

'I love you wills': Romantic gesture or disaster?

By *Linda T. Cammuso*

Married couples commonly have simple reciprocal wills that name each other as the beneficiary of the other's estate. Known as "I love you wills," this arrangement is a simplistic form of estate planning that results in spouses directly inheriting each other's assets.



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You might ask: How else would I structure my will? Wouldn't I want to leave my assets to my spouse? The answer is both "yes" and "no." As couples age, concerns arise about losing assets to the cost of long-term care, particularly if either spouse ends up receiving care in a nursing home setting.

While the "I love you will" makes sense in

theory, it is not the most protective way for older couples to provide for each other. Assets you leave directly to your spouse upon your death, either through your will or through a beneficiary designation that names your spouse (as with life insurance, annuities and IRAs), will become assets in your spouse's name. If your spouse is currently residing in a nursing home or later needs nursing care or worse, the assets your spouse inherits from your estate will be subject to a private spend down.

Traditional revocable living trusts that couples set up for estate tax planning and probate avoidance likewise do not have long-term care protection.

Luckily, spouses have special planning options available under federal and state Medicaid laws. One such option, which is an alternative to the "I love you will" or living trust structure, is to create a trust inside your will (known as a testamentary trust) to

hold assets for your spouse upon your death. Under Medicaid rules, assets in a properly drafted and funded testamentary trust are automatically protected from the surviving spouse's long-term care expenses — with no five-year look back period.

This means that spouses can still inherit from each other, but in a way that is completely protected from long-term care exposure. These same testamentary trusts can also accomplish traditional estate planning objectives such as estate tax minimization/elimination and protective planning for future beneficiaries.

Who should consider wills with spousal testamentary trusts? For starters, these wills are clearly a must for couples where one spouse is either already in a nursing home or is vulnerable to needing long-term care in the near future — for example, where a spouse has a dementia diagnosis. If the healthier spouse was to suddenly predecease, assets

would be exposed in the name of the needy/nursing home spouse.

Couples approaching their retirement/senior years should also consider adding testamentary trusts to their wills. This will give them the option of leaving some of their assets to each other in trust as a precautionary measure. Since the surviving spouse is the beneficiary of the trust, he/she will still have use of the assets with the added benefit of long-term care protection if nursing home care is needed in the future.

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