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## ELDER LAW NEWS UPDATE

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TO: Clients, Friends and Colleagues

\*\*Check out [www.eldercareatty.com](http://www.eldercareatty.com).

### - SELLING YOUR HOME IN TRUST -

Many of my clients have chosen to protect their assets from the cost of long term care by creating and funding the **Irrevocable Income Only Trust**. After five years the assets in trust are not countable by Medicaid if one were to apply for assistance. The trust allows the creators to receive income for life, change their beneficiaries by Will, and to exchange property of equal value with that in trust. Although the creator of the trust has no direct access to principal, the Trustee, nevertheless, may withdraw principal for the creator's beneficiaries, usually the children. Since most of my clients have transferred their personal residences to trust, the question NOW becomes;

**What happens when you place your home in trust?** Essentially, there is only good news. In addition to the home being protected from the cost of long term care, you continue to receive all the benefits you would have had if the home were not in trust. For example, you continue to receive the real estate tax exemptions associated with the residence (enhanced star, veterans exemption, senior citizen exemption etc.) you retain the capital gains exemption if you were to sell your home during your lifetime (\$250,000.00 or \$500,000.00 if you file jointly with a spouse), and if the home is sold upon your passing the kids receive a step-up in basis, meaning the kids should not have to pay any capital gains tax. Finally there is an avoidance of *probate* for those assets in trust, and for those assets having beneficiaries and joint ownership.

**Preparing for the sale of your home in trust**, means that you will probably have to open up a bank account in the name of the trust (if you have not done so already) and the Trustee will be the signatory. It is into this trust bank account that the sales proceeds will be deposited. The sales proceeds remain protected because the protected illiquid asset (your home) was merely transformed into a liquid asset-cash. It has already passed the five year test. The Trustee may purchase another residence with the sales proceeds, or invest them, or do both. When you are ready to sell your home in trust, make sure you gather up the deed, the certificate of occupancy, the survey, your title insurance policy (purchased when you bought the home) and the real estate tax bill from the town in which you live. These items will be needed in preparing a contract of sale.

### USE OF THE NY ASSET PROTECTION TRUSTS IN FLORIDA

If you plan to move to Florida, the Asset Protection Trust will be recognized in that foreign jurisdiction. Nevertheless, recent fair hearing decisions in Florida have made it clear that Florida Medicaid is taking exception to one of the creator's powers, being the "right to exchange assets of equal value" in the trust. **WHEN AND IF YOU CONTEMPLATE A MOVE TO FLORIDA**, be sure to schedule an appointment to review your trust and amend it so as to remove such power of "exchange" from the trust.

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