



## Administration of a **MEDICAID TRUST**

# PLAN TODAY FOR TOMORROW SALVATORE M. DI COSTANZO, ESQ.

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(By appointment only)

THE PURPOSE OF THIS MEMORANDUM IS TO SUMMARIZE important provisions of your Medicaid Trust (“Trust”) and to answer frequently asked questions. You should reference this memorandum frequently to maintain your familiarity and understanding of the Trust. This memorandum is not intended to summarize every provision of the Trust, nor does it cover everything we discussed with you. If you have a question regarding your Trust, please contact us before acting.

### **General Provisions**

- The Trust is irrevocable, however, under limited circumstances, the Trust may be terminated and the assets returned to you.
- The Trust has a separate EIN, which is included on the cover page of the Trust document.

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

- You are responsible for arranging for the transfer of your liquid assets and any real property outside of New York State to the Trust. However, you should contact us prior to transferring any assets to the Trust.
- You do not have access to the principal of the Trust. Under no circumstances can the principal of the trust be distributed to you or for your benefit.
- Under certain circumstances, the principal of the Trust can be distributed to your children or some other class of individuals as defined in the Trust.
- 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 can change the beneficiaries of the Trust among the class of individuals stated in the Trust.

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### Provisions Related to the Income of the Trust

- You are entitled to 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. We recommend that you consult with your accountant regarding all tax matters if you do not intend for us to prepare such tax returns.

### 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.
- You should receive a new tax bill that shows one or more of the trustees as the owner(s) of the Residence. The trustee(s) does not own the Residence in any individual capacity.
- 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.

- Banks will likely not allow you to obtain a reverse mortgage or a home equity line of credit on the Residence. You will most likely be unable to refinance.
- The residence can be sold by the trustee and the proceeds can be used to purchase a new residence.
- The trustee cannot sell any Residence without your written consent.
- If you intend to sell any Residence, the trustee must attend to the signing of all documents and the closing of title. The sales proceeds must be payable to the trustee and deposited into a trust account, which the trustee will need to open if one does not already exist. You should have your real estate attorney contact us to review the terms of the Trust.
- The trustee can use the sales proceeds from the Residence to purchase a new Residence in the Trust. If the sales proceeds from the existing Residence exceed the value of the new Residence you wish to purchase, the extra funds must stay in the Trust and may be invested in order to generate income.

### Provisions Related to the Trustee

- The trustee, in his or her fiduciary capacity, is the legal owner of any assets transferred to the Trust.
- You can 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

- The assets of the Trust cannot be considered by Medicaid once five (5) years has elapsed since the date of transferring your assets to the Trust.
- Even after 5 years has elapsed, you still do not have access to the Trust assets.
- If you or your spouse (if any) requires nursing home care within five (5) years of creating the Trust, someone should contact us immediately as there is additional planning that needs to be addressed.

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