

Attorney Timothy P. Crawford, CPA, CELA\*, CAP\*\*  
wants to share this information with you.

## **ASSET PROTECTION TRUST VS. WILLS WITH TESTAMENTARY SPECIAL NEEDS TRUST**

GREATER MILWAUKEE AREA OFFICES IN BROOKFIELD, GLENDALE, MILWAUKEE, OAK CREEK & RACINE

*Your Asset Protection Law Firm*

840 Lake Avenue, Suite 200  
Racine, WI 53403  
(262) 634-6659

E-mail: [tpc@execpc.com](mailto:tpc@execpc.com)  
Website: [www.TpcLaw.com](http://www.TpcLaw.com)

When you do advance planning to protect your assets from needing to be spent on nursing home care costs, you generally should use an Asset Protection Trust. Ideally you do this a full five years in advance of going into the nursing home to get past the five year lookback, but, even if you don't make the five years you can get some protection along the way. Sometimes our clients don't want to use an Asset Protection Trust because they think either: 1) they will never make the five years before one of them gets sick and needs care, or 2) they don't want to give up any control. Well if an Asset Protection Trust doesn't feel like a good fit, there is another strategy to consider. This alternate strategy is only for married couples.

The alternative strategy for married couples involves using a specially designed Marital Property Agreement and Wills with Testamentary Trusts, generally combined with a Revocable Trust. With this strategy, at the death of the first spouse, certain assets of your choosing will go into the Testamentary Trust for the benefit of the surviving spouse. Whatever goes into the Testamentary Trust is protected from the nursing home and there is no five year lookback issue with this approach! The downside is that if you go into a nursing home you get no protection because you still have control of everything. The other downside is you must go through probate at the death of the first spouse.

Keep in mind many of our clients think they won't make the five year mark but frequently still do, so there is still a general preference to use an Asset Protection Trust when possible. But, if you think there is simply no way you will make the five year lookback period, or if you want to maintain total control of all assets until the first spouse dies, then you may want to consider the Wills with Testamentary Trusts and Marital Property Agreement approach.

There is no right or wrong when considering these two approaches. There is a useful chart which compares these two approaches and their respective costs and benefits.

**COMPARISON CHART FOR  
ASSET PROTECTION TRUST VERSUS WILLS WITH TESTAMENTARY TRUST**

<b><u>PROS &amp; CONS</u></b>	<b><u>ASSET PROTECTION TRUST</u></b>	<b><u>WILLS W/TRUSTS AND MPA</u></b>
<b>CONTROL</b>	Some control: fire and replace trustee, direct investment decisions, live in all real estate, disinherit beneficiaries, right to income.	Total control until the death of first spouse, then it depends based on design.
<b>PROTECTION</b>	Yes, 100% protection after 5 years with some protection along the way.	Not until the first spouse dies. Then up to 100% protection depending on design.
<b>ESTATE RECOVERY</b>	No, the government cannot force payment after your death.	No, the government cannot force payment after your death.
<b>PROBATE</b>	No.	Yes, you must go through probate with this approach.

**Call us at (262) 634-6659 to learn more.**

**“Those Who Plan Ahead Win.  
Those Who Don’t Plan Ahead Lose.”**

This article is for informational purpose only and is not intended as legal advice. It is recommended that you call Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Crawford can be reached at 1-262-634-6659. Please refer to this article when you call.

\*Attorney Timothy P. Crawford is a Nationally Board Certified Elder Law Attorney (**CELA**). He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

\*\*Timothy P. Crawford was invited to join the Council of Advanced Practitioners (**CAP**) of the National Academy of Elder Law Attorneys (**NAELA**) in August of 2005. **CAP** is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated by Martindale Hubbell, a service that provides an independent rating of the quality of attorneys, as one of the top attorneys in the nation.

Attorney Timothy P. Crawford has been selected as a **Fellow** of NAELA. **Fellow** is the highest honor bestowed by the Academy. Selection as a **Fellow** signifies that his peers recognize the lawyer as a model for others and as an exceptional lawyer and leader.

Attorney Timothy P. Crawford has a superb rating of 10 out of 10 with A V V O.

A V V O has awarded to Attorney Timothy P. Crawford the A V V O Client's Choice Award.

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