

# Living trusts, life estates and joint accounts: Are you Protected?

**W**hen planning to protect themselves from long term care expenses, many individuals have either placed their home or other assets in a Revocable Living Trust, an Irrevocable Trust while retaining the right to receive income, transferred the home to children by a deed that retained the right to live in the home for their lifetime (i.e., a life estate deed) or added a child's name to an account as a joint tenant with rights of survivorship. The general idea behind such planning was to remove assets from an individual's probate estate because Medicaid was only permitted to recover for benefits paid on behalf of the individual from the individual's probate estate. Properly drafted, each of these vehicles accomplished that goal since the assets held in such trusts, deeds or joint accounts do not pass under a person's Last

Will and Testament in probate. Thus, Medicaid did not have a right to recover against such assets.

However, as of April 1, 2011, New York state permits expanded estate recovery against assets passing outside of probate. In Gov. Cuomo's budget, passed this year, Medicaid now has a right of recovery at a person's death against revocable living trusts, irrevocable trusts to the extent of retained interests in the trusts, life estate interests, joint accounts, and, potentially, certain accounts that even have designated beneficiaries. While there is a quagmire of legal issues surrounding New York's ability to enforce recovery under the new law, the proposed budget savings is merely \$1 million and it does not appear to take into account the actual legal costs for New York to attempt recovery. Thus, the actual budgetary benefit of this change is questionable.

What does this mean for you? At the outset, if you or a loved one anticipates the need for long-term care either at home or in a facility, then legal

planning is imperative. Gone are the days a general practitioner can handle planning specialized concerns of elder care or special

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planning. The use of trusts and other vehicles remain a valid planning strategy. However, given the change in law, their appropriate use in the planning process requires a consultation with a qualified elder law attorney.

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