

INTERVIEW TRANSCRIPT WITH IRINA YADGAROVA ON 620 AM; 6/3/2016

As we are not yet acquainted, Mrs. Yadgarova, please tell us about yourself and your legal background.

I graduated from Cardozo Law School in 2008. I began my legal career as a wealth management attorney for a Swiss Bank – “UBS Wealth Management”, and worked there for two years. In 2010, I began building my own practice focusing primarily on Estate Planning and Elder Law. I think my passion to begin my own practice stems from the enjoyment I get from learning about my clients and personally helping them – face to face –as opposed to representing a faceless institution.

How do you distinguish yourself from other estate or elder lawyers?

I am extremely detail oriented and committed to my work – these characteristics translate to my clients getting a superior quality work product that I am wholly overseeing. There are far too many attorneys out there who will meet the client once, get them to sign a retainer and never speak with them again. The client is then stuck speaking to a secretary or having to pay supplemental fees. Furthermore, I have dedicated my career to focusing on this specific niche of wealth management/estate planning and elder law (the two are very interrelated). Unfortunately, there are a lot of lawyers out there, who look at estate planning as a means to supplement their general practice. Because this area of the law is so nuanced and complex, you absolutely need and deserve a lawyer who has a specialized focus in this area. I will be giving a brief overview of Medicaid Planning today but for those listeners interested in either more detail or learning about Asset Protection, Wills, Powers of Attorney or Estate Taxes, call my office today at 347-699-5529.

Asset protection and Medicaid planning are popular techniques elder lawyers implement for those nearing retirement or in need of Medicaid. Can you explain the process and what it entails?

Let me start by clearing up a major misconception – Medicaid is NOT only for those who are underprivileged or poor. Because long term care (including home care and nursing home care) are so expensive, the law recognizes ways for wealthier individuals to obtain Medicaid as long as they are over the age of 65 or retired. Of course, the “Medicaid planning” as we call it, must be done with an attorney experienced in this field. Generally speaking the process entails transferring assets, most commonly via use of trusts in order to shelter the assets from potential creditors like Medicaid as well as in order to obtain eligibility for this government health insurance. For those in immediate need of health care or a home health aide, we also make sure the client retains all of their income –even if they are earning thousands monthly—and still maintains Medicaid eligibility.

If someone has a home or owns a coop or has multiple properties wouldn't that disqualify an individual from Medicaid?

Owning a home or even multiple properties will not disqualify you from Medicaid so long as you are working with a knowledgeable attorney to help qualify you for Medicaid. If you own one home or coop, you will be eligible for Medicaid so long as it's your primary residence and the market price for the property is worth no more than about \$828,000. However, and this is a very important point to keep in mind, even though eligibility is not an issue with one personal residence, there is “Medicaid estate recovery” meaning Medicaid will recover against the home after the Medicaid recipient passes away or

can place a “Medicaid lien” meaning if the person needs to go into a nursing home permanently, Medicaid will have a claim for potentially the entire value of the property. All of these Medicaid claims can be entirely avoided by setting up a Medicaid Asset Protection Trust. The trust will ensure security against creditors like Medicaid and preserve all tax breaks and advantages (such as the STAR exemption in New York entitling seniors to discounts on real property taxes). Another major advantage of the Trust is that if you own more than one parcel of real property or a significant amount of assets, they can all be transferred into this Trust and enable you to receive Medicaid.

If I transfer a home or multiple properties to the trust, how does the Trust actually function and can you explain more about the tax consequences, if any?

The Trust becomes the new legal owner of the property and is irrevocable. However, you (and your spouse if you are married) will have an absolute and unalienable right to live in the home until the last one of you passes away. You will have the right to all income from the property (for example, if you have tenants). And you can continue to pay for all associated expenses such as a mortgage, maintenance fees, or repairs. The IRS will ignore this trust for income tax purposes so your income tax returns will not be affected. You will need to appoint someone you trust and have a good relationship with, like an adult child to serve as a Trustee (you can have more than one Trustee). The Trustee’s function is to administer the Trust property – meaning they will be the ones to sign a contract of sale if and when the house or other Trust property is liquidated. The money from the sale of the home can be used to purchase another property (in any location, even outside the US) or purchase any investment or simply placed into a bank account, but must continue to follow the Trust terms. It’s crucial to keep in mind that the money from a sale of trust property cannot be used to support you, but it can be used to help your children or other beneficiaries if they need help with their health, education, maintenance or support.

The last major component of the Trust is that you get to choose the beneficiaries who will inherit the Trust property when you pass away. These are typically family members like your children or siblings. If the Trust is properly drafted by an attorney who understands the relevant provisions of the US Tax Code, those inheriting the property will not pay any capital gains taxes on the sale of the property after your death. We frequently receive calls from clients who wish to simply retitle their properties in the names of their children instead of forming a trust—for most of them, this would be a tremendous mistake due to disastrous tax consequences as well as exposing the assets to the risk of creditors (including your children’s spouses). Consequently, there are major disadvantages to transferring a home or other property to your children during your lifetime directly and is a major reason that you should form a Trust instead. To learn more about the consequences of transferring appreciated assets, call our office today at 347-699-5529.

But if the underlying principal or asset of the Trust property is locked away in Trust, how will someone who wants Medicaid support themselves financially?

As we already explained, the Trust in most instances is created in a way that permits you as the transferor of the property to use all income generated from the trust property. The only real limitation is

that once your home is transferred to an Asset Protection Trust, you cannot use the sales proceeds to live off. Fortunately, very few people actually have this need and so forming these Trusts is very prevalent. Furthermore, I want to clarify that the income a person receives –whether from Social Security, Retirement, Pension, Disability, or from any other source, is never placed into an Asset Protection Trust. You are entitled to all income, even if it exceeds Medicaid limits, and will become eligible for Medicaid if you are elderly or disabled.

The means to ensuring Medicaid eligibility for those who earn more than the Medicaid threshold—there is no ceiling by the way, for how much you can be earning—is by use of an entirely different Trust—namely, a Pooled Income Trust. This type of Trust is very different from the Asset Protection Trust we have been discussing. Generally speaking, a Pooled Income Trust functions by means of a Trust company ensuring that your income is spent on anything for your benefit. You are able to purchase food, clothing, pay for rent or maintenance, pay for a vacation, utilities, jewelry and really anything you may want so long as the purchase is for you and not a gift. A Pooled income trust would entitle you to stop paying for Medicare (not Medicaid) premiums as well.

Most of this planning should be done prior to applying for Medicaid. If you are already receiving Medicaid but have a home or coop in your name, please call my office and take immediate action to protect your property. Likewise, if you are paying what's called a "spenddown" for Medicaid, or are paying Medicare premiums but have Medicaid, be sure to call my office to avoid paying these costs.

Needless to say, Asset Protection and Medicaid Planning are very complex. I have greatly enjoyed helping my clients preserve their assets and achieve peace of mind. Call my office today and receive a detailed consultation: 347-699-5529; 347-699-5529.