

Deason Law Firm  
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## Choose Wisely: Burial Trust or Burial Plan?

At some point in life, you may ask yourself, "If I were to die today, what have I done to plan for my funeral?" In many cases, the answer to this question remains to be answered after you die.

Most qualified estate planning attorneys would agree that funeral planning for both you and your family should be a top concern. And, as a second, but no less important issue, is that by utilizing proper funeral planning, you can prospectively take steps that may help you qualify for government entitlement programs like Medicaid and Arizona Long Term Care Services. To this extent, two of the most popular, but relatively unheard of steps people will take when planning for Medicaid, is to use a Burial Trust or a Burial Plan.

### Burial Trusts and Burial Plans

Under 42 U.S.C.A. §1382(b)(2)(B), the value of burial spaces (the place where you might eventually be buried) for an individual and his or her spouse and immediate family members is generally excluded from being a countable resource for Medicaid. This means that if you purchase a crypt, vault, or headstone and space for you and your immediate family members, the value of those items will be excluded from Medicaid's financial eligibility determination. And, in most instances, funds that are set aside for burial will also be excluded albeit there is an SSI (supplemental security income) limitation for this type of burial fund. Now, in addition to this basic SSI rule, you must realize that the amount of the burial fund exclusion will absolutely be reduced by the "face value" of burial insurance if the insurance has a cash value. Arizona and Arizona Long Term Care Services applies this reduction rule. But, excluded burial funds (revocable burial contracts, irrevocable burial trusts, and any other separately identifiable fund clearly designated as having been set aside for burial expenses) will absolutely need to be kept separate from other assets not set aside for burial. 20 C.F.R. § 416.1231(b)(1), (3).

### Arizona Policy

In conjunction with federal law, some (ALTCS) Arizona Long Term Care Services Policy, §706.08, provides in part that burial funds must be clearly designated for burial expenses and be kept separate from all non-burial related expenses. So, a life insurance policy that is used to fund a burial plan may also be considered a burial fund, as long as it does not have a cash value and is, therefore, a term life policy, and, if the policy is declaratively designated as a burial fund, assigned to fund a pre-need burial contract, or if a funeral provider has been irrevocably named as the beneficiary. In instances, however, where one might consider purchasing a burial plan, it is best to determine whether such plan is irrevocable, and that the funds are only to be used for burial.

Since there are many rules that apply to using a Burial Trust or Burial Plan, you should always use due diligence and take considerable time to consult with a trusted advisor who can assist you in reviewing your particular concerns and issues.

**If you are interested in scheduling an appointment with Robert Michael Way, Esq., to discuss these or other issues, then please call Mary at 783-4575.**

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## Recent News of Bank Failures Gives Rise in Concern Regarding Security of Bank Deposits - Ownership of Bank Accounts in a Revocable Living Trust Can Help

The recent failures of IndyMac Bank and other financial institutions have led many consumers to express concern about the safety of their bank accounts. The recent failures are the most in a given year since 2002, when there were eleven failures.

With the rash of failures, consumers want to know whether their bank accounts are fully insured. The Federal Deposit Insurance Corporation ("FDIC") insures bank accounts. FDIC insurance is based on the ownership of the accounts, and is generally \$100,000 for all accounts (\$250,000 for retirement accounts like IRAs) with the same ownership. Unless the ownership of multiple accounts at the same financial institution is different, the accounts will be aggregated for purposes of determining FDIC insurance. (For instance, all accounts owned only by John Doe would have an aggregate coverage limit of \$100,000; all accounts owned only by Mary Doe would have an aggregate coverage limit of \$100,000; and all accounts owned jointly by John and Mary Doe would have an aggregate coverage limit of \$200,000 [\$100,000 for each of them]).

One way to increase the amount of FDIC insurance at any one financial institution is to provide for different ownership of the accounts at that bank.

While this is an easy way to get greater FDIC coverage for accounts at the same financial institution, it can lead to problems when a spouse whose name is not on the account needs to access the funds in the account.

Another alternative would be to avoid placing more than \$100,000 with any one financial institution. This will be impractical in many cases.

A third alternative may be to own the bank accounts in the name of a revocable living trust. In many circumstances, the amount of FDIC insurance on bank accounts owned by a revocable living trust will be much greater than if the accounts were titled otherwise. This anomaly is because of a change in the way that FDIC calculates insurance coverage for trust accounts, which came about from changes in the FDIC insurance regulations in April of 2004. Instead of limiting the coverage of all accounts owned by a revocable living trust to \$100,000 in the aggregate, coverage is calculated based on the number of "qualifying beneficiaries" identified in the trust agreement.

A helpful resource for calculating the amount of FDIC insurance coverage available is the "FDIC Guide to Calculating Deposit Insurance Coverage for Revocable and Insurance Coverage for Revocable and Irrevocable Trusts". If you are interested in this 83 page report, please call our office.

**If you'd like more information on this subject or would like to schedule an appointment to meet with one of the attorneys at the Deason Law Firm, please call Mary at 783-4575.**

**There Are At Least 7 Basic Reasons To Have Your Trust Reviewed:** 1. Second Families 2. Heirs with Creditor Problems 3. Disabled Heirs 4. Control Issues 5. Stale Documents 6. Changes in the Law 7. Funeral Decisions.

**Attend our upcoming Legacy Wealth Planning Seminar** and take a deeper look at the impact of disability for either spouse and the life of the surviving spouse after death; protection for the beneficiaries from divorce, lawsuits, creditor problems, re-marriage and what about mama's pie plate?

**Have we reviewed your Trust in the last 3 years?** Since the death of a beneficiary?; Since the death/incapacity of a successor trustee?; Since you reconciled with your long lost child?; Since the tax law changed?; Since you had another child/grandchild?; Since you won the lottery?

**Take the first step toward providing financial security for you and your family's future and eliminating the confusion surrounding your estate. Estate Planning... It's What We Do!**

**RSVP with Mary at 783-4575**

**Tuesday, September 9th @  
9:30am or 6:30pm**

Yuma Civic & Convention Center (East Wing), 1440 Desert Hills Dr.

***Published by:***

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*This information is for general purposes only and does not constitute legal advice.*



This is a complimentary, educational newsletter. If you are NOT interested in receiving this information in the future, please contact Mary at 783-4575.

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