LAW OFFICES OF
JOANNE SCHLENK MCAVEY, PLLC

MEMBER OF NATIONAL ACADEMY OF ELDER LAW ATTORNEYS
PAST CO-CHAIR OF THE ELDER LAW COMMITTEE OF THE SCBA

1641 DEER PARK AVENUE
DEER PARK, NEW YORK 11729
(631) 243-4516
FACSIMILE: (631) 243-2501
E-MAIL: JOANNEMCAVEY@AOL.COM

**ELDER LAW NEWS UPDATE** *September, 2014*

**TO:** Clients, Friends and Colleagues

**SUBJECT:** ***WHY THE IRREVOCABLE TRUST IS SUCH A GOOD ESTATE & MEDICAID PLANNING TOOL!***

## *ESTATE & MEDICAID PLANNING*

Clients are savvy enough to know what they want to accomplish when they arrive at my office. Avoiding probate is often a goal, but by far and large, the greatest need is to ensure the retention of adequate income and assets during lifetime, and a seamless transition of resources from their estates to their heirs, upon passing. However, the greatest estate plan does not ensure this, if the income and assets are spent down for the cost of long term care due to an illness or accident or both.

Those same resources, with proper and timely planning, ensure that there are sufficient lifetime reserves upon which to rely, and an eventual estate to administer.

The *Irrevocable Income Only Trust* has been a tried and true vehicle for estate and medicaid planning for more than twenty five years. Its use has been challenged in the Courts with a *decisive blow to those who would question its viability*. To date, there is no better legal instrument that *accomplishes* so much for you, with such de minimis risk.

## *WHAT IS IT & HOW DOES IT WORK?*

The trust is a contract between you, the creator of the trust, and the trustee, to manage contributed assets according to the trust terms. Income is received by you for life. Although, the primary residence is usually placed in trust, bank accounts, investments, bonds, life insurance, annuities etc. may also be contributed. Since the assets in trust remain a part of your taxable estate, *all income it earns, is reportable by you, * you still *enjoy* the real property tax exemptions & *the capital gains tax exemptions upon the sale of the home/appreciated assets, and * your kids enjoy a step up in basis upon your passing (meaning they *should* have no capital gains tax to pay upon the sale of the home/assets). *No probate is necessary *as pertain to the assets in trust*. What a windfall for estate planning, but it palls in comparison to the countervailing medicaid advantages.

When assets are held in an irrevocable income only trust for the requisite period of time for medicaid planning, they * are *not counted as available resources when you apply* for either <u>long term home care assistance or chronic care assistance</u> in a nursing and rehabilitation center. This means, as pertains to your home, that * you may live in it, sell it or rent it, but the home may not be recovered by medicaid for the cost of your care. It ensures *your spouse has a place to live, and *a resource for your children. *The *appreciation* in your home/assets is also protected. If the home/assets are sold, the proceeds may be placed in a trust bank account, from which * you receive the income, and *the kids, the principal if they need it. You may, as life changes, choose to *change your beneficiaries in the trust, by Will, and *your beneficiaries will not be responsible for the cost of your care from the trust proceeds.

## *HOW DOES THIS APPLY TO ME?*

If you can self insure for the cost of long term care in a nursing home, which cost currently ranges from $13,000 to $17,000 per month on Long Island, then planning will not apply to you. But if your resources and income will not cover the bill, then planning to *qualify for medicaid assistance* is a mandate, and a prudent course of action.

---