

States: **All**

Important Note:
The determination of whether a trust satisfies requirements for us to allow it to own our TLC policy should be assessed on a case-by-case basis. Our legal department will want to review trust documents as part of our suitability assessments.

Contact: Questions?
Please contact your
Genworth Sales Team.

Why Traditional Life Insurance is Often Owned by Irrevocable Trusts

It is not uncommon for life insurance policies to be owned by irrevocable trusts. There are many reasons why this might make sense, including:

- Keeping the death benefit out of the grantor/insured's taxable estate;
- Providing a convenient and tax-efficient way to make lifetime gifts of the insurance premiums; and
- Offering a potentially greater level of creditor protection for the policy.

For these (and perhaps other) reasons, clients purchasing Total Living Coverage® may ask whether it can be owned by a trust.

Threshold for Trust Ownership of TLC:

- The trust document must contain wording permitting the trust to own life insurance;
- The trust must have an insurable interest in the individual insured under the life insurance policy;
- The trust must have an insurable interest in the insured for purposes of health insurance; and
- The trust must be obligated to pay the insured's long term care expenses.

Insurable Interest

Whether insurable interest exists is a question of state law and is typically determined at the time a life or health insurance policy is applied for.

- For life insurance: It is generally required that the policyowner would suffer a financial loss if the insured died. In the case of a trust, insurable interest is generally found to exist if the trust beneficiaries are closely related to the insured (love and affection);

(continued)

Genworth Financial companies include:

Genworth Life and Annuity Insurance Company, Richmond, VA

Genworth Life Insurance Company, Richmond, VA

Genworth Life Insurance Company of New York, New York, NY

Only Genworth Life Insurance Company of New York is admitted in and conducts business in New York.

Long term care insurance products issued by Genworth Life Insurance Company and in New York by Genworth Life Insurance Company of New York.

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- For health insurance: Insurable interest may generally exist in cases where the policyowner has an obligation to pay the insured's medical or long term care expenses (financial loss or obligation).

Obligation to Pay Insured's Long Term Care Expenses

The long term care benefits offered under TLC must be paid either directly to the service provider or as reimbursement to the owner for actual long term care expenses incurred¹. If a trust owned a TLC policy but the trustee was not permitted to pay the insured's long term care expenses, we would not be able to pay the claims without the trust violating its terms. To avoid such a result and ensure suitability of ownership, we require that the trustee have an obligation under the trust to pay the insured's long term care expenses.

Revocable Trusts

- Grantor establishes and places assets in a trust that can be revoked or amended by the grantor during the grantor's lifetime.
- Grantor is considered the owner of all assets in the trust for gift, estate and income tax purposes.

TLC ownership by revocable trust

- Grantor has insurable interest in his own life. Therefore, the grantor's revocable trust can generally also own TLC on the grantor's life and on anyone in whom the grantor has insurable interest. This might include the grantor's spouse, parents or children.

Irrevocable Trusts

- A grantor usually establishes an irrevocable trust in order to remove assets from the grantor's estate and to care for future generations after the grantor dies.
- An irrevocable trust is a separate legal entity from the grantor.
- The grantor cannot revoke or amend the trust; nor can the trust provide benefits to the grantor without causing inclusion of the trust assets in the grantor's estate.

TLC ownership by irrevocable trust

- We will permit an irrevocable trust to be the owner and beneficiary of the TLC policy only if the trustee has a legal obligation to pay the long term care expenses of the insured. This obligation helps to establish insurable interest.
- We will not permit an irrevocable trust to own a policy on someone who is not a beneficiary of the trust. This rules out insuring the grantor of most irrevocable life insurance trusts (ILITs) since the grantor will almost never be a beneficiary of the trust. A key purpose of an ILIT is to keep its assets out of the estate of the grantor, which generally requires the grantor to have given up all rights to the use or benefit of these assets.
- The wording in the trust that creates the "obligation" may be **expressly** stated, but is more often found as an **"implied"** obligation:

¹ We represent in the TLC policy that the Accelerated Benefit Rider satisfies the requirements for an accelerated death benefit with respect to a chronically ill individual under Internal Revenue Code (IRC) §101(g)(1)(B). That section says:

§101(g)(1) For purposes of this section, the following amounts shall be treated as an amount paid by reason of the death of an insured:

(B) Any amount received under a life insurance contract on the life of an insured who is a chronically ill individual.

For an accelerated death benefit to satisfy the special rules for chronically ill insureds under §101(g)(3)(A)(i), the payment for any period under the rider must be for "costs incurred by the payee...for qualified long term care services provided for the insured for that period." The full text of that section says:

§101(g)(3) In the case of an insured who is a chronically ill individual—

(A) In general. Paragraphs (1) and (2) shall not apply to any payment received for any period unless—

(i) such payment is for costs incurred by the payee (not compensated for by insurance or otherwise) for qualified long-term care services provided for the insured for such period.

Example of trust wording that expressly establishes insurable interest:

- “The trustee is required to pay all reasonable and necessary medical expenses, including long term care expenses, incurred by any beneficiary of the trust”; or

Determining when an “implied” obligation establishes insurable interest:

- A trust might provide that payment of medical expenses for the proposed insured is within the discretion of the trustee, but based on an *ascertainable standard* that would reasonably compel the trustee to pay these expenses. For example: "The trustee shall distribute all income and/or principal as trustee as in its reasonable discretion shall determine to be proper for my beneficiary's health, education, support, and maintenance in accordance with my beneficiary's accustomed manner of living."
- Another example would be if the trustee is required to "pay all income annually" to a beneficiary (as is common with credit shelter and qualified terminable interest property (QTIP) trusts) and state trust accounting laws permit the trustee to treat long term care benefit payments as "income" for trust distribution purposes. In addition, the trustee would need to confirm their interpretation of the trust distribution provisions as requiring payment of any qualified long term care expenses for the insured based upon a "reasonableness" standard.

Who Makes the Determination as to Whether a Trust Can Own TLC?

The determination of whether the wording of a particular trust satisfies these requirements sufficiently for us to allow it to own our TLC policy is something the Genworth companies need to assess on a case-by-case basis. Our legal department will typically want to review trust documents as part of our suitability assessments.

Total Living Coverage® is underwritten by Genworth Life Insurance Company.

Total Living Coverage is universal life insurance with long term care benefits and is subject to the terms, issue limitations and conditions of Policy Form No. ULPLTCIPGLI (11/05) et al. and Rider Form Nos. ULRABRIPGLI (11/05) et al., ULREBRIPGLI (11/05) et al., ULRROPIGLI (11/05) et al. and ULRGMBRIPGLI (11/05) et al. or ULRGMBRIPGLI (0709) et al. Policy, benefits and riders may not all be available in all states. Terms and conditions may vary by state.

Total Living Coverage universal life insurance with long term care benefits is subject to state availability and the terms, issue limitations and conditions of Policy Form No. ICC12-GL5000 and Rider Form Nos. ICC12-GL500R, ICC12-GL501R, ICC12-GL502R, and ICC12-GL503R or Policy Form No. GL5000 0212 et al. and Rider Form Nos. GL500R 0212 et al., GL501R 0212 et al., GL502R 0212 et al., and GL503R 0212 et al.

For Genworth Life Insurance Company of New York, Total Living Coverage universal life insurance with nursing home and home care benefits is subject to the terms, issue limitations and conditions of Policy Form No. ULPLTCIPGLI NY (11/05) and Rider Form Nos. ULRABRIPGLI NY (07/09), ULREBRIPGLI NY (11/05), ULRTIIPGLI NY (11/05), ULRGMBRIPGLI NY (07/09) and ULRROPIGLI NY (11/05). Available only in New York.

All guarantees are based on the claims-paying ability of the issuing insurance company.

Refer to the policy for full information about product coverage, features, benefits and limitations. This Bulletin provides a summary of coverage. Policy terms and provisions will prevail.