

**Hudson Valley Estate
Planning Council**
**The \$5M Exemption: What's
an Estate Planner to do ?**
**Bernard A. Krooks, JD, CPA,
LL.M, CELA, AEP**
Littman Krooks LLP
www.littmankrooks.com

ESTATE PLANNING

- Non-tax reasons
- Asset protection
- Elder law
- Special needs planning
- NYS tax planning
- Same sex partners

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**FINANCING LONG-TERM
CARE**

Medicare **Medicaid**

Private Pay **Long-Term
Care
Insurance**

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MEDICARE

Federal program
Administered by CMS
Short-term rehabilitation
Prior hospital stay required
Deductibles and co-pays
Does not cover custodial care

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MEDICAID PLANNING

Crisis planning
Non-crisis planning
Exempt assets
Exempt transfers

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2011 RESOURCE AND INCOME LEVELS

Single Individual \$13,800
CSRA Maximum \$109,560
Single Individual \$767
MMMNA \$2,739

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2011 REGIONAL RATES

Central	\$7,688
Long Island	\$11,445
New York City	\$10,579
Northeastern	\$8,323
Northern Metropolitan	\$10,105
Rochester	\$8,942
Western	\$7,863

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PENALTY PERIOD

Below Medicaid resource amount
In a nursing home
Approved application but for penalty period

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MARRIED PERSONS

- Community spouse allowance
- Nursing home
 - Home care
- Legally responsible relative
- Right of election
 - Divorce

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ASSET TRANSFERS

Rules apply to income and assets

Individual and spouse

Disclaimers

Jointly held assets

Home care

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PROMISSORY NOTE

Crisis planning only

Gifted share

Loaned share

- Not an available resource
 - No secondary market
 - Non-negotiable, non-assignable, non-transferrable
- Not a transfer

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PROMISSORY NOTE

DRA compliant

- Actuarially sound
- Equal payments during term
- No deferred or balloon payments
- Not self-canceling on death of lender

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PROMISSORY NOTE

- Interest rate
AFR
- Term of note
- Payment stream
Lower than private pay rate

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EXEMPT TRANSFERS

- Transfer of residence to qualified persons
Not for purpose of applying for Medicaid
- Transfer to child with disabilities
- Sole benefit trust
- Transfer between spouses

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RETIREMENT ACCOUNTS

- Pay-out status
- Age of Medicaid applicant
- IRS v. Medicaid tables
- Roth IRAs

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RESIDENCE

Intent to return home

Qualified individual living in residence

\$758,000 cap

- Spouse
- Child under 21, blind or disabled

Medicaid lien

Estate recovery

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LIFE ESTATE

• Protect family home

• Tax issues

• Basis step up

• Medicaid issues

• Estate recovery

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MEDICAID TRUST

Revocable trust – entire corpus is counted as an available resource of the individual

Irrevocable trust – the portion of the corpus that could be paid to or for the benefit of the individual is treated as a resource available to the individual

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MEDICAID TRUST

- Irrevocable
- Income-only trust
- Limited power of appointment
- Sprinkling provision
- Grantor trust
 - Income
 - Principal

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MEDICAID TRUST

- Preferable to outright gift/life estate
 - Tax benefits
 - Creditor protection
- Drafting issues
 - Power to terminate/trustee discretion
- Estate recovery

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FIRST PARTY SNT

- ▶ Established by the individual's parent, grandparent, legal guardian or court
- ▶ Created with the assets or income of the individual with disabilities when under age 65
 - Inheritance
 - PI lawsuit
 - Matrimonial action

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FIRST PARTY SNT

- Disregarded as available income and resource
- ▶ No SSI or Medicaid penalty period
- ▶ Contributions after age 65 are subject to transfer penalty provisions

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FIRST PARTY SNT

Protects resources without sacrificing government benefits

Irrevocable trust

Individual with disabilities must be sole beneficiary of trust during his lifetime

Payback provision

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POOLED TRUST



Created and managed by non-profit association

Separate accounts

May be established by the individual

No age limit

Modified payback provision

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SUPPLEMENTAL NEEDS TRUST

No payback requirement

No age limit

Third-party SNT

- Testamentary trust

- Inter-vivos trust

Revocable v. irrevocable



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LTC INSURANCE

- Premium increases up to 40%
On top of up to 18% increases in 2008

- Pay higher premiums or reduce benefits

- No lifetime benefit

- Stop writing new policies

- Suspend sales to employers

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LTC INSURANCE

- Policies originally priced too low
 - Policy lapses
 - Duration of care
 - Interest rates
 - Cost of health care

- Sales fell 24% in 2009

- Up 11% in 2010

- 7 million policies in force

- Less than 5% of possible market

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LTC INSURANCE

Select stable insurer

- Ratings
- Financial condition
- Record of premium increases

Work with reputable agent

Review new products

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DEDUCTIBILITY OF LTCI PREMIUMS

Age 40 or less	\$340
Over 40-50	\$640
Over 50-60	\$1,270
Over 60-70	\$3,390
Over age 70	\$4,240
20% NYS tax credit	



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TAX TREATMENT OF BENEFITS

Benefits received under a qualified LTC policy are not considered taxable income

Tax-free cap of \$300/day applies to indemnity policies



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NYS Tax Issues

- \$1M exemption
- No portability

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Marriage Equality Act

- DOMA
 - Social Security survivor benefits
- ERISA
- Family leave
- Joint tax returns

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NYS Tax Issues

- Personal income tax
- Estate tax
 - QTIP
 - Joint property

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THANK YOU!

**Bernard A. Krooks, JD, CPA,
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