



June 1, 2022

Mr. John Smith Ms. Jane Smith
1 Main Street
Albany, NY 12201

Dear Mr. and Ms. Smith:

This letter will describe how your Irrevocable Trust will operate. It sets forth the various steps necessary to “fund” your Trust and to carry out the use of the Trust for Medicaid planning purposes. It is critical that the procedures discussed in this letter are followed precisely so that the planning objectives desired in establishing your Trust will be accomplished. Failure to follow these instructions may result in adverse Medicaid and tax consequences.

Among other things, we will (1) describe what actions you must take to transfer assets into the Trust, and (2) discuss some of the things you need to know and be thinking about in the future, to ensure the proper administration of the Trust in a manner that will ensure the protection of the Trust assets in the event either of you requires long term care.

As you are aware, income generated from the assets that you transfer to the Trust is payable to the two of you during your lifetimes, in the discretion of your Trustee. During this time, it is anticipated that the Trust will run smoothly and that your Trustee will have few legal problems in the administration of the Trust. In order to help accomplish the long-range objectives for which the Trust was created, however, it is necessary that administration of the Trust be consistent with the rules set forth in the Trust instrument and the tax laws related to trusts.

The first step in implementing the Trust is for you to transfer your assets into the Trust.

(a) YOUR TRUST IS EFFECTIVE ONLY TO THE EXTENT THAT IT IS FUNDED.

The Trustee collects the income and, in the Trustee’s discretion, pays it to the income beneficiaries—initially the two of you. Under no circumstances may trust principal be paid to either of you, as Grantors. This is necessary to ensure that the assets in your Trust remain protected in the event either of you require long term care and wish to qualify for government benefits to assist you in paying for such care.

As you can see, while you are living, the assets that you fund into the Trust will be administered for the Trust beneficiaries according to your instructions in the Trust. Then, upon your death, the remaining assets will be distributed to the remainder beneficiaries by means of the provisions of the Trust.

I. WHAT IS A “MEDICAID ASSET PROTECTION TRUST”?

Although we discussed your Trust in detail and you now understand the basics of how an irrevocable trust operates, this summary explanation will likely be helpful when you review the Trust in the future.

By signing the Trust instrument (that is, the Trust Agreement), you created a new legal entity, or legal being. This is the Trust itself. Within it, you established a number of rights and responsibilities for persons named in the Trust. These persons serve four roles.

The first is the role of “Grantor.” The Grantor of a trust is the creator of the trust. For your Trust, the two of you are the creators of the Trust, and therefore the Grantors of the Trust, and you will transfer assets into it.

The second is the role of “Trustee.” The Trustee of a trust manages the trust, makes decisions regarding the use of trust assets, and makes distributions pursuant to the terms of the trust. You have appointed Joseph Smith to serve as Trustee of your Trust.

The third is the role of “beneficiary.” A trust exists for the benefit of the beneficiaries. A trust has two types of beneficiaries: the income beneficiaries, who are the recipients of distributions of trust income, and the principal beneficiaries, who are the recipients of distributions of trust principal. While you are alive, the principal beneficiaries are your descendants, who may receive distributions for any purpose, at the Trustee’s discretion, if the Trustee is independent, and if not, may receive distributions for health, education, maintenance, and support, at the Trustee’s discretion. In addition, your Trust designates the two of you to receive discretionary distributions of income.

CAUTION: If a principal beneficiary is a “Supplemental Needs Person,” we recommend that you consult with our office prior to making any outright distributions of principal to the beneficiary to determine how this might affect the beneficiary’s government benefits.

After both of you have died, the income and principal beneficiaries of your Trust are your descendants, per stirpes, who will receive their shares in trust as specified in Article Five of your Trust.

The fourth is the role of “Trust Protector.” A Trust Protector is responsible for protecting the purpose and intent of the trust. In your Trust, the Trust Protector will have the limited ability to make certain amendments to the Trust, remove a Trustee, and fill Trustee vacancies. The Trust Protector cannot, however, change the beneficiaries of the Trust.

The responsibilities and the powers of the Trustees are described in Article Ten of the Trust Agreement. Not all trust instruments contain the same powers, so the Trustees must pay attention to the language in your Trust to be certain of the authority and options available. Some of the Trust provisions reflect existing trust law, while others are included because they suit your situation and may supersede such existing laws for irrevocable trusts.

Your Trust is a “Medicaid Asset Protection Trust,” meaning the assets transferred to it are protected from counting as resources for Medicaid qualification purposes. Your Trust is “irrevocable,” meaning that you, as Grantors, have given up the power to revoke the Trust and cannot thereby end its existence.

II. NO AMENDMENT OF TRUST PERMITTED

You do not have the power to amend your Trust. This means that you cannot change any of its terms. You do, however, retain the right to change the Trustees. You have also retained a “limited power of appointment” to change the remainder beneficiaries of the Trust estate through your Wills, living trusts, or other written instrument. The power of appointment is “limited” in that you can appoint the assets to your descendants and charities, but not to yourselves, your estates, your creditors, or the creditors of your estates. Further, this power is a “testamentary” power, meaning that the instructions you leave will be effective upon your death.

III. TRANSFERRING ASSETS INTO YOUR TRUST (“FUNDING YOUR TRUST”)

A. THE IMPORTANCE OF FUNDING THE TRUST

Your assets must be transferred into the Trust if it is to achieve its objectives. This is commonly known as “funding your Trust.”

The Trustee only has control of the property if it is in the Trust. You have no control of your assets once they have been transferred into the Trust. The major reason for establishing the Trust (that is, removal of assets from your ownership) will only be achieved if the assets are transferred into the Trust.

To the extent that you, as Grantors, do not transfer assets into your Trust, such assets will not be protected for Medicaid eligibility purposes.

B. WHAT IS THE CORRECT AMOUNT OF ASSETS THAT WE SHOULD USE TO INITIALLY FUND OUR TRUST AND WHAT IMPACT WILL THIS HAVE ON OUR MEDICAID ELIGIBILITY?

You should transfer as much of your assets at one time that you wish to protect from being considered an available resource for Medicaid purposes to an account (or various accounts) opened in the name of your Trust. The determination of the amount of assets to be used to initially fund your Trust should be made in consultation with our office. No checks representing principal should be written to either of you from the Trust. If these instructions are not followed exactly, there will be a penalty period imposed, or the Trust assets will be deemed an available resource for Medicaid eligibility purposes, or both. If you want to make other gifts subsequent to the initial funding of your Trust, we strongly recommend that you contact our office for guidance. Furthermore, the transfers made into the Trust are subject to a 60-month lookback period for Medicaid eligibility purposes. Therefore, depending upon the amount of assets used to fund your Irrevocable Trust.

C. IN WHAT “NAME” WILL OUR TRUSTEE HOLD THESE ASSETS?

We recommend that title to the Trust assets be held by the Trustees in substantially the following format:

Joseph Smith, Trustee of the Smith Family Irrevocable Trust dated February 1, 2022.

Sometimes, banks or other financial institutions prefer a slightly different format for the titling of trust assets. This is not a problem. The important thing is to be sure that your Trust is not confused with any other trust and that the assets are clearly held in the name of your Trustees.

We are providing you with a copy of the Trust, as this copy will need to be provided to the bank or other financial institution at the time the new trust account is created.

D. TAXPAYER IDENTIFICATION NUMBER

We have obtained the following taxpayer identification number for your Trust:

[Applied for]

This number will also be communicated to your Trustee. You should keep this number handy for future reference. The I.D. number should be used on all accounts retitled in the name of the Trust, and for any new accounts.

E. IMPORTANT INFORMATION REGARDING YOUR IRREVOCABLE TRUST

1. Limited Power of Appointment

In creating this Trust, you have reserved a Limited Power of Appointment (see Section 3.02). This means that any appreciated assets placed into the Trust will receive a step-up in basis for 1/2 of the assets upon the first death, and a step-up in basis for the other 1/2 upon the second death (however, any appreciation of the first spouse's 1/2 after his or her date of death will not get a step-up in basis upon the second spouse's death). It also means that 1/2 of the date-of-death value of these assets will be brought back into your estate for estate tax purposes. This should not present a problem since you do not have a taxable estate; therefore, no estate tax will be due, notwithstanding the inclusion of these assets in your estate.

For example, assume that you jointly own an asset worth \$120,000 with a \$20,000 basis, and you transfer the asset into your Trust. If the asset does not appreciate further before the first death, the value of 1/2 of the asset (\$60,000) will be included in the first decedent's estate and will get a step-up in basis. This 1/2 will have a \$60,000 basis and the survivor's 1/2 remains at a \$10,000 basis (1/2 of the original \$20,000 basis). Now assume that the asset increases in value to \$220,000 before the second death. One-half of the

date-of-death value (\$110,000) would be included in the second spouse's estate and will get a step-up in basis. The result is an asset worth \$220,000 and a \$170,000 basis (the basis of first spouse's 1/2 was adjusted to \$60,000 at his or her date of death, and the basis of the second spouse's 1/2 was adjusted to \$110,000, for a total of \$170,000). Therefore, if the property were sold shortly after the second spouse's death, there would be a gain of \$50,000 (\$220,000 value less \$170,000 basis).

2. Distributions of Income and Principal to You

You are not beneficiaries of trust principal. However, you have elected to give your Trustee discretionary authority to distribute income to you. This means that Medicaid may budget trust income as part of your patient responsibility once you qualify for Medicaid benefits, whether or not any income is actually distributed. If only one of you qualifies for Medicaid benefits while both of you are alive, then one-half of the income would be budgeted by Medicaid as available for purposes of the applying spouse's eligibility to receive Medicaid. The remaining one-half of trust income would be payable to the non-applying spouse. Under no circumstances may principal of the Trust be paid to or for the benefit of either of you (see Section 1.04).

F. PLACING SPECIFIC ASSETS INTO YOUR TRUST

Even though you may not have all the types of assets that are addressed below, we feel that it is helpful to discuss them as you may obtain such assets in the future or simply wish to be well-informed.

i. Real Property

Real property may generally be transferred into an Irrevocable Trust.

You have advised us that you own the real property located at 1 Main Street, Rensselaer, New York, and that you wish to place it into your Trust. Accordingly, we will prepare a deed of transfer into the Trust. We will have the new deed recorded and will forward it to you when the recorded copy has been received.

Please be advised that some County Clerk's Office's offices will scrutinize transfers of real property into Trusts. If you have advised us that you wish to fund your Trust with your residence, then we have included language in the Trust that clearly preserves your right to any and all continued property exemptions (such as STAR exemption). However, we cannot control the actions of the County Clerk's Office's offices. Please carefully review your next tax bill and any documentation regarding exemptions you receive to ensure that any previously granted exemptions are stated thereon. Please contact our office immediately for further legal representation and action if an exemption has been removed as a result of the transfer of the property into the Trust.

If your property is encumbered by a mortgage, we strongly recommend that you obtain the existing lender's approval of the proposed transfer before the transfer is made. In addition, some lenders might not agree to a new loan (or refinance an existing loan) on property in an irrevocable trust. Accordingly, if you're contemplating a new loan or a refinance for the property, you should NOT transfer it into the Trust without first checking with your lender to determine if the Trustee will be able to borrow against the property held

inside the Trust.

With respect to any real property located outside of New York, you need to hire an attorney licensed to practice law in the jurisdiction where the property is located to prepare a deed to transfer such property to your Trust. We can locate an attorney in another jurisdiction for you if you do not already know one.

In addition, upon transfer of ownership of real property to your Trust, the property insurance company should be requested to retitle the property insurance in the name of the Trust to avoid any issues should a claim arise (for example, the proceeds of a claim would likely be paid to you directly, rather than your Trust, and if you are a Medicaid recipient at the time, this can have negative consequences).

If any rental property is conveyed to your Trust, all future rental payments should be made to the Trustee of the Trust. You will need to notify your existing tenants of the change. Moreover, your lease should be reviewed to make sure that an assignment of the lease to your Trust is not prohibited. Please let us know if it is necessary for us to review your lease in this regard.

ii. Savings Accounts and Certificates of Deposit

These accounts should be held by the Trustee of your Trust in the format set forth in paragraph III.C, above. Banks and similar institutions commonly see Trusts and are used to helping their depositors with necessary changes. A copy of the Trust Agreement is usually required and you may suggest that the bank make a copy if they require it for their records. We recommend that you keep a copy of any card or document that you sign to effect the change. If a particular savings account cannot be transferred before a set date without losing interest, you may decide to wait, although this could extend the Medicaid penalty period.

Please note that some banks view the retitling of a Certificate of Deposit (CD) as a change in ownership, requiring a new CD to be issued. This could result in the forfeiture of some of the interest that the CD would have earned. The amount of forfeiture will depend on the financial institution, but a forfeiture of 3 months of interest, or more, is not unheard of. As noted above, it is imperative that we transfer all CDs into your Trust immediately, even if some interest is forfeited as a result.

iii. Checking Accounts

While such accounts can, and in some cases should, be put into the name of your Trust, you may want to leave one account in your individual names, especially if income is deposited directly into the checking account. Bank records must indicate which checking accounts are held in the name of the Trust and which accounts are held in your individual names.

iv. Life Insurance Policies

You must write to your insurance agent or to the company itself to obtain the insurance company's "Change of Beneficiary" and "Change of Ownership" forms. In most cases, the owner and the beneficiary should be your Trust. Because these changes are not effective until they are received and acknowledged by insurance companies, we advise you to take care of this as soon as possible. Be sure you receive written assurance from the insurance company that the desired changes have been effected in company records and by endorsement on the policy. You may have personal reasons for naming a particular individual as

beneficiary, in which case upon your death the proceeds of the policy will neither go into your Trust nor be distributed under its terms, but will pass according to your beneficiary designation by operation of law.

5. Stock/Securities

The transfer of stock to the Trust must be accomplished by changing title on the stock certificates themselves. In some cases, your broker can help you make this change without charge. In other cases, a small charge per certificate may be required. If, however, you hold shares through a brokerage account, you only need to change the title on the brokerage account, rather than on each share certificate.

Your stockbroker may request a copy of the signed Trust Agreement for examination by his or her firm's legal department. We generally do not provide a copy of the entire agreement. A copy of the signature page and the Trustee powers will demonstrate that the Trust is properly executed and the Trustees have the necessary power to borrow money, buy and sell stocks, bonds, and options and conduct other Trust business.

If you hold shares in a closely held corporation, you should have the corporation's secretary issue new certificates in the name of the Trust. The existing (old) certificates should then be canceled. Before this is done, however, it should be determined whether there is a stock restriction agreement, whether an assignment might cause some sort of forfeiture, and whether the board must approve the transfer. It would be wise to consult with corporate counsel in this regard.

6. Partnerships

Partnership interests can be complicated. A limited partnership agreement or a general partnership agreement may indicate what is needed to transfer the interest. If you have them, review the agreements to determine (a) whether or not you can transfer your interest into the Trust and, if so, (b) how you are to achieve this result. You may want us to help you with this. If you do, we will need a copy of any partnership agreements to which you are a party. We can then advise you.

7. Promissory Notes

You may assign each promissory note you own to the Trust. We suggest that you do so by typing on the back of each note the following endorsement:

Pay to the order of Joseph Smith, Trustee of the Smith Family Irrevocable Trust dated February 1, 2022

Dated: _____ Name: _____

Signature of Named Payee

You can also assign the mortgages securing payment of the notes to the Trust. You need not record the Assignment, but it should be prepared in the same manner as deeds to real property and should be retained

in a safe place. If you or a Successor Trustee need to commence any action to obtain title to the property given as the security for payment of the note, the Assignment can be recorded.

8. Individual Retirement Accounts (IRAs)

Individual Retirement Accounts (IRAs) must be held in the name of the individual who created the accounts. Thus, IRAs cannot be transferred into your Trust. At the present time, the law is unclear as to how IRAs should be treated in a Medicaid trust situation and, therefore, we would recommend further consultation if you are considering attempting to protect an IRA.

9. Automobiles

At this time, we do not recommend that you transfer your automobile to the Trust, as there is an exception under current Medicaid law for ownership of one automobile.

If, however, you have a number of automobiles, or automobiles of particularly high value, these probably should be transferred to the Trust. Please let us know if this is the case so that we can assist you further in funding the Trust with these assets.

10. Other Personal Property

Please let us know if you have any other property which we may not have considered such as airplanes, yachts, horses, art work, copyrights, patents, royalty contracts, a family business, stock options, mobile homes, or partnership interests. We will need to give you specific advice based on the particular asset.

Personal property items (jewelry, furs, furniture, and art objects, etc.) that are very valuable such that they may be considered “resources” for Medicaid purposes, should be transferred by a general assignment with particular descriptions of valued items and a provision to cover after-acquired items.

DI. ADMINISTRATION OF THE TRUST

The Trustee can do anything that the Trust Agreement specifically allows (see the Trustee Powers article in your Trust instrument), and which is allowed under New York Law.

a. INCOME TAX RETURNS

Please be advised that this Trust is a “grantor trust” under the Internal Revenue Code. Please note that any income generated by the Trust assets will need to be reported on your tax return, regardless of whether you, as Grantors chose to receive such income or if such income is being accumulated in the Trust and not paid out to either of you. The Trustee will file a tax return using IRS Form 1041, showing the income and deductions of the Trust on an attachment that you will use to prepare your tax return. You will file your return with the same information as before.

Your Taxpayer Identification Number should be communicated to your accountant or tax return preparer as it will be used on the tax information return to be signed by the Trustee.

b. RECORD KEEPING

We do not believe that any extraordinary record keeping is necessary beyond that which you would ordinarily maintain. It is important, however, that your Trustee keeps records of property held in the Trust separate from property that is not held in the Trust. Once changes that are recommended in this letter are made, your Trustee will receive monthly and other account statements in the name of the Trust. Information you receive from your stockbroker or other source of financial information should also be adequate.

Preparation of Schedule A

We have prepared a Schedule A listing the initial assets transferred to the Trust. Your Trust must be funded in order to be valid. When additional assets are transferred to the Trust, Schedule A may be revised.

Future Changes in Trust Assets

If the Trust subsequently disposes of a listed asset, it may be removed from the Schedule A by keeping a separate schedule and indicating its disposition and the date in the margin. Schedule A, as originally prepared, need not be changed as it only indicates assets as of a particular day. As assets are removed, your Trustee should simply keep a record of the change. Likewise, if a new asset is acquired by the Trust by contribution by you, as Grantors, or by reinvestment of the Trust assets, it may be added to a new schedule.

We recommend that you review the schedule of assets for the Trust each year when income tax returns are prepared. Delete what has been sold, add what has been acquired and confirm that it is held in the name of the Trust.

DII. YOUR LAST WILL AND TESTAMENT

Assets owned by your Irrevocable Trust will not be subject to disposition by your Last Will and Testament. Your Last Will and Testament has been written to provide for the disposition of any assets that have not been registered in the name of your Irrevocable Trust. For example, tangible personal property or other assets might not have been transferred to the Trust. Your Last Will and Testament's only effect is to transfer these assets to the proper beneficiary. If all of your assets are effectively owned by your Irrevocable Trust, probate administration of your Will should not be required. Any property held in joint tenancy with right of survivorship will not be considered an asset of your Irrevocable Trust, but will pass by operation of law to the joint tenant, again eliminating the need for probate.

You retained a Limited Power of Appointment over your Irrevocable Trust assets. If you exercise that power of appointment through provisions in your Will, then a probate might be needed.

We hope that this letter answers most, if not all, of your questions regarding the funding of your Irrevocable Trust. Once you have had an opportunity to review the letter, please contact us if you need assistance in funding the Trust.

Very truly yours,

PIERRO, CONNOR & STRAUSS, LLC

A handwritten signature in cursive script, appearing to read "Louis W. Pierro".

Louis W. Pierro

LWP/vw