



## PLAN TODAY FOR TOMORROW

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### **The Ins and Outs of a Medicaid Trust**

We may all fall ill someday, and while being cared for at home is always a priority, it is possible that we may require nursing home care. Nursing home care is generally far more costly than homecare and for that reason, one must plan today to cover the cost of care tomorrow. There are only four options for the payment of such care: paying privately, long-term care insurance, Medicare, and Medicaid. With such limited options and because such care can be incredibly expensive, planning for Medicaid eligibility has become paramount.

The most common advance planning technique being implemented today is the Medicaid Trust ("Trust") which, when implemented early enough, can protect assets, such as your home, should one seek Medicaid to help pay for care. This is a summary of important concepts related to the administration of the Trust.

Many people are concerned about losing control. As you will see, if the Trust is properly drafted, you still maintain a good amount of control. Once implemented, the Trust may protect your assets, thereby preserving an inheritance for your loved ones.

#### ***General Provisions***

- The Trust is irrevocable. With the consent of the beneficiaries, however, New York State law may permit you to revoke the Trust.
- The Trust has a separate taxpayer identification number.
- Assets within the Trust avoid probate upon your death.

#### ***Provisions Related to the Principal of the Trust***

- The principal of the Trust cannot be distributed directly to you or for your benefit.
- The principal of the Trust can be distributed, however, to your children or some other class of individuals as defined in the Trust, who can then give it back to you.
- If the principal of the Trust consists of brokerage assets, the trustee will be the person responsible for interacting with your financial advisor and giving instructions regarding the investments of such assets.
- You have the power to change the beneficiaries of the Trust among a class of individuals that you will define in the Trust. This class often consists of children or nieces and nephews



***Provisions Related to the Income of the Trust***

- Generally, you are entitled to receive the income of the Trust.
- Income consists of interest and dividends, not capital gains.
- If the Trust generates income, you may need to file an income tax return for the Trust.

***Provisions Related to Your Primary or Secondary Residence***

- If you transferred your primary or secondary residence to the Trust, you have the right to use and occupy such residence without having to pay rent.
- You, not the trustee, are responsible for paying the real estate taxes and upkeep and maintenance on any residence.
- If eligible, you remain entitled to the STAR exemption, VA exemption and any other exemption that benefits any residence.
- You may have difficulty refinancing your mortgage once your residence is transferred to the Trust.

***Provisions Related to Your Primary or Secondary Residence (continued)***

- The trustee may sell any residence of the Trust and use the proceeds to purchase a new residence of equal or lesser value.
- If the net sales proceeds exceed the value of any new purchase, the surplus funds must remain in the Trust and may be invested to generate income.
- If there is an existing open line of credit, you can no longer access that line of credit.

***Provisions Related to the Trustee***

- You may name anyone as trustee, other than yourself.
- The trustee does not own any assets of the Trust individually.
- You may remove and replace any trustee.
- There are no income tax consequences to the trustee for serving as the trustee.
- The trustee does not assume any form of personal liability for serving as trustee unless they are negligent.

***Provisions Related to Medicaid Eligibility***

- Based on current law, the assets of the Trust cannot be considered by Medicaid for eligibility purposes once five (5) years has elapsed from the date of transferring your assets to the Trust.
- Even after five (5) years has elapsed, you still do not have access to the Trust assets.

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To learn more about Mr. Di Costanzo and Ms. Feldman and their practice areas, visit our practice specific website at [www.plantodayfortomorrow.com](http://www.plantodayfortomorrow.com).