

# Asset Protection Law Newsletter



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A FREE LEGAL UPDATE FOR ELDERS AND SAME SEX PARTNERS WHO SEEK ASSET PROTECTION ♦ MARCH 1, 2015 EDITION

## MEDICAID PLANNING BY NONLAWYERS IS THE UNAUTHORIZED PRACTICE OF LAW (A 3<sup>RD</sup> DEGREE FELONY), SAYS FLORIDA SUPREME COURT!

The Florida Supreme Court recently issued a ruling that took aim at nonlawyers who charge fees to help people get Medicaid benefits — including seniors who need Medicaid coverage for nursing-home care.

The Supreme Court approved a proposal that said some of the services provided by so-called Medicaid planners constitute the improper "unlicensed practice of law."

The proposal came from a Florida Bar committee, which worked on the issue for months and concluded a need to "protect the public from harm."

"Testimony described the type of harm caused by non-lawyer Medicaid planners which includes denial of Medicaid eligibility, exploitation, catastrophic or severe tax liability, and the purchase of inappropriate financial products threatening or destroying clients' life savings," the committee said in part of the document.

"The potential for public harm is even greater when the non-lawyers put themselves in a position of reliance and advising the customer as to the proper course of action to take."

The issues focused, at least in part, on services provided to families as they try to get Medicaid coverage for people going into nursing homes.

As an example, the Bar committee pointed to nonlawyers preparing what are known as "qualified income trusts," which are used when Medicaid applicants' income exceeds certain thresholds.

Excess income needs to go into trust accounts each month for applicants to qualify for Medicaid coverage.

The Bar committee, formally known as the Standing Committee on the Unlicensed Practice of Law, cited examples of nonlawyers improperly preparing such a trust and giving incorrect advice, which led to Medicaid benefits being denied.

As another example of the issues involved, the Bar committee pointed to nonlawyers providing legal advice about how to structure assets so that people can qualify for Medicaid.

"Assessing the facts relevant to a client's situation, applying those facts to the laws governing Medicaid, developing a plan to structure or spend the client's assets in compliance with those laws, and drafting legal documents to execute the plan, would constitute the practice of law...." the proposal said.

"It is the opinion of the Standing Committee that when a non-lawyer engages in these activities or renders legal advice regarding the implementation of Florida law to obtain Medicaid benefits the non-lawyer is engaged in the unlicensed practice of law."

Under the Florida Constitution, the Supreme Court has the authority to regulate attorneys and prevent the unlicensed practice of law. The Bar investigates allegations and acts as a prosecutor in civil cases involving the unlicensed practice of law, according to information on the organization's website.

## WHY SOUTH DAKOTA HAS BEST DYNASTY TRUST IN NATION

A combination of favorable tax laws, privacy provisions, and the potential for the trust to last indefinitely are among the factors contributing to the popularity of South Dakota trusts.

Why do so many of the Forbes 400 and other wealthy families choose to base their trusts in South Dakota? A combination of favorable tax laws, privacy provisions and the potential for the trust to last indefinitely are among the factors contributing to the rise in trusts domiciled in the Mount Rushmore State. In fact, assets in South Dakota trusts tripled in the past four years and now stand at more than \$120 billion.

A South Dakota trust is a dynasty trust with a twist. Dynasty trusts, or generation-skipping trusts, allow for the transfer of assets from generation to successive generations, while reducing gift and estate taxes, for as long as state laws permit.

South Dakota is one of just 10 states that do not set a limit on the number of years the trust may be in existence. (The others are Idaho, Wisconsin and more recently Delaware, Missouri, New Hampshire, New Jersey, Pennsylvania, Rhode Island, North Carolina, and Alaska.)

A family trust chartered in South Dakota has the potential to last through the lifetimes of generations not yet born. A dynasty trust is typically established by combining a trust with a limited liability company or a family limited partnership.

The trust agreement allows you to designate the amount, timing, and other circumstances under which heirs will receive income, principal, or both. Heirs pay income taxes on the amount they withdraw.

That South Dakota does not have a state income tax is one of the reasons why South Dakota trusts have become so popular. South Dakota offers several advantages compared to the nine other states that allow dynasty trusts with unlimited duration.

No state income tax on non-residents: South Dakota (along with Alaska) assesses no income taxes on residents and non-residents.

Additionally, South Dakota is one of five states that do not tax non-resident grantors and beneficiaries on trust income. Low capital requirements: The assets required to set up the trust are relatively low at \$200,000. This compares to \$500,000 in New Hampshire.

Lowest state premium taxes: Life insurance is among the assets that may fund the trust. State premium tax on life insurance in South Dakota is 0.80%; the remainder range from 0.10% to more than 4.00%.

Strict privacy laws: Of the 10 states with unlimited-duration dynasty trusts, South Dakota is the only one in which court records pertaining to the trusts are not available to the public.

Keep in mind, however, that the company setting up the trust must have a physical address in South Dakota along with a staffed office. Out-of-state grantors and beneficiaries must also pay income taxes in their home states.

A South Dakota trust can be a powerful estate planning and wealth preservation strategy for transferring assets to future generations. But the complexity of South Dakota trusts require qualified tax, legal, and financial expertise to plan and implement, so make sure to work with a trusted professional.

Please contact me for additional information to see if a South Dakota trust makes sense for your situation.

## News You Can Use

### 2015 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	<b>\$2,199.00</b>
Personal Needs Allowance:	<b>\$105.00</b>
Asset Limit (Individual):	<b>\$2,000.00</b>
Asset Limit (Couple):	<b>\$3,000.00</b>
Medicare Part B Premium:	<b>\$104.90</b>
Community Spouse Resource Allowance:	<b>\$119,220.00</b>
Minimum Monthly Maintenance Income Allowance:	<b>\$1,966.25</b>
Maximum Monthly Maintenance Income Allowance:	<b>\$2,980.00</b>