



PLAN TODAY FOR TOMORROW

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The Ins and Outs of a Revocable Trust

A Revocable Trust (“Trust”) is used to avoid probate. Examples of situations where probate should be avoided include where you own property in more than one state, you have distant heirs, you anticipate fighting among your beneficiaries, or where further trusts are anticipated, such as for minors or disabled individuals.

The purpose of this memorandum is to summarize important provisions of a Trust and to answer frequently asked questions. This memorandum is not intended to summarize every provision of the Trust. If you have a question regarding Revocable Trusts, please contact us.

General Provisions

- The Trust is revocable. That means you have access to all the assets of the Trust. That also means that this Trust *does not* protect your assets should you someday seek Medicaid to help pay for your care at home or in a nursing home.
- The Trust does not have a separate tax identification number. The tax identification number of the Trust is your Social Security number.
- The assets within the Trust do not need to go through probate, which means that the Trust does not need to be submitted to Court to be administered following your death.

Provisions Related to the Principal of the Trust

- You can use the principal of the Trust as you wish.
- You are responsible for arranging for the transfer of your liquid assets and any real property outside of New York State to the Trust.
- Any assets that are not transferred to the Trust and that do not have a joint owner or beneficiary designation will be subject to the probate process, thereby defeating the main purpose of the Trust.

Provisions Related to the Income of the Trust

- You are entitled to the income of the Trust.
- The Trust does not file a tax return. You must report the income generated by the assets of the Trust on your individual income tax return. If you do not intend for us to prepare such tax returns, we recommend that you consult with your accountant.



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Provisions Related to Residential Property in the Trust (“Residence”)

- You have the right to live in the Residence without having to pay rent.
- You are responsible for the real estate taxes and upkeep and maintenance on the Residence.
- If otherwise eligible, you are entitled to the STAR exemption, VA exemption, and any other exemption that benefits the Residence.
- You should inform your insurance carrier that you transferred the Residence to the Trust.
- You may have difficulty refinancing, obtaining a reverse mortgage or a home equity line of credit. There is an increasing trend for banks to allow financing and we have relationships with a few. You might have to remove the Residence from the Trust in these instances and once financing is in place, return the Residence to the Trust.

Provisions Related to the Trustee

- In most cases, you are the initial trustee of the Trust.
- Depending on the terms of the Trust, you may usually appoint a co-trustee to serve with you and anyone you wish as successor trustee.
- Depending on the terms of the Trust, you may usually remove and replace any trustee.

Provisions Related to Medicaid Eligibility

- This type of trust *does not* protect your assets from the cost of nursing home care.
- There is no look-back period for transferring assets to a revocable trust since all the Trust’s assets are considered your assets for Medicaid purposes. If you intend to protect your assets, you should contact us to discuss preparing an Irrevocable Medicaid Income Only Trust.

Salvatore M. Di Costanzo, Esq., is a senior partner with the law firm Maker, Fragale & Di Costanzo, LLP. Mr. Di Costanzo is an attorney and accountant whose main areas of practice include elder law, estate planning, special needs planning, estate and trust administration, and guardianships.

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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.