MASSACHUSETTS SUPREME JUDICIAL COURT PROVIDES LONG-AWAITED GUIDANCE ON THE USE OF IRREVOCABLE TRUSTS IN MEDICAID PLANNING

More and more Americans are faced with the prospect of outliving their resources and rely on Medicaid to bridge the gap between expensive long-term health care and dwindling personal assets. Eligibility for Medicaid assistance, however, requires that an applicant's assets not exceed certain minimal levels. These low thresholds can make it extremely difficult for Medicaid applicants to avoid having to sacrifice a lifetime of savings before qualifying for Medicaid.

Effective Medicaid planning can mitigate the impact of this harsh reality. Importantly, planning should be done sooner rather than later, as certain transfers within five years of an individual's application for Medicaid benefits can limit eligibility for assistance-this is known as the look-back rule.

One Medicaid planning strategy involves the transferring of an individual's home into an irrevocable trust. An applicant's primary residence is generally not a countable asset for the purpose of the eligibility determination-that is, within certain fairly liberal value limitations, you don't need to sell your home to qualify for Medicaid-but the government can later pursue a recovery claim against your estate for any sale proceeds of the home. Transferring one's home into an irrevocable trust avoids this result while at the same time providing asset protection for beneficiaries and preserving favorable income and property tax treatment for the home. This practice was addressed head-on in Daley v. Secretary of the Executive Office of Health and Human Services and the companion case Nadeau v. Director of the Office of Medicaid, both decided by the Massachusetts Supreme Judicial Court.

In each of these cases the applicant transferred their respective home into an income-only irrevocable trust, but using different methods. In Daley, the applicant retained a life estate in the deed transferring the home to the trust. In Nadeau, the terms of the trust itself granted the applicant the continued right to use and occupy the home. In its holding, the Court distilled certain principles that will be very useful going forward. These are:

- The retained right to use the home in either case is not a countable resource under the so-called "any circumstances" test.
- Where the retained right to occupy the home comes from the terms of the trust itself, that right may have an imputed value for purposes of determining that applicant's available income.