

The 5 year lookback period **only** applies to nursing home care and does not apply to Medicaid services for home health care. This means a transfer now will let you qualify for Medicaid home care services **without waiting**.

The Medicaid Asset Protection Trust is very flexible. You have the right to sell your home and use the money from its sale to buy another home or condominium and continue to enjoy the protection of the trust.

PROTECTING ASSETS FOR CHILDREN

Many successful parents have children who are poor at handling money. They want to provide for their children upon their death but fear that their children may waste away their inheritance.

A solution to this problem is a **Spendthrift Trust**. Your children's inheritance is managed by someone you choose who will distribute their inheritance in a plan you create such as giving their inheritance to them in installments based on their ages. This enables you to provide for your loved ones and also safeguard their inheritance from being wasted.

PLANNING FOR DISABLED CHILDREN

You can provide for disabled children in your Will without risking government benefits they are receiving by creating a **Special Needs Trust**. This trust legally permits you to provide for them without risk of losing their benefits.

CONTACT US



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Nicholas T. Montalto

Nicholas T. Montalto received his Bachelor of Business Administration in Accounting from St. John's University. Soon after, he became a Certified Public Accountant and began as the supervising auditor at Peat, Marwick, Mitchell & Co. (KPMG). He then served as a Controller of Popular Science Publishing Company and finally the Vice President and General Counsel to D. L. Blair Corp.

In 1966, Mr. Montalto earned his Juris Doctorate degree from St. John's University School of Law. In law school, he was awarded the prestigious American Jurisprudence Award in Estate and Income Taxation and graduated at the top of graduating class.

Mr. Montalto has been in private practice since 1972, specializing in Elder law, Trusts and Estates and Medicaid issues. He, and the members of the Law Offices of Nicholas T. Montalto ("NTM"), have extensive experience in negotiations, as well as, trial experience in all of the Federal and State Courts of New York. In addition, Mr. Montalto is a member of the Richmond County Bar Association.

NTM recognizes that their clients work hard to attain their standard of living, to raise and educate their children, and to provide for their retirement years. These clients want assurances that their families will be cared for in the event of their disability or death. NTM is firmly committed to protecting their clients' assets and dignity.

After a comprehensive evaluation, Mr. Montalto will develop an appropriate plan that is designed to avoid the devastating financial consequences that can result from the exorbitant costs of long-term care, court cost and estate taxes.

NTM will handle the preparation of Wills, Durable Powers of Attorney, Health Care Proxies, Guardianships, and Medicaid issues, together with Trust and Estate matters. They will explain the laws as they apply to each individual client and then patiently discuss the available legal options. An appropriate plan of action will then be arranged and finally implemented.

NTM has been engaged in all phases of the general practice of law for *over forty years* and the quality of their legal services have resulted in the growth of their practice.



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ELDER LAW ESTATE PLANNING GUIDE

ELDER LAW AND ESTATE PLANNING

ELDER LAW ESTATE PLANNING

Planning now lets **you** choose who will handle your legal/financial affairs and make medical decisions for you if you are unable. It will protect your property and qualify you for *medicaid* if you require long term care. Upon your death it will keep your assets in your blood line for the benefit of your children and grandchildren.

DURABLE POWER OF ATTORNEY

This document lets **you** select who will manage your finances, pay your bills and take care of you if you become disabled. Without this document your loved ones will have to go to Court to have someone appointed to do these things. This will result in a great legal expense and you may wind up with a **stranger** managing your affairs. A Durable Power of Attorney avoids this expense and uncertainty.

LIVING WILL/ HEALTHCARE PROXY

This document insures that your wishes as to end of life care are followed and lets **you** choose who will make health care decisions for you. Without this document your spouse or children cannot make these decisions and can result in a Court making these decisions instead of you.

LAST WILL AND TESTAMENT

A Will is a document that lets you say who will receive your property on your death. Without a Will the law will decide who gets your property. Many people think their spouse will automatically get all of their property when they die. This may not be true.

REVOCABLE LIVING TRUST

A **Revocable** Living Trust is a *legal person* that you create to hold title to your property. You still control your property while you are alive and upon your death your property will go as you specify in the trust. You may revoke or change the terms of this trust at any time.

This Trust generally avoids the need to probate a Will since you specify in the trust who will receive your property on your death.

Even though a will may not be needed one is usually prepared to make sure that any property that you did not place in the trust will find its way into the trust upon your death. This is called a **Pour Over Will**.

This trust avoids the risk of a Court intervening in your affairs if you become disabled and appointing a **stranger** to manage your affairs.

The trust will automatically transfer all real estate which you own regardless of which state it is located. This avoids the cost of an *ancillary* probate proceeding.

Using a trust enables you to save New York estate taxes by dividing your property into separate trusts.

While this type of trust can be changed by you any time it does not protect your property if you become severely disabled and require long term care.

IRREVOCABLE LIVING TRUST

An **Irrevocable** Living Trust has the same advantages as the **Revocable** Trust however once created cannot be changed unless everyone involved in the trust agrees.

This type of trust is also called a **Medicaid Asset Protection Trust** since if you become disabled you may qualify for **Medicaid** and protect your assets.

This trust is ideal to protect your family home. It permits you to remain in your home for the rest of your life, keep all your income and protect it should you should need long term care.

This trust usually will not affect your lifestyle since you still receive your pension and social security checks directly have the right to stay in your home and keep all of your real estate tax exemptions. The trust can sell and trade assets through the a trustee that you choose and you may change the trustee at any time.

LOOK BACK PERIOD

The Medicaid Asset Protection Trust is subject to a **look back period** of five (5) years. This means if you transfer assets into this Trust and require nursing home care after five years have passed your assets are fully protected. Even though there is a five year wait, it pays to get started now since you will get credit for the time you accumulate if you do not make the full five years.