



PLAN TODAY FOR TOMORROW  
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## Basics of Elder Law: Dying is Not the Problem!

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## The Elder Law Bucket List

- **Planning for Incapacity**
  - **Advance Directives**
- **Planning for Death**
  - **Last Will and Testament**
  - **Revocable Trust**
- **Planning for Long-Term Care**
  - **Irrevocable Trust (“Medicaid Trust”)**



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## Advance Directives

### •Power of Attorney

- Boilerplate forms off the internet are insufficient
- Must be modified by an elder law attorney
- Failure to have a proper POA results in a guardianship

### •Health Care Proxy

- Make sure you state your wishes regarding artificial nutrition and hydration

### •Burial Remains Form

### •Living Will



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## Paying For Long-Term Care

- Everyone may fall ill someday; AND
- If you fall ill, you may require long-term care....SO....

HOW WILL YOU PAY FOR IT?



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## 4 Ways To Pay For Long-Term Care

- Private
- Long-Term Care Insurance
- Medicare
- Medicaid

PICK ONE!



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## Medicaid Trust

- **“Bread and Butter” planning technique to plan in advance and protect your assets in contemplation of future long-term care needs**
- **Referred to colloquially as a “Medicaid Trust”**
- **Irrevocable – but a properly drafted trust will provide for flexibility**
- **5- year look- back period**



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## Ins and Outs of a Medicaid Trust

- You are the creator (not the trustee); Usually children are the trustees
- You have the right to live on the property transferred to the trust
- The trustee (not you) can sell the property – but only with your consent
- You can remove and replace the trustee
- You can change the beneficiaries of the trust
- You still get the STAR exemption or any other exemption
- If the property is sold, you still qualify for the gain exclusion
- After 5 years, the assets transferred to the trust are protected
- When you die, the trust terminates



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## Last Will and Testament vs. Revocable Trust

### • Last Will and Testament

- May necessitate a PROBATE proceeding
  - » Probate could take months
  - » Open door for heirs to contest
  - » Must probate in all states where you have property (“ancillary probate”)
  - » Could be costly in legal fees

### • Revocable Trust

- Avoids Probate





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## Categorical Factors to Avoid Probate

- **Property in more than one state**
- **Distant heirs**
- **Disinheriting heirs**
- **Medicaid recipient**
  - Medicaid has a claim against your probate estate
- **Estate plan includes trusts**
  - Minor beneficiaries
  - Disabled beneficiaries
  - Estate tax planning