

WHAT IS THE DIFFERENCE BETWEEN A NEW YORK REVOCABLE LIVING TRUST AND A MEDICAID TRUST?

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A trust is a type of legal device that is used in the field of estate planning, and there are multiple different types of trusts. All trusts do not accomplish the same objectives.

One major distinction between trusts is the power of revocation. There are trusts that can be revoked or dissolved, and there are also irrevocable trusts. Let's examine the details.

REVOCABLE LIVING TRUSTS

Revocable living trusts are very popular, and you could potentially benefit from the creation of a revocable living trust even if you are not extraordinarily wealthy.

As the name would indicate, you can revoke this type of trust, so you could change your mind, dissolve the trust, and walk away with the assets back in your pocket.

You will probably never want to revoke the trust, because you would be creating it as the centerpiece of your estate plan, but you do not have to worry about losing control while the trust is intact. The person who creates a revocable living trust is called the grantor in legal parlance, and the estate administrator is called the trustee.



The grantor will typically act as the trustee at first, so you can direct the actions of the trust throughout your life when you establish a revocable living trust. The trust creator can also act as the beneficiary.

When you create the trust declaration, you name a successor trustee to take over after you pass away, and you name successor beneficiaries who will receive distributions from the trust after you are gone.

One of the advantages that you gain when you use a revocable living trust is the ability to leave behind instructions that the trustee must follow regarding the nature of the asset distributions to the beneficiaries. You may have concerns about beneficiaries spending their inheritances too quickly. If you feel this way, you could instruct the trustee to distribute limited assets on a monthly basis over an extended period of time.



Another advantage is the facilitation of probate avoidance. If you maintain direct personal possession of your property until the time of your death, and you arrange for its transfer through the terms of a last will, the will would be admitted to probate after your passing. The heirs

would have to wait out this process before they could receive their inheritances, and it will take close to a year at minimum.

MEDICAID TRUSTS

Many senior citizens seek Medicaid eligibility at some point in time, even if they were qualified for Medicare. This is because Medicaid will pay for nursing home care. Medicare will pay for convalescent care after surgery, but it will not pay for custodial care, and this is the type of care that you would receive in a nursing home.

Medicaid is a program that is earmarked for people with financial need. As a result, if you apply for Medicaid to pay for long-term care, you will not qualify if your countable assets exceed \$2000 in value.



To qualify for Medicaid, people often give assets to their loved ones. Of course you could give direct gifts, but you could also convey assets into a Medicaid trust.

A Medicaid trust would not be a revocable trust; it would be an irrevocable trust.



Assets in a revocable living trust would be counted by Medicaid, because you retain control of the resources, and you can dissolve the trust and take back the assets at any time.

Things are different with an irrevocable trust. You cannot revoke the trust, and generally speaking, you cannot alter the terms of the trust after it has been created. This is called surrendering incidents of ownership. Because you have surrendered ownership, assets that have been conveyed into an irrevocable Medicaid trust would not

be counted by Medicaid evaluators when your eligibility status was being determined.

SUMMARY

A revocable living trust is a type of trust that you can rescind or dissolve. These trusts provide many benefits, but assets in this type of trust would be counted if you were to apply for Medicaid to pay for long-term care.

However, you could use an irrevocable Medicaid trust if you want to get assets out of your own name before you apply for Medicaid coverage. This does take advance planning, because there is a five-year Medicaid look back. You have to fund the trust at least five years before you apply for Medicaid if you want to obtain timely coverage.

To learn more about trusts, contact a licensed estate planning attorney to set up a consultation.

REFERENCES

American Bar Association

http://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/revocable_trusts.html

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Mark S. Eghrari is an attorney in private practice in Smithtown, New York. He has been in practice since 1988. Mark S. Eghrari provides extensive estate and tax planning services to individuals and businesses. Mr. Eghrari's primary focus is helping clients avoid probate, minimize or eliminate Federal and State Estate taxes and protect their assets from the high cost of nursing care, if they become ill. Mr. Eghrari's expertise is in providing unique and innovative estate planning solutions that create a secure future for his clients and their loved ones. Mr. Eghrari is a member of the American Bar Association and New York State Bar Association as well as the National Academy of Elder Law Attorneys and the American Academy of Estate Planning Attorneys.

Mr. Eghrari completed his undergraduate work at Lafayette College in Easton, Pennsylvania and received his MBA in banking and finance from Hofstra University on Long Island. He earned his Juris Doctorate from the Hofstra University School of Law, where he was a member of the Law Review. While in law school, Mr. Eghrari gained practical experience in the corporate tax department of Citicorp in New York city.

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