

**At The Odum Law Firm, we provide the residents of Dothan, AI and surrounding area with high-quality legal representation. We offer services in Accidents & Injury, Family Law, Divorce Law, Criminal Law, Wills and Estate planning. We are ready and willing to assist you with all your legal needs. At The Odum Law Firm, the emphasis is on qualified, experienced legal representation.**

**The law office of William H. Odum, Jr. Attorney at Law, provides clients with an honest evaluation of their cases and representation of their claims. We offer after hour and weekend appointments; free consultation for all clients. Contact us today.**

**[www.theodumfirm.com](http://www.theodumfirm.com)**



***Frequently Asked  
Questions of  
Estate Planning***

by  
William H. Odum, Jr.  
Attorney at Law  
  
Dothan, Alabama

This brochure prepared by:

William H. Odum, Jr., LLC  
William H. Odum, Jr.  
Attorney at Law  
110 North Bell Street  
Dothan, Alabama 36303  
(334) 699-6841

Alabama State Bar rules require the following on attorney advertisements: "No representation is made that the quality of legal services to be performed is greater than the legal services to be performed by other lawyers."

## Frequently Asked Questions of Estate Planning

### **What is the “Lookback Period”?**

Medicaid looks back 60 months from the date of a Medicaid application to determine whether you have made any gifts. The lookback period is only an audit period during which time Medicaid has the right to review all of the financial records of the applicant (and the spouse of the applicant, if applicable).

### **Am I Ineligible For Medicaid If I Have Transferred Assets Within The Lookback Period?**

Whether a period of ineligibility applies depends on the amount and date of the gift, the identity of the recipient, and the type of Medicaid benefit you seek.

Transfers to spouses and disabled children are not subject to a penalty and additional exceptions may apply if the applicant transferred his or her residence. The transfer penalty is only for nursing home care and the LTHHC (“Long Term Home Health Care”) Program. The transfer penalty can be shorter or longer than 60 months. There is no transfer penalty for Medicaid home care.

### **Are Gifts Under \$12,000 Excluded from the Medicaid Transfer Penalty?**

A gift of under \$12,000 is subject to the Medicaid transfer penalty rules for nursing home care and the Long Term Home Health Care program even though the gift is excluded for federal gift tax purposes.

### **Do Gifts in Excess of \$12,000 Require a Gift Tax Payment?**

Gifts in excess of \$12,000 are subject to Federal gift tax, but the amount of the gift will be offset by the \$1,000,000 Federal gift tax exclusion. Therefore, no gift tax is actually due unless the donor’s total lifetime gifts exceed \$1,000,000.

### **Are Life Insurance Proceeds Tax Free?**

Generally, the receipts of life insurance proceeds are income tax free but not estate tax free. Proper planning can be undertaken, however, so that life insurance proceeds are also estate tax free. For example, an Irrevocable Insurance Trust can be utilized.

### **Should I have a Durable Power of Attorney?**

It is advisable to have a Durable Power of Attorney if you have at least one person whom you trust implicitly who is also willing to manage your financial affairs in the event you become incapacitated. If you become incapacitated and you have not executed a proper Durable Power of Attorney, a costly guardianship proceeding would likely be necessary to obtain authority from the court to manage your affairs.

### **Do Revocable Trusts Avoid Estate Taxes?**

A Revocable Trust does not avoid estate taxes although it may avoid the probate process. The Trust assets will be part of the grantor’s estate for estate tax purposes. However, married couples can save estate taxes by having

Revocable Trusts which contain a Credit Shelter Trust (also known as a By-Pass Trust.)

### **Can Revocable Trusts Protect Assets from Medicaid?**

A Revocable Trust does not protect assets from Medicaid and the nursing home. The Trust assets are considered available for the purpose of determining Medicaid eligibility. Creditors such as a nursing home can also make a claim against the Trust assets. Only a properly drafted Irrevocable Trust will protect the assets from Medicaid and the nursing home.

### **Is Estate Planning Necessary For Individuals With Under \$1,000,000 In Assets?**

Everyone should implement estate and long term care planning to protect one’s assets and to preserve one’s dignity. A Durable Power of Attorney with Health Care Proxy and Living Will can ensure ongoing decision making in the event of a disability. Wills and Trusts can ensure a proper disposition of your assets at the time of your death. Long Term Care Planning can protect your assets from Medicaid and the nursing home. There are also Federal and State income tax issues which affect people with under \$1,000,000 that should be addressed (for example, IRA distributions, basis rules, and capital gains on the sale of a residence).