

April 26, 2018

Financial Advisor  
Advisor's Company  
123 Main Street  
Anywhere, Georgia 12345

Re: Asset Protection Analysis

Dear Financial Advisor:

You have asked us to analyze the risk your clients the Walkers have of losing their assets to a lawsuit, nursing home or other unforeseen liability. We performed this analysis based on the following information:

	Mrs./Joint	Mr.	Total
Monthly Income	\$1,014.00	\$1,700.00	\$2,714.00
Non-Retirement Assets	\$450,000.00	\$0.00	\$450,000.00
Real Estate	\$200,000.00	\$0.00	\$200,000.00
Total Assets	\$650,000.00	\$0.00	\$650,000.00

Our analysis is based on an interpretation of common law, trust law, asset protection and Medicaid laws, and is being provided as a general response to your request. The actual result of any asset protection plan is based on a detailed analysis of the Walkers' assets and an in-depth discussion with them about their goals and objectives. **This analysis does not constitute legal advice, and no planning should be done without the Walkers consulting directly with an attorney qualified to create an asset protection plan to meet their situation.** We make no representation whether laws will change or be interpreted differently by courts or whether the Georgia State Department of Human Services will change its position on its interpretation of current Medicaid laws. Medicaid planning is often a volatile area and changes in interpretation by the state do occur.

### **Assets at Risk**

Many issues exist that can place the Walkers' assets at risk of being lost, including a lawsuit or unanticipated health crisis. A simple car accident can expose them to the risk of losing their lifetime of assets. More likely, however, is the risk of loss created by health that requires a nursing home or other long-term care. Costs for care currently exceed \$8,916.65 per month. **Based on the information provided and the laws as they are currently being applied, all of the Walkers' \$650,000.00 of assets are at risk.** While current Medicaid laws permit an individual to retain a minimum amount of assets (approximately \$2,500.00) and a spouse residing in the community up to \$23,844.00 (and in limited circumstances \$119,220.00) in assets, a home, a car and a prepaid funeral, it is not automatically protected. For example, if either of the Walkers died, all assets would be at risk because the spousal exemptions would no longer apply. Additionally, while the

current Medicaid laws provide for these exemptions, no such exemptions exist against losses from lawsuits. Therefore all of the Walkers' assets are currently at risk.

### **Additional Benefits Available To Pay For Health Care**

In addition to providing Medicaid benefits to pay for care in a nursing home, Georgia has a Medicaid benefit to pay for the Walkers' care received at home. This Medicaid benefit provides assistance for basic needs, including assistance with dressing, cooking, travel to doctor appointments, grocery shopping, and maintenance of the residence including cleaning, laundry, lawn care, etc. Medicaid will pay for individuals to come into the home to assist with these needs. The community Medicaid program provides assistance for as little as two (2) hours and as much as twenty-four (24) hours per day depending upon the need. It also permits the Walkers to have family members, friends, or acquaintances be the care providers.

Based on the information provided, the Walkers do not currently qualify for community Medicaid but the Walkers can become eligible with planning. Obviously, receiving care at home paid for by Medicaid benefits will enable the Walkers to stay home longer and reduce the amount of assets lost paying for nursing home care.

### **Amount That Can Be Protected**

**Option 1:** If a crisis occurred that would require either of the Walkers to enter a nursing home, we could immediately qualify Mr. Walker or Ms. Walker to receive Medicaid by utilizing a Medicaid Qualifying annuity. This "wait and see" approach, however, has risk, in that all or part of the \$450,000.00 that would be required to be placed in an annuity for the benefit of the non-nursing home spouse could be lost if either of the Walkers gets sued, needs care, or passes away. To avoid the risk of losing the \$450,000.00, the Walkers may want to consider implementing Option 2 now, while they are healthy, to begin the process to protect all of their assets.

**Option 2:** The plan we recommend will immediately protect all of the Walkers' assets from future lawsuits or unforeseen creditors, and ***reduce their risk of loss to a nursing home from \$650,000.00 to an estimated \$219,076.00, immediately protecting \$430,924.00 of their assets. If the Walkers stay healthy, the \$219,076.00 at risk would begin being protected at a rate of \$8,202.65 per month 34 months after completing their planning with us, until month 60, when all of their assets would be protected.***

If either of the Walkers enters a nursing home within 34 months, eligibility for Medicaid benefits would occur approximately 26 months after entering the nursing home ***or a gift/loan plan would have to be established.*** If the Walkers stay healthy beyond 60 months, their eligibility for Medicaid would be immediate upon entering the nursing home. Obviously the advantage to creating a plan now is to start the clock ticking against the timeline necessary to assure protection of their assets in the shortest period of time.

## The Plan

The asset protection plan we recommend will utilize one of three asset protection trusts that enable the Walkers to maintain full control of their assets. In addition, the Walkers can retain the right to all income from their assets for the remainder of their lives. The plan must, however, prevent them from having direct access to the principal to ensure that a nursing home, or other creditors and predators, does not obtain access to it. The plan does allow the Walkers to maintain the use and benefits of the money, and allows them to make outright principal distributions to anyone other than themselves. The Walkers can make distributions to their children or other intended beneficiaries for any purpose (i.e. paying for a wedding, paying for college, helping to buy a first house, etc.), and they, as trustees, can purchase assets for the trust that they can utilize (i.e. a home, vacation property, etc.). The Walkers can possibly have indirect access to the principal during the remainder of their lives through third parties they trust (i.e., children), but there is no guarantee the third party will comply with their request.

Another wonderful feature of the plan is it can also ensure a lifetime of protection for the Walkers' beneficiaries. Their beneficiaries will have full access to the assets being left to them, but the assets will not be subject to being lost to a lawsuit, their spouse in divorce, bankruptcy, creditors, or a nursing home. This is a significant benefit the Walkers can provide for their beneficiaries that they cannot do for themselves.

***A significant benefit to the Walkers by implementing an asset protection plan now, while they are healthy, is insuring their immediate eligibility for community Medicaid benefits if their health fails any time after completing the implementation of the plan.*** Another consideration to protect against the cost of a nursing home is a long-term care insurance policy (LTCI). While perceived as expensive, the cost of an annual premium for a couple is usually less than the cost of one month's nursing home care for one of them. In many circumstances, our clients opt to purchase LTCI and implement an asset protection plan. This has two main benefits. First, the amount at risk of \$219,076.00 outlined above would no longer be at risk and assets funded into the asset protection plan would be immediately protected. Second and more advantageous, *the income generated from the asset protection plan, combined with the LTCI daily benefit, the community Medicaid benefit can, when properly planned for, provide the Walkers with enough cash flow to pay for care at home rather than ever having to go to a nursing home.*

## Summary

As stated, without a plan, all of the Walkers' assets are at risk. **The plan we recommend would immediately protect all of the Walkers' assets from future lawsuits and reduce the Walkers' risk of loss to a nursing home from \$650,000.00 to an estimated \$219,076.00, immediately protecting \$430,924.00 of their assets. If the Walkers stay healthy for 34 months, they would begin to protect an additional \$8,202.65 per month until it is all protected.**

As you can see, the most efficient way for the Walkers to protect their assets is to begin planning immediately. **The period to begin protection does not commence until all**

**our planning is complete, including the funding of any trust we create.** If an asset protection plan is something of interest to the Walkers, we are happy to provide them education and a complete review of their current estate plan to identify what personal goals it provides for and what other options are available to them. **There is no cost for this meeting, because we value our relationship with you.**

We appreciate your trust in having us prepare this analysis for the Walkers. We know they are important clients to you. We look forward to assisting you or the Walkers in any way you deem appropriate.

Sincerely,

**BRIAN M. DOUGLAS & ASSOCIATES, LLC**

By: \_\_\_\_\_  
Brian M. Douglas