

Reprinted Article Published by
the Olean Times Herald, Olean, NY on 5/31/2011

How to Protect Your Assets -- What you have worked for all your life.

By: Teddar S. Brooks, Esq. Brooks & Brooks, LLP
207 Court Street, Little Valley, New York 14755 (Tel. 716-938-9133)

We are frequently asked, “**How can I protect my house or investments?**” This question usually comes from one of the following threats or concerns:

1. The Medicaid spend down requirements, which could impoverish the spouse or family;
2. Huge claims for medical services;
3. Contingent creditor claims (such as from an automobile accident); or
4. The unfortunate consequences of a high risk business or profession (e.g. surgeon , contractor, etc.).

One of the best answers to the above threats or concerns to your family assets is the **Family Safe Trust** – commonly known as an asset protection trust.

How does the Family Safe Trust work? Here are the answers:

You, as the grantor, by a trust agreement create a legal trust with special provisions and powers (i.e. the Family Safe Trust) and appoint a trustee (normally one or more members of the family) to manage and administer the trust in accordance with the directions you create and establish in your trust agreement. The grantor of the trust may be two persons, i.e. husband and wife; and the trustee may be two or more persons, i.e. two or more of the children or trusted close friend.

Then, you, as grantor, transfer to the Family Safe Trust specific assets (typically, the family residence or rental real property, insurance policies or other investments), which thereafter are administered by the trustee, again under the specific terms of the trust agreement you have established.

The income from the Family Safe Trust is distributed according to your wishes, as specified in the trust agreement. In certain types of trusts (e.g. Medicaid Safe Trusts) you, as grantor, may reserve all of the income to yourself.

The principal of the trust (i.e. the trust assets) usually will stay in the trust and be distributed to the ultimate beneficiary of the trust (e.g. the children and/or

charity(ies)) at specified ages or upon the occurrence of a specific event (e.g. death of the grantor or surviving spouse). You also may include within the provisions of the trust agreement authorization for early distributions of principal to the ultimate beneficiary for specific reasons (e.g. education costs, special needs, etc.).

This Family Safe Trust has **numerous income, gift and estate tax advantages**, just a few of which may include:

You as the grantor of the trust (who may receive the income) are taxed on the income, which saves the trust from paying any tax – often the grantor is in a lower tax bracket than the trust would be, and therefore the tax, if any, is paid at a lower rate.

If the family residence is transferred to the trust and then sold, the trust and grantor (you) will receive the exemption from income tax for the sale of the personal residence; and, the proceeds can be reinvested into another residence for you as grantor (e.g. down sizing the personal residence), or be invested in other assets depending upon the grantor's (your) requirements.

Upon the death of the surviving grantor, the ultimate beneficiary(ies), e.g. the children, often will receive a “stepped-up” cost basis in the assets - this will minimize taxes for the ultimate beneficiary(ies).

The Family Safe Trust is most frequently structured to avoid any gift or income taxes otherwise due when setting up the trust.

For families from modest to high net worth, a Family Safe Trust provides great protection and flexibility. Each family situation is unique and therefore we always recommend a complete estate plan for every person or family. No person's estate is too small or too big to preserve and protect.