



# LONG TERM CARE PLANNING WITH ASSET PROTECTION

PRESENTED BY:

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# WELCOME - HOUSEKEEPING

- We are sharing our webcam; please note your lines are muted
- Type questions in the Q&A pod at the bottom of your screen
- Presentation can be found here under “Estate Planning”  
<https://www.pierrolaw.com/resources/>
- Fill out survey



## Employee Assistance Program

This program is brought to you by the  
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# THE LEGAL PROJECT

- Introduction by Laurie Allen, Manager, Pro Bono Programs
- Private, independent, not-for-profit organization
- Provides civil legal services and supports for vulnerable community members
- Over 300 pro bono attorneys and staff across 11 counties in NYS
- Offers legal clinics and workshops including “Legally Speaking”
- Contact 518-435-1770 or [www.legalproject.org](http://www.legalproject.org)



# Our Team Of Attorneys



**Louis Pierro**



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**Peter Strauss**



**Caryn Keppler**



**Richard Rothberg**



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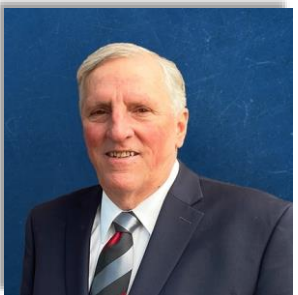
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Also licensed in New Jersey, Massachusetts and Florida



# AGENDA

- The Importance of Estate Planning
- “Core Four” Documents Everyone Needs
- Trust Planning
- Asset Protection for Long Term Care Planning
  - NYS Medicaid Home Care
- Putting your Plan into Action



# 2023 ESTATE AND GIFT TAX

- Federal Gift, Estate and GST Tax Exemption = \$12,920,000/person
  - Current laws Sunset 12/31/25
    - > reduction to inflation-adjusted \$5,000,000 (~\$7m)
  - Portability of Estate + Gift, not GST Exemptions
- NYS Estate Tax Exemption = \$6,580,000/person
  - No Gift or GST Tax in NY – opportunity for large gifts
  - However, gifts made within 3 years of death are clawed back
  - No State Portability – Use it or lose it exemption



# GOALS



**Appoint the Right Individuals** to handle various management functions for you during life and after death

**Protect and Preserve Assets** from nursing homes, creditors, taxes and probate

**Provide a Legacy** to secure your family's future by preserving wealth



# Failing to Plan = COURT

Ensure your family won't inherit a legal mess

- Guardianship – Supreme Court
- Probate – Surrogate's Court
  - Expensive
  - Time consuming
  - Public
  - Who wins?



# CORE FOUR – THE FOUNDATION

**THE CORE  
ESTATE  
PLANNING  
DOCUMENTS**

**POWER OF ATTORNEY (POA)**

**HEALTH CARE PROXY (HCP)**

**DISPOSITION OF REMAINS  
APPOINTMENT (DORA)**

**WILL**

# POWER OF ATTORNEY



Appoint an individual to transact business and financial matters in your name

- Co-agents, alternates – Who?
  - Agent must sign - Oath
  - Comprehensive Powers Including Gifting - Key
- Durable, Springing
- Incorrect POA = Court

# HEALTH CARE PROXY / LIVING WILL



- Designate a surrogate to act if you are incapacitated
- Living will provides direction to health care agent including end of life decisions – incorporate in a single document
- DNR, MOLST
- Download our Health Care Decision Making Guide at:  
[www.pierrolaw.com/resources/](http://www.pierrolaw.com/resources/)

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# DISPOSITION OF REMAINS APPOINTMENT (DORA)

- 
- Appoint a person as your Agent to carry out your burial or cremation wishes
  - Include special instructions on the form – as detailed as you wish
  - Give comfort and guidance at a difficult time

# WILL



- Direct distribution of your property at death
- Establish “testamentary” trusts to protect beneficiaries, reduce or eliminate estate taxes and provide for heirs
- Designate Executors and Trustees
- Appoint a Guardian for your minor children

# WILL

VS.

# TRUST

## Required:

- ✗ Probate: cost & delays
- ✗ Only takes effect after death
- ✗ No provision for incapacity
- ✗ No privacy – court papers filed in probate are public record
- ✗ Extra costs and delays if any beneficiary is a minor or disabled person

- ✓ No Probate
- ✓ Manages Assets During Life and provides long term protection
- ✓ Provides for Successor Trustee upon death or incapacity - continuity
- ✓ Financial affairs remain private
- ✓ Must be 'funded' to be effective

***Major problem with ONLY having a Will:  
Probate can take several months to several years!!!!***



# TYPES OF TRUSTS

Living vs. Testamentary

Revocable vs.  
Irrevocable

Asset Protection Trusts

Life Insurance Trusts

Retirement Plan Trusts

Special Needs Trusts

Beneficiary Controlled  
Trust





# REVOCABLE LIVING TRUST



- Organize your assets
- Provide for management and use of assets should you become incapacitated
- Secure all beneficiaries
- Create 'downstream' trusts outside of the Court's reach
- **Avoid probate**

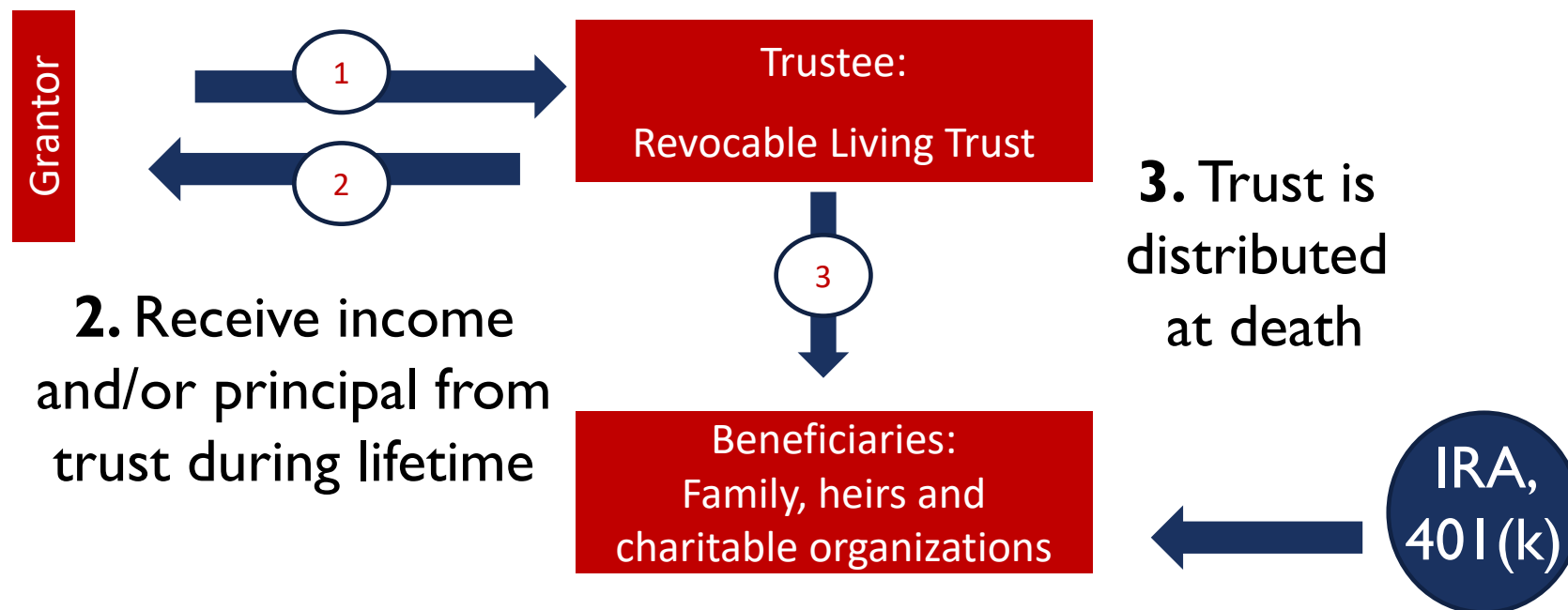
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# CHOOSING A TRUSTEE: CONSIDERATIONS

- Must be prepared to devote sufficient time and availability for trust management
- Must take responsibility to carry out instructions and distributions to beneficiaries
- Must be willing to be an 'expert' on your trust, fulfilling legal and fiduciary responsibilities
- May need to hire professionals to assist them (accountant, attorney, etc.)
- May or may not charge a fee to be trustee (such as a corporate trustee)

# REVOCABLE TRUST WITH FUNDING

1. Place all assets in trust (except IRA's, Def. comp., 401(k)'s, etc.)



[You can be the Grantor, Trustee and Beneficiary!]

# ENHANCED ESTATE PLANNING – NEXT GEN

## Issue:

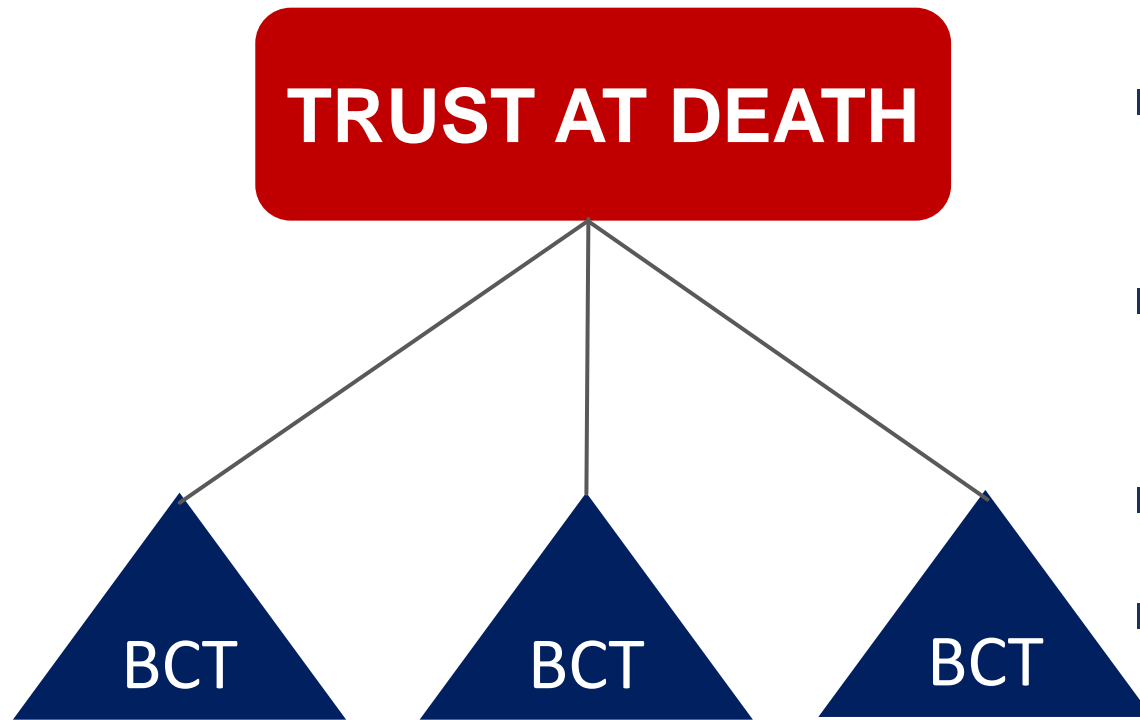
We worked and saved, and when we die, we want our family's wealth protected from divorcing spouses, lawsuits, bankruptcy and Medicaid.

## Solution:

Beneficiary Controlled Trusts-  
a/k/a “Bloodline Trusts”



# BENEFICIARY CONTROLLED TRUSTS



- Child can be trustee = Control of Assets
- Can use assets for themselves and their families
- Outside the reach of creditors
- Guarantees the family's legacy - assets stay in the bloodline

**Trusts for Children and Grandchildren**

# PLAN FOR THE COST OF LONG-TERM CARE

## #1 Risk to Your Retirement:

- Nursing Home Costs
- Home Care Costs



**Americans age 65 and older will need long-term care services and support at some point in their lifetime**



# KEY QUESTIONS ON PAYING FOR LTC

1. **Where** would you want to live?
2. **Who** would take care of you?
3. **How** would you pay for it - \$200K+/yr!

Self-  
Insuring

Private LTC  
Insurance  
+ Life  
Products

Medicaid



# MEDICARE VS. MEDICAID

Medicare does  
not cover long-  
term care



Medicaid is the  
only government  
program that pays  
for LTC



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# LONG-TERM CARE INSURANCE

## Traditional LTC insurance

- you choose amount of coverage, length of policy
- few companies now offer it; premiums may rise

## Hybrid LTC insurance

- provides LTC for you and a death benefit for beneficiaries if you pass before needing it

## Life Insurance with a Long-Term Care rider

- use part or all of policy's death benefit for LTC while you're alive, covers more than traditional policy – indemnity benefit pays as cash, can use for anything

# MORE ON AGING IN PLACE

## **Cost of Home Care**

\$35/hr. x 24 hrs. x 365 days =  
\$306,000/year

## **Availability of Home Care Workers – Major Problem**

**Professional Care Management – helps  
coordinate care**



# HOME? ...OR THE NURSING HOME



## Chronic Care Medicaid

- **Nursing home care**
- 5-year lookback
- Transfer penalties = # of mos.



## Community Medicaid

- **Home health care**
- Assisted living facility
- Medicaid managed long-term care
- Adult day care
- No lookback under current rules

# CAUTION: REVOCABLE LIVING TRUSTS ARE NOT MEDICAID PROTECTED



- Assets in a **revocable living trust** not exempt in determining Medicaid eligibility
- Assets transferred into an '**irrevocable trust**' are exempt if done properly
  - HOME CARE – no lookback
  - NURSING HOME – 5 year lookback

# GOOD NEWS: MEDICAID INCOME & ASSET LIMITS INCREASED IN 2023

Landmark Medicaid Increases Passed in NYS Budget:

- Same income limit will be used for younger people under Affordable Care Act and for Age 65+, blind & disabled

INCOME / MTH			ASSET LIMIT	
YEAR	SINGLES	COUPLES	SINGLES	COUPLES
<b>2023</b>	<b>\$1,677 + \$20</b>	<b>\$2,268 + \$20</b>	<b>\$30,182</b>	<b>\$40,821</b>
Difference over 2022	+\$763	+901	+\$13,382	+\$16,821

# EXEMPT ASSETS

Some assets that are exempt:

- \$30,182
- Pre-paid burial
- Income producing business assets
- Life insurance – face value less than \$1,500!
- One Car
- IRA in “Periodic Payment Status”- *major exception, include Roth IRA’s*

**Non-Exempt Assets= EVERYTHING ELSE!**

# YOUR HOME

- Exempt if you, a spouse or minor or disabled child lives there
- Transfer exemptions
  - Caretaker Child (2 yrs.)
  - Sibling with an Equity Interest (1 yr.)
  - Disabled Child
  - Spouse
- Intent to return home if nursing home is needed
  - Subjective Intent OK





# TRANSFER OF ASSETS

- Lookback Period – All transactions are reviewed
  - Nursing Home, 5 yrs.
  - Home Care
    - Currently NO LOOKBACK
    - 2 ½ yr. lookback “expected” in 2025
- Penalties for Transfers during the lookback
  - Penalty = number of months before Medicaid will pay for care





# EXAMPLE: PLANNING FOR LONG-TERM CARE

- Jerry – NYS DMV Systems Analyst, age 59
- Patricia – Bank HR Director, age 61
- Live in Albany
- Two adult children, Gretchen age 30 and Thomas age 28; 1 grandchild, Patrick age 3
- No LTC Insurance Coverage



# THEIR ESTATE PLANNING GOALS

1. Create Advance Directives: The Core Four
2. Retire comfortably – Soc. Sec., IRA, Pension, insurance
3. Protect their home and life-savings from Long-Term Care costs
4. Leave a legacy for children and grandchildren
5. Age in their own home and receive care when needed

# ASSETS - JERRY AND PATTY

## **Jerry:**

■ Deferred Comp	\$325,000
■ Stock	\$175,000

## **Patty:**

■ 401(k)	\$250,000
■ Non-Qualified Annuity	\$150,000
■ CDs	\$50,000

## **Joint:**

■ Savings & Checking	\$ 75,000
■ Home	\$245,000



# EXPLORE BUYING INSURANCE

1. Insurable
2. Affordable
3. Products available in NYS?



# MEDICAID ASSET PROTECTION TRUST

**Jerry and  
Patty  
(Grantors)**

- Co-Trustees: Gretchen and Thomas manage trust assets
- Beneficiaries:
  - Jerry and Patty will have income and rights to use real and personal property for life
  - Upon death, Beneficiary-Controlled Trusts will be created for their heirs
  - Heirs: Gretchen, Thomas and their descendants

# TRUST FUNDING- IRREVOCABLE TRUST

Home

\$50K from Cash Accounts

Jerry's Stock Portfolio

Patty's Annuity

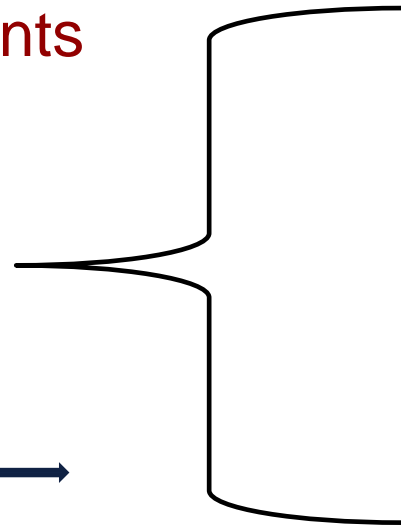
Patty's CDs

Add'l options

Life Insurance

Business

Real Estate



## MAPT

- Income can be paid or accumulated
- Principal can NOT be given back to the Grantors (Jerry and Patty) directly
- Principal can be paid to children or others (who can use it for any purpose)

# PROTECTING ASSETS WITH SECURITY

## KEEP OUT

50K Cash  
Patty's 401(k)  
Jerry's Def. Comp

## Security Features

- Power to change Trustees
- Power to change beneficiaries
- Can revoke under NY Law with consent of beneficiaries

# MEDICAID ASSET PROTECTION TRUST

## RESULTS:



### Jerry and Patty's Plan Completed:

- Wishes during life and upon death will be followed
- No probate or court involvement
- Home and assets are protected
- Legacy is secure for family
- Long-Term Care costs will be covered by Medicaid



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# PEACE OF MIND

## Results If You Plan Now:

- Age in place with dignity, independence and security



# THE SECURE ACT – 2.0 SIGNED DECEMBER ‘22



10 YEARS

- Raises the starting age for Required Minimum Distributions (RMDs) **from 72 to 73**
- **Mandatory 10-year payout** for all beneficiaries of qualified retirement accounts, including IRA's, 401(k)s, 403(b)s, etc.
- Exceptions for spouse, disabled or chronically ill individual

# THE SECURE ACT – CONT.

- Careful consideration must be given to naming trusts as beneficiaries
- Trust Protectors can be used to add flexibility
- All existing Trusts should be reviewed to avoid unintended consequences



# SOLUTIONS TO ANALYZE

## OVERVIEW

- Roth Conversions
- Spousal Rollovers and the New Spousal Rollover Trap
- IRAs Payable to CRTs
- Life Insurance Solutions
- Special Needs Trusts (Chronic Illness)



# PIERRO, CONNOR & STRAUSS



- Consultations in person, virtually or by phone

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**Are You Prepared?**

**THANK YOU!  
QUESTIONS?**

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