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Levene Gouldin & Thompson, LLP

450 Plaza Drive
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Phone: 607.763.9200
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Medicaid Eligibility And the Irrevocable Living Trust

LEVENE GOULDIN & THOMPSON, LLP
ATTORNEYS AT LAW

450 Plaza Drive
Vestal, NY 13850
Telephone: 607.763.9200
Fax: 607.763.9211

www.LGTlegal.com

Branch offices in Deposit, Whitney Point and Ithaca, NY and Montrose, PA

Medicaid Eligibility and the Irrevocable Living Trust

1. What is a Trust?

A trust as a legal agreement where the grantor or creator gives assets to a trustee who can only use the principal and income from the trust assets as specified by the grantor in the trust agreement. Upon creating a trust, the grantor must transfer assets into the name of the trust, to be thereafter managed by the trustee. The trustee must perform his or her duties with the utmost honesty and loyalty.

2. What Are Other Characteristics of the Trust?

In order to protect the trust from consideration as an available resource under Medicaid rules, the trust must be irrevocable. This means the grantor cannot change his or her mind and remove the assets from the trust at some future date. Also, the grantor cannot have any access to the principal, only the income. However, the grantor can change the beneficiary of the trust if that power is reserved in the agreement. The trust will result in the avoidance or reduction in some of the expenses associated with probate. However, this trust is not a substitute for a Will. Since the grantor cannot serve as his or her own trustee, the grantor needs to carefully consider who will act as the primary trustee, as well as an alternate.

3. What Are the Tax Consequences of the Trust?

The transfer of assets into the trust may have gift tax consequences unless the grantor reserves the right to change the beneficiary of the trust. In that case, no gift tax return will be required. During the grantor's lifetime, the income will be paid and taxed to the grantor personally under the Internal Revenue Code's Grantor Trust Rules. The Trust can use the grantor’s social security number. So long as the grantor continues to receive all the income that is generated annually from the trust, a separate income tax return for the trust will not be required. Upon the grantor's death, the trust will be fully included in the grantor's gross estate for estate tax purposes, with the value of the assets ‘stepped-up’ or increased to the date of death value.

4. What Happens Upon the Grantor's Death?

Upon the death of the grantor, the trust income and principal will be distributed to the beneficiaries that the grantor has named in the trust agreement.

5. Can I Have a Trust and Be Eligible for Medicaid?

An irrevocable living trust is an ideal Medicaid planning tool. The trust would provide that the creator of the trust, or grantor, is entitled to all income earned by the trust assets until death. The trust principal (i.e., the assets placed in the trust) cannot be used for the grantor's benefit, including long-term care, if custodial nursing home care were required in the future. Transfers into an irrevocable living trust are subject to the Medicaid 60-month “look-back” period and trigger a period of Medicaid ineligibility. Therefore, the grantor needs to coordinate the creation of the trust, the transfer of assets into the trust, and the timing of an application for Medicaid very carefully in order to avoid the imposition of any period of Medicaid ineligibility during that 5-year “look-back” period.