for Medicaid. But when he dies, his house is subject to a MERP Recovery Claim. I've written other columns on MERP and on Enhanced Life Estate deeds (Lady Bird deeds) which you will find in the archives at TexasEstateAndProbate.com.

Paul Premack is a Certified Elder Law Attorney with offices in San Antonio and Seattle, handling Wills and Trusts, Probate, and Business Entity issues. View past legal columns or submit free questions on legal issues via www.TexasEstateandProbate.com or www.Premack.com.