



## LIVING TRUSTS FOR EVERYONE?

*Can you Trust a Trust?*

Harry Mann and his wife Ineda Mann, were enjoying a nice, quiet afternoon at home together, when the mailman came. As Harry was flipping through the envelopes and advertisements, separating the “trash” from the things he actually wanted to open, something caught his attention. It was a flier inviting them to a free estate planning/asset protection seminar. This was a topic that they were fairly curious about, being that they were in their late 60's. So they attended the seminar and ended up hiring Justin Case, the attorney that held the seminar, to do their estate planning.

Harry had begun noticing some slight changes in Ineda's behavior - little things here and there, forgetting words and names of people, and familiar places suddenly being strangely unfamiliar to her. It was beginning to worry him a bit, not to the point of considering some assisted home care for her, but enough to start thinking ahead for the future.

As they were visiting with Attorney Case about their estate planning needs, they expressed to him their concerns about nursing home costs eating up all of their assets, particularly if one of them died before the other. Harry's father had died of a heart attack in his late 50's, so it was somewhat of a lurking fear in the back of both of their minds, and this fear was gradually growing as the years passed.

Attorney Case assured them that their new estate plan would protect them, no matter what the future held. He drafted The Mann Family Revocable Trust which contained a Special Needs Trust for the surviving spouse after the death of the first spouse. It sounded like a wonderful plan! They felt safe and secure, assured knowing that everything was in order.

Well, Harry and Ineda were able to spend a few more happy years together. What had been one of their worst fears became a harsh reality. Harry passed away suddenly, of a heart attack. Ineda was devastated, but continued on her own, taking it one day at a time, with the help of her three children.

Her forgetfulness increased to the point that her oldest son became very concerned and had her evaluated at the hospital. The children did not want to have to deal with any worse news, but we don't get to choose the cards that life deals us. Mom was diagnosed with Alzheimer's. The children took turns checking on Mom every day, and finally when she needed more care than they were able to provide her, they had to move her into a nursing home. At least, after all of this, they were certain they wouldn't have to deal with the costs of Mom's care, since Mom and Dad had planned ahead for the future.

The three children applied for Medicaid, claiming that the Special Needs Trust under the Mann Family Trust was exempt. However, their application was DENIED! The caseworker said the Special Needs Trust was not exempt. We can imagine the overwhelming flood of emotions that came over them: anger, confusion, frustration, anxiety over the Medicaid denial, and the sadness of watching Mom slowly deteriorate. (This was an all-too-familiar feeling.) Well, they did what they thought they had to do: they paid mom's monthly nursing home and prescription bill of \$3,300 a month, rapidly depleting their parents assets that were left.

What went wrong? Federal law requires that a Special Needs Trust for a spouse be “testamentary” which means it must be established by a Will. Even that might not work. Here, the Special Needs Trust was established by a Trust. The estate planning attorney had done his best to provide them with what they needed. However, his limited knowledge of the changes in Medicaid law was quite costly for the Mann's.

We can all learn from Harry and Ineda and seek out the advice of an expert in the field of Elder Law when Medicaid could be a possibility in the future.

### **WORDS OF WISDOM:**

*A friend is someone who's there when he needs you.*

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