

## Asset Protection Trusts (APTs):

- aka Grantor Irrevocable Trusts, Intentionally Defective Grantor Trusts
- For Medicaid purposes, are subject to a **5-year look back** under most state statutes (in fraud of creditors)
- For Veterans Benefits, are subject to **3-year look-back**.
- E.g. if a gift was made January 1, 2021, the grantor should wait until January 2, 2026 before applying for Medicaid.

**\*Disclaimer:** The information provided in this presentation is intended to be educational and informational only and should not be construed as tax or legal advice. Seek the advice and counsel of an attorney as to your specific situation.

## There are several benefits to the Use of an Asset Protection Trust:

- Client(s) may stay in their home as long as they like and keep their Home even if client(s) need Long-term Care.
- Home and Other Assets are not subject to Medicaid Estate Recovery Lien OR Probate Action
- Client keeps and remains in control of their assets via family/friends
- Helps client protect their assets **before** a crisis strikes
- Protects the IRC § 121 exclusion on capital gains on the sale of client's home
- Protects step-up in basis on sale of appreciated assets
- Ensures that the income generated in trust comes to client(s) or client's loved ones
- Ensures that the assets cannot be taken from client(s)
- Ensures that the assets are safe and go where client(s) want

## Outright Gifts (Short Term View) vs. Gifts Into Trust (Long Term View)

## There are several advantages to the Use of an APT *rather than* an Outright Gift

Outright gift = no Section 121 exclusion of capital gain upon sale of home = capital gains tax

Outright gift = no preservation of step-up of basis = capital gains tax

Outright gift = no asset protection from the creditors of beneficiaries (children) or from the beneficiaries' spouse in a divorce proceeding

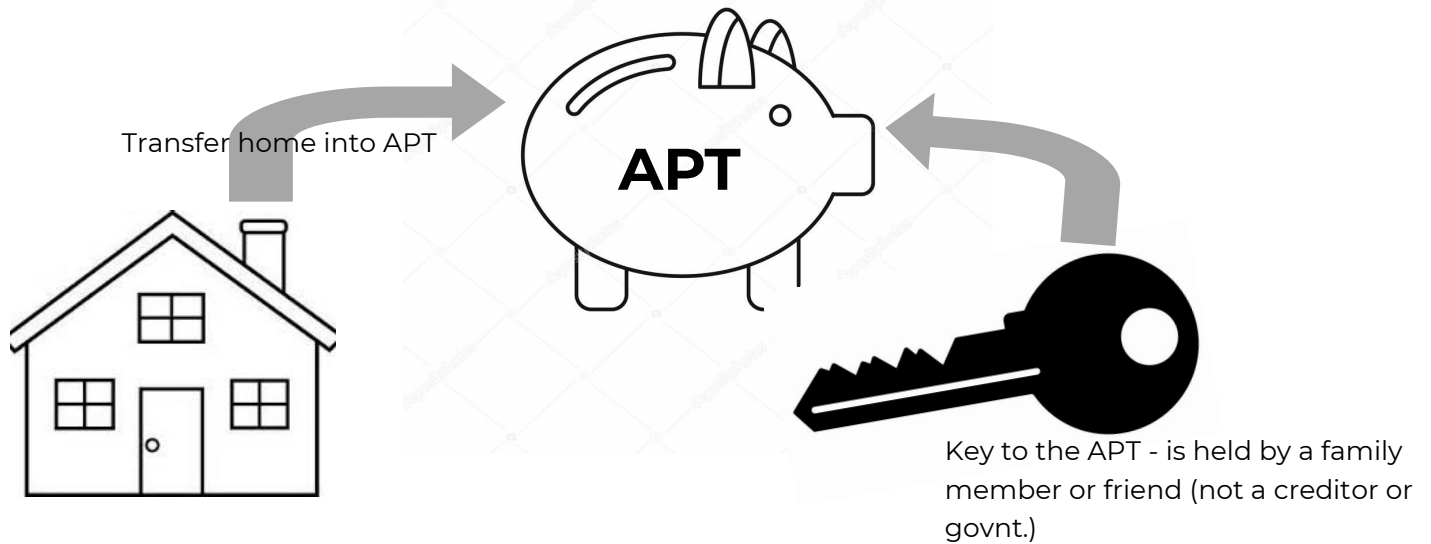
Outright gift = no control by Mom and Dad to direct the disposition of income OR assets while living and upon death

## Clients have more options available with Strong, Properly Drafted Estate Planning

- Powers of Attorney with "enhanced powers" allow for more options to protect independence and assets, even if capacity is lost

## How an APT typically works:

- Most commonly, we gift/transfer the Family Home into the APT



## Maintain Complete Control is Key to Your Clients

- Your clients are totally in control of who are Trustees of the APT
- Your clients are totally in control of the Beneficiaries
- Your clients have total use of the Home as long as they wish and the APT can sell the home when the clients no longer wish to live there

## 5 Years After Transferring Home/Assets to APT

- All assets are noncountable for Medicaid (after 3 years for Veterans Benefits)
- Complete protection of all assets in the APT, from creditors, government, LTC facilities
- Assets pass to chosen heirs when clients de cease

**A Life Care Plan defines, prioritizes, and mobilizes every aspect of your client's care AND preserves family wealth to the greatest extent possible.**