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wanted to share this information with you.

**WISCONSIN HAS IMPLEMENTED THE NEW FEDERAL RULES  
EFFECTIVE JANUARY 1, 2009**

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In the past I have recommended the “Right To Change Your Mind Agreement™” to protect your home. However, now that Wisconsin has changed its laws and has adopted the new Federal Law, there is another solution called the “A PIT Trust™”. Effective January 1, 2009, Wisconsin implemented the new Federal Rules.

**3 YEAR VS. 5 YEAR RULE**

Under prior law, outright gifts only needed to be reported if they occurred within 3 years of applying for benefits. Under prior law, a gift to an irrevocable trust needed to be reported if the transfer to the irrevocable trust took place within 5 years of applying for benefits. Under the new Federal law, which has been implemented in Wisconsin effective January 1, 2009, even outright gifts have the same 5 year rule.

This has taken away a major advantage to using outright gifts vs. transfers to an irrevocable trust. Another way of saying this, is that it has put transfers to an irrevocable trust to protect your assets on equal footing with outright gifts to your children.

**WHAT SHOULD I DO?**

When you are doing planning, you now must consider the use of an irrevocable trust to protect your assets as Wisconsin has made the outright gift to your children of your financial assets less attractive.

The following is an explanation of how the A PIT Trust™ differs from your estate planning Revocable Trust.

1. The A PIT Trust™ is Irrevocable. Your normal estate planning trust to avoid probate or avoid death taxes is not an irrevocable trust and thus, does not give your assets any protection.
  - a. The Irrevocable Trust is just that. It is irrevocable. Therefore, great care needs to be taken in drafting the irrevocable trust to give you as much flexibility as possible. To give you this flexibility, this trust needs some very special features designed into it. These would include a “TRUST ADVISOR”. This is a person who could change certain portions of the trust despite the fact that the trust is irrevocable. This will allow changes to be made to the trust by the Trust Advisor to keep the trust in compliance with future changes in asset protection laws.
  - b. You could not be the Trustee. The Trustee would generally be one of your children.
  - c. You would not have any rights to principal, thus, you can not be forced to spend the money in the A PIT Trust™ on your nursing home care costs.
  - d. You could have the right to the income. Then, nobody could stop you from getting the income. Thus, you have some built in protection as opposed to an outright gift to your children where your children could refuse to give you the income from the gifts you have made to them. However, you probably don't want to retain this right to income or you will be forced to spend this income on your nursing home care.
2. The trust would be designed with a “TRAP DOOR”. This is a special feature unique to an A PIT Trust™ which would allow your children to withdraw the assets from the trust while you are alive. This is an absolutely necessary provision to make sure that you can get access to your principal if you need it. You may need it to have the children give you some of your money back if you go to the nursing home too soon, (within 5 years).
  - a. You may need money back to help you pay for assisted living as the cost of assisted living may exceed your monthly income.
  - b. You may need it back to spend while you are living in your own home because the monthly income that you are receiving is not enough to live on.
  - c. You can see how important this “TRAP DOOR” feature is to you and thus must be included in the design of your trust.

- d. However, just like with outright gifts, the “TRAP DOOR” feature could be abused by your child by your child withdrawing money from the trust and not giving it to you. There can be no legal requirement that the withdrawal of money from the trust by the children must be spent on you.

## **WHO WILL GET MY MONEY WHEN I DIE?**

Your **ASSET PROTECTION IRREVOCABLE TRUST** (A PIT) will have a feature in it that will say who gets your money when you die. This is the same as any other trust that we would do for you as part of normal estate planning. However, in your **ASSET PROTECTION IRREVOCABLE TRUST**, this trust will contain a Special Power of Appointment. You will have the right to change your mind as to who will get your money. For example, if you originally said my three children are going to inherit the assets of the trust at the time of my death, but subsequently you decided that you did not want your third child to inherit anything, you would be able to exercise your Special Power of Appointment (right to change your mind), and put a document together that would provide that at your death your assets would go to your two children. This is just an example. You would have full rights in deciding who you would want to have receive your assets that are inside your **ASSET PROTECTION IRREVOCABLE TRUST** at the time of your death. This is a major advantage to you in that it gives you the maximum flexibility of deciding who would get your assets at the time of your death.

## **WHAT ABOUT TAXES?**

Special care has been taken in designing the “A PIT Trust™” so that it will be treated as a “GRANTOR TRUST” under the tax laws. It is very important that your trust be designed so that it is a Grantor Trust under the tax law. A Grantor Trust gets you very favorable treatment under the tax law. This special treatment allows you to transfer your stocks into your A PIT Trust™ without the need to cash out your stocks and pay capital gains taxes. As you know, gifting away cash to your children has the problem of requiring you to pay capital gains taxes at the time of sale of your stock, or other appreciated assets. The advantage of the A PIT Trust™ rules is that your children do not pay any tax on income earned by the trust. All of the income from the assets you have transferred to the trust will continue to be reported on your personal tax return. There is no need to file a tax return for the A PIT Trust™. The trust tax identification number is your personal social security number. This means that the A PIT Trust™ has no need to obtain a tax identification number or file a tax return.

## WHAT ABOUT MY HOME?

Your **ASSET PROTECTION IRREVOCABLE TRUST** (A PIT Trust™) can be a way to protect your home from being sold to pay for nursing home care costs. Once your **ASSET PROTECTION IRREVOCABLE TRUST** (A PIT Trust™) has been created, we can transfer your home into the trust and have all of the advantages we had before with the stand alone Right To Change Your Mind Agreement™ package plus additional advantages.

1. By transferring 100% of your home into your **ASSET PROTECTION IRREVOCABLE TRUST** (A PIT Trust™) we will have 100% of your home protected.
2. If you decide to sell your home, it can be sold and still be eligible to be sold tax free. Neither you nor your children will have a tax problem when you sell your home. In addition, when you sell your home, your **ASSET PROTECTION IRREVOCABLE TRUST** (A PIT Trust™) will receive 100% of the proceeds. Thus, 100% of the proceeds stay protected so that they do not need to be spent on nursing home care costs.
3. If you want to buy a new home, you simply have your **ASSET PROTECTION IRREVOCABLE TRUST** (A PIT Trust™) purchase your new home. This new home can be sold tax free, as well as the next one, and the next one, and the next one. All the time you are buying and selling homes, you do not have any significant additional costs in selling or in protecting the next home.

## ADVANTAGES FOR YOUR CHILDREN

Assets held inside your **ASSET PROTECTION IRREVOCABLE TRUST** (A PIT Trust™) should not be subject to the claims of your children's creditors.

1. Thus, if a child needs to file bankruptcy, the child's creditors should not be able to reach the assets inside the Trust.
2. Thus, if your child is getting a divorce, the child's spouse should not be able to reach the assets inside the **ASSET PROTECTION IRREVOCABLE TRUST** (A PIT Trust™).
3. Thus, if a child dies, your document will control who gets it next, which generally would be your child's children, not your child's spouse.
4. Your child will have no tax consequences.

**“Those Who Plan Ahead Win.  
Those Who Don’t Plan Ahead Lose.”**

This article is not intended as legal advice. It is basic information. I would recommend that you call Attorney Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Timothy P. Crawford can be reached toll-free at 1-888-634-6675. When you call in, please mention the fact that you have read this article. Attorney Timothy P. Crawford is a Board Certified Elder Attorney. He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association. Timothy P. Crawford was invited to join the Council of Advanced Practitioners of the \*National Academy of Elder Law Attorneys (NAELA) in August of 2005. The \*\*Council of Advanced Practitioners (CAP) is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated by Martindale Hubbell.

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**“Helping Families in Wisconsin for Over 30 Years to Protect Their  
Assets from Nursing Home Care Costs”**

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