



**James E. De Martino, Attorney**  
P.O. Box 126 Belvidere, NJ 07823

**908-874-5636**  
**(fax) 570-897-6452**

**New Jersey Elder Lawyer**

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## IRREVOCABLE LIVING TRUST

### (Single Individuals)

PREAMBLE: NJ Medicaid practice and procedure has, for all intents and purposes, eliminated many of the exceptions to the 5-yr. lookback rule for single people.

### SUGGESTION

Single people should consider conveying their assets into an Irrevocable Trust managed by their child(ren). Such a trust:

- Starts the clock on the 5-yr. lookback rule.** e.g. Single person conveys assets into a trust. Three years later, this individual needs to go into a long-term care facility. The family only needs to find a way to pay for that care for the remaining two years of the lookback period.
- Eliminates estate settlement entanglements if the single individual becomes deceased while there are remaining monies in the Irrevocable Trust.
- Removes assets from the parent's name into an Irrevocable Living Trust charter. Does not become the children's asset until the parent dies.
- Once created, the by-laws and inheritance provisions cannot be changed (thus, the term "Irrevocable.")
- If properly drafted, is immune from parent's creditors and children's creditors.
- While in existence, the trust is immune from any divorce ramifications of alimony, child support, property settlement, etc. involving the children.
- Assets placed in the trust DO NOT count against the children when they are seeking college aid or assistance for their own children.
- Gets its own taxpayer identification number (similar to Social Security Number). Will not have to pay any income taxes unless there are liquid assets in the trust which earn interest.

### UPON DEATH

Assets in an Irrevocable Trust do not have to go through probate or estate settlement. The assets in the trust cannot be encumbered by a death tax lien.

The Irrevocable Trust is dissolved by the Trustee writing checks to each beneficiary on the death of the parent.

#### IRREVOCABLE TRUSTS FOR MARRIED COUPLES

Irrevocable Trust work for married couples as well. They are not used as often, because married couples are granted more leniency by the Medicaid code.

Single people, however, do not have many exceptions to the 5-yr. lookback rule. It may be the only major legal device for them to seek shelter.

**Contact us for further information on Irrevocable Trusts, and how they fare under the Medicaid code and tax code.**

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## **James E. De Martino, Attorney**

**Elder Law and NJ Estate Planning Strategies**

P.O. Box 126 Belvidere, New Jersey , 07823

**Phone: 908-874-5636**

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