

**BROOKS  
&  
BROOKS, LLP**



## POTENTIAL CHANGE IN THE VETERAN'S ADMINISTRATION LAW

**BACKGROUND:** Many senior military veterans, and their surviving spouses, qualify for a unique VA benefit called "Aid and Attendance" Pension. This is not a "pension" for service in the military for 20 years, or so. It is a special pension afforded to needy veterans, or their surviving spouses.

This benefit is intended to help a veteran with the cost of personal care needs, "Aid and Attendance," whether at home, at an assisted living facility or skilled nursing facility, with the biggest benefit applying to home or assisted living care. It is an extra benefit that VA makes to the veteran to assist with elder care.

To qualify, among other things, the veteran must have income less than approximately \$15,000/year and other assets of less than \$80,000. To qualify on the income side is not too difficult, since the VA reduces the veteran's income by the cost of his or her care. An example would be a qualifying veteran that has \$30,000 of income, which is offset by payments to an assisted living facility of \$30,000; thus the net qualifying income in this case is zero. The harder hurdle is having less than \$80,000 of assets. The good news is that currently veterans can adopt an asset protection trust and transfer the excess assets to it and qualify for the VA benefit one month later. This is a good strategy to assist a veteran in qualifying for the Aid and Attendance pension.

**THE PROBLEM:** Senator Ron Wyden has introduced a bill in the US Senate, which if passed, would require the Secretary of Veterans Affairs to impose a 36 month "look back" rule for uncompensated transfers made by the veteran, the veteran's spouse or surviving spouse. The Bill reportedly has five cosponsors and bipartisan support. If enacted into law, it would become effective one year after its passage.

**EFFECT:** Veterans or their surviving spouses who are proactive now and take advantage of creating and implementing an asset protection trust before this new law is passed will be exempt from its provisions, and thus save and protect more of their assets from being lost to long-term care costs.

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### Free Workshops

August 20, 2013

Holiday Valley, Ellicottville  
with Manning & Napier  
6:30 to 8:30 p.m.

August 29, 2013

Gowanda Community Place  
with Andersen Cuddihy, Inc  
6:30 to 8:30 p.m.

September 17, 2013

White Inn, Fredonia  
with Summit Wealth  
Management  
6:30 to 8:30 p.m.

### Another Compelling Reason to Use Trusts for Medicaid Planning

A recent Supreme Court, Appellate Division, case gives us a good indication as to what happens when asset protection planning conflicts with estate planning. In the case of *Matter of Rokeach N.Y. Sup. Ct., App. Div., 2nd Dept., Dec. 19, 2012*, the court ruled that an executor of the estate of a woman who transferred her assets in order to qualify for Medicaid cannot recover those assets to pass them through the estate.

Ms. Rokeach transferred various kinds of assets to different people between 1996 and 2000. The executor had argued that the property has been sold in violation of a written agreement executed in 1986 and that Ms. Rokeach had deeded her property with an “understanding” that the assets would be held as a trust fund for her, so that she could qualify for Medicaid benefits.

The trial court held against the executor and the Supreme Court, Appellate Division, affirms the decision. The Court ruled that the executor could not recover the property, as the evidence showed that the transfers, when made, were gifts and Ms. Rokeach did not have any interest in the property at the time of her death.

This appears to be a case where the people that benefitted by the gifts in order to qualify for Medicaid were not the same people identified in the Will as beneficiaries. If Ms. Rokeach had instead adopted an asset protection trust and funded the trust with those same assets, she would have achieved her goal of qualifying for Medicaid **and** preserved her ability to pass those assets on to intended beneficiaries. Additionally, she could have reserved the right under the terms of the trust to change beneficiaries during her lifetime if she chose to.

Gifts of property away sounds like the simple and easy thing to do; however, it can create more problems for both the donor and donee.

Consider the following:

- What control over the property does the donor have after the gift?
- What if the donee has children going to college, he or she will have to declare the donated property as a family asset, which will likely reduce available financial aid!
- What if the donee has a creditor issue - his or her creditor will be able to take the donated property!
- What if the donee predeceased the donor. What happens to the property then?

A well designed trust can alleviate these problems by protect the property better and provide more indirect control over the property for the donor.

### Keeping an Eye on Proposed Legislation

We should all be aware that last year a bill was introduced in the House of Representatives which called for studying the impact of extending the Medicaid “Look Back” Period to **10 years** and reducing the home equity exemption to \$50,000. The bill did not get far into the legislative process last year, but to us it is an indication of a growing sentiment in Congress to put further road blocks in the way of asset protection planning.

We bring you this information to reiterate the fact that if asset protection planning is important to protect hard earned family wealth from the devastating effect of long-term nursing home care, then take action now while the rules are still favorable and time is on your side. As we have said to many clients about asset protection planning, “...your situation does not improve with age.”