

# Drafting Successful Medicaid Trusts

*Expert advice on withstanding MassHealth scrutiny*

Creating an effective Medicaid trust requires not only a deep understanding of trust law, but also of estate and tax planning. You must know how to draft trust terms that will get approved—not always easy when it seems unclear what the state will—and will not—allow. Using the right language and key terms is vital—and more challenging than ever.

This program provides a review and analysis of recent and current Medicaid trust cases both at the fair hearing stage and Superior Court stage. The analysis explores the current arguments the state is making, which includes attacks on the limited power of appointment to charities or children, the argument that nominee realty trusts are revocable, the power to loan money to the donor, the power to terminate the trust, and several others. Learn about the grantor powers that are the safest to use and which ones are being challenged by the state. Hear a discussion of the income tax benefits of making the trust a grantor trust and the importance of keeping the § 121 capital gains exclusion. Learn when it might be okay to not make the trust a grantor trust in an effort to reduce the risk of the state challenging the trust, along with the pros and cons of such advice and the circumstances when such advice may be appropriate.

Learn what paragraphs should be in these irrevocable trusts, and which ones to avoid. You also learn how to draft around current challenges and make arguments to distinguish your trust from the *Cohen, Doherty*, and most recent *Braiterman* cases that MassHealth uses to attack these Medicaid trusts. We also explore the step-up basis rules and the estate and gift tax rules as they relate to drafting these trusts. More specifically, learn how to draft a QTIP share and a remainder share into these trusts to obtain both estate tax reduction and nursing home protection at the same time. Finally, we walk through when to use life estates, the two ways to create life estates, and the related income and gift tax issues associated with them. You come away with an in-depth understanding of how these trusts work, how best to draft them, and related estate, income, and gift tax implications associated with using them.

## Agenda

- How to Draft and Use Medicaid Income Only Trusts in Your Practice
- How to Make a Medicaid Trust into a Grantor Trust and the Related Income Tax Benefits
- When and Why It Could Make Sense to Not Make the Trust a Grantor Trust
- Life Estates and How to Use Them with Medicaid Trusts in Light of *Daley*
- Medicaid Trusts: Income, Estate, and Gift Tax Planning
- Drafting Bypass Trusts and Marital Shares in Medicaid Trusts to Accomplish Estate Tax Savings at the Same Time
- Current Fair Hearing Decisions and Ongoing Superior Court Cases Dealing with These Trusts and Related Arguments Being Made

## Faculty

Lisa M. Neeley, Esq., *Mirick, O'Connell, DeMallie & Lougee LLP, Worcester, Chair*

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Register at [www.mcle.org](http://www.mcle.org)

### LIVE WEBCAST

Tuesday, December 6, 2022

2:00 pm–5:00 pm

Program Number: 2230032WBC

### REBROADCAST

Wednesday, December 21, 2022

9:00 am–12:00 noon

Program Number: 2230032RBC

### REBROADCAST

Thursday, December 29, 2022

1:00 pm–4:00 pm

Program Number: 2230032RB1

### ON DEMAND WEBCAST

View after Thursday, December 29, 2022

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