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ELDER LAW NEWS UPDATE

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TO: Clients, Friends and Colleagues

**Check out www.eldercareatty.com.

PROTECTING YOUR HOME WITH A LIFE ESTATE OR IN A TRUST

For those of you who have consulted with me, we have discussed the advantage of transferring your home to a Medicaid Asset Protection Trust (MAP), but rarely do we have time to discuss the issues surrounding the alternative, the deed to children with a reserved life estate in the parent. *When you think of your home*, you think of Senior Citizen tax exemptions, enhanced Star exemptions, Veterans exemptions, capital gains exemptions, required gift tax filings, children's creditors claims against your home, and legal fee differences. Let me preface, that the Trust has far more flexibility and advantages than the deed with a life estate, but let's make a comparison and you be the judge.

HOMES IN TRUST

1. As the creator of the Trust and the beneficial owner of the home in trust, you should be entitled to all of the real estate tax exemptions you formerly claimed, being the Veterans, Star and Senior Citizens' exemptions.
2. The Trust protects against the children's creditors claims. Think credit card claims, loan defaults, car accident litigation, and potential matrimonial claims.
3. You may sell the home that is titled in trust without affecting Medicaid eligibility provided the look back period has expired (5 year look back). The sales proceeds will be protected and you also may claim the \$250,000 or \$500,000 capital gains exemptions for an individual, or a married couple.
4. When you transfer your home to a MAP Trust, it remains your property due to the grantor trust rules, which is an IRS term of art. Gift tax returns may not need to be filed since it is an incomplete gift.
5. The legal fees associated with the preparation of a Trust are higher than that of a deed with a Life Estate. However, it is minimal compared to the cost of a nursing home bed in this region, which range from \$15K to \$19K per month.

DEED TO KIDS WITH RESERVED LIFE ESTATE

1. As the owner of a life estate interest in your home, you will continue to receive whatever real tax exemptions you formerly held prior to the transfer.
 2. Creditors claims of the children may attach to your home in the event a claim is reduced to judgment. In fact, a filed judgment in the County Clerk's office will automatically be a lien against real property- the home.
 3. When a home is sold with a Life Estate interest, it is reduced to cash and you lose your Medicaid eligibility. You may also lose a portion of the \$250,000.00 capital gains exemption, but it is the children's remainder interest that may be subject to the full capital gains tax liability upon sale. \$\$
 4. Gift tax returns will have to be filed although no tax liability will accrue since there is a Federal gift tax exclusion of \$12,060,000.00. NYS has no gift tax.
 5. The legal fees associated in preparing a Deed with a Life Estate are less than those preparing a Trust. However, you *may not sell your home* during your lifetime lest you *lose your Medicaid eligibility* and sacrifice the expiration of the five look back period.
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