So I'd like to welcome everybody for joining us on this lakeside chat this evening we're trying something different because we know that it's an important topic that everybody is really interested in and today we have joining us Heather West. She is currently at the rural law center of new york on the base but we've worked with her before for quite a number of years now heather and i've even had the pleasure of being on a panel with her and i know that she has great information to share with us and is very easy with the information and doesn't use a lot of technical jargon that most of us just don't understand so heather i'd like to send it over to you and thank you very much for joining us today well thank you for inviting me um so as christina said um prior to joining the rural law center of new york i was the estates and trust attorney with the law firm of stafford owens pillar renee and kelleher and trombly for 18 years so i do have some experience in this area so today i thought we would talk about trust um i think there's a lot of information out there about trusts but none of it is sort of the basic what exactly does this do for me why do i need it um i see a lot of people come into my office and one of the first things i hear and i always dread it is well susie orman says i need a will or i need a trust um maybe but it's not the end-all be-all and certainly a trust does have purposes uh but there may be other options for you something that is faster easier cheaper uh than a truss so i thought today what i would do is just break down the basics of what a trust is the kind of trust that you might be interested in doing and maybe what the alternatives are so a lot of people can confuse what a will is a last rule and testament

is simply a document that you create that lets us society know what you want to happen to all of your possessions upon your death and usually there's a process when you have a will that when you die if you have assets um your heirs may need to go to the surrogate's port there's the petition for probate and waivers and hopefully everything's good and you don't need a hearing but maybe you do um that's what a will does that's after you are gone a trust is something really similar to a will and sometimes it's called a will substitute and what it does is it is another document and you create it either during your lifetime and the fancy term for that is an interviews trust so somebody tells you you need an interview trust that simply means a trust that you create during your lifetime that's it then there are testamentary trusts and those are trust that are created within your will and those trusts do not come into existence until after you have passed away and your will has been probated so we're just going to work basically on interviews trust those living trusts and we will we'll talk about testamentary trust because again there are uses for that um but basically there are two types of trust hi heidi um so there's a revocable trust right and there's an irrevocable trust and trusts are either one or the other uh there are lots of other trust names out there there are lots of trust purposes out there but basically you either have a revocable trust or you have an irrevocable trust so a revocable trust um i always kind of say this and nobody laughs along with me but it's like the hokey pokey of state planning um because you can put stuff in and you can take stuff out again nobody's laughing so i gotta give up on that joke but that's what a revocable trust is it simply means that you can put your assets into this trust and at any time you can take the assets back out so why would you need a revocable trust why you know what's the purpose of putting an asset into a trust if i can just take it out again well a revocable trust has several good things about it one it can be a will substitute so if you're in a situation where you want to avoid the probate process meaning you want to avoid having to go to surges for you want your heirs to avoid going to surge its court for whatever reasons um you can do a revocable trust you can put all of your assets into it and during your lifetime assuming that you are the trustee you can take those assets out if you need to with a revocable trust you are the grantor meaning you're the one who created it and you can also be the trustee meaning the one who runs it one of the really nice things about a revocable trust is if something bad were to happen to you and again you know like a lot of lawyers we like to think of worst case scenarios so if something bad happened to you and you've put all your assets into trust you can name a successor trustee somebody who steps into your shoes and can take care of all of your assets for you right um it's similar to a power of attorney which is an alternate but we'll talk about that in a second but certainly you get to choose who could handle those assets for you one of the things when we talk about revocable trust is obviously who would be your successor trustee or a trustee if you don't want to be the trustee

i'm going to tell you who it doesn't have to be that seems to be easier it doesn't have to be a relative it doesn't have to be your spouse it should be a person who is obviously trustworthy who can handle the kind of day-to-day not necessarily bookkeeping but who can keep records who has some sense of financial situations now that doesn't mean that the person you choose has to be an accountant or somebody with a fancy degree they just need to know this is money it's not my money and i can't play with it right and your trustee can also have the power to hire other people like accountants and attorneys to help them but really it's that situation if you're not able to take care of your assets you're still alive um but you can't take care of your assets or you can't take care of your property then who can do that for you and a revocable trust is a way to kind of set that up it's a just in case now the property that you put into the revocable trust is pretty much anything you can think of with a few exceptions um so real property can be put into the trust and when i say put into the trust i mean that the title of the asset is changed it's changed from your personal name so instead of the house being in my name heather west's name i put it into my revocable trust so the deed now says trump the trust of heather dear west dated whatever fancy date i might choose to put on so that's what i mean by putting a tr an asset into a trust you actually change the ownership of it to the trust you can put like i said real property you can put accounts you can put personal asset your your personal property your things um a couple of things you can't or i i wouldn't recommend is an ira because that if you put that into a trust it's a payout and then you land up on sure christina's shuttering even as i speak about this um you know you you trip all of those lovely penalties for early withdrawals from iras so those are things you don't put in you can have a life insurance payable to a trust so if you've got property but no cash and when you die he's gonna pay the taxes on that your insurance can pay to the trust and your trust all of a sudden has cash one of the other pros of having a revocable trust if you have property outside of new york let's say you have a house in florida or arizona god knows why you wouldn't this he but that's up to you all um but if you have property outside real property outside of new york a revocable trust is an excellent way to avoid what's called ancillary probate so like i discussed um when you pass you do the whole probate process in the new york court if you own property outside of new york real property you have to do that process in that state as well and that can be really time consuming it can be expensive and just basically a pain but if your trust owns that property you can avoid that you don't have to do that because you don't own the property the trust owns the property and the trust is a separate entity from yourself so you may not exist anymore but your trust does

another good reason to have a trust a revocable trust i'm sorry i just want to make sure we stay on the revocable trust um is if you don't have a lot of family and i know this sounds strange but it's an estate planning technique one of the hardest things to do when i'm helping somebody within a state especially somebody who has very limited family or no close family is under new york law i still have to find next of kin now if somebody hasn't been close to their relatives in years and years and years or has nobody it can take a lot of time and a lot of expense to try and search for that family and the court wants you to find somebody so the court doesn't simply accept me saying well i looked and i didn't find anybody oh no i have to tell them where i looked i have to tell them who i spoke to i have to show where i searched this can take a significant amount of time and money again avoiding probate if you put all of your assets in a trust we can avoid that extra cost in time and just to kind of give you an example of how complicated this is searching for family i had a case where a gentleman died worst case scenario without a will um and no wife no kids but he did have six brothers and sisters a mother who had predeceased him and a father who disappeared 50 years ago now nobody had heard from the father in 50 odd years but rumors were he was still alive still in not new york but they thought new mexico great i had to prove to the court i searched and what the court does then is after you've done your search the court says well one last shot you have to publish a notice in a newspaper and where you think the last place they lived is the last resort i don't like doing it it's expensive time consuming all of those bad things i did publish in new mexico in the county where i thought this person was um it was so rural that they didn't have a daily newspaper they didn't have a weekly newspaper they had a once a month newspaper and so the judge was very gracious and allowed me to print in that paper one day after publishing the notice i got a phone call from my client and lo and behold after 52 years the father is in new mexico alive doing well and has six other kids which means i now have to give them notice well some of those six kids had died then i had to track down their kids some of those kids were adopted i gotta track down those kids my client was fortunate in that i did this as part of the rural law center so the service was free easily if i were a private attorney charging i'm looking at probably eight to ten thousand dollars in fees just to help her find her family so that is an extreme example but that does happen it's happened to me more than once yes how far down the line do you have to go you know do you have to find cousins what's the rule first cousins once removed first cousins once remote yep so basically great grandchildren of the common grandparent so yeah yeah it can yeah it can go down pretty far and like i said it it happens it's happened to me more than once um and it's always the person who has supposedly no family and i'm the one who discovers that they had like 32 cousins um who all of a sudden have a right to object to that person's estate so speaking of which that leads me into the next reason to have a trust if you are having issues with family members or let's say a family member maybe has maybe a drug problem a drinking problem a gambling problem marrying maybe they married the wrong person a trust is a way to protect those assets from that person a will gives them an opportunity to object to it you know all of those lovely nighttime dramas where somebody's gonna object to the will and all of that good stuff um in real life it's a good 20 000 to do a will contest i'd say it's super ridiculously expensive um but that doesn't mean somebody can't trip up the estate and drag it out so if you want to avoid some kind of family conflict a trust is a way to avoid the surge it's court now i've been talking about trying to avoid the surrogate support and probate and all of that in and of itself probate is simply a process um it is neither good nor bad i think it depends on your situation it depends on your family and your circumstances so again when we talk about maybe you want to do trust you need to talk to whomever it is you're working with and ask them you know am i going to be better off with a trust or is there really any need to set that up right now can i just do do a will um what makes sense for my situation and i think that's why i always have a problem with the whole susie orman thing is it doesn't take into account what your situation is it shouldn't be um a blanket recommendation in my in my opinion heather yes we often get a question of is there a certain level of assets that somebody should have before they consider a trust is there a guideline there there's not really a certain level but trusts do cost money to operate so you want to make sure that if you have a trust there's enough money in there to make sense to have a trust because depending again also on how long that trust is going to exist so with a trust and this is generally either revocable or irrevocable doesn't matter the trust at some point is going to pay out to your heirs and that may be immediately after your death or it may be 20 years after your death so i think when we look at creating a trust we also have to keep in mind not only what are the assets going into it but how long do we expect this trust to last so if you're just thinking of putting 50 000 in a trust that might make sense if we're looking at maybe having a minor eventually get that money and you know they're 15 now and we want it to pay out when they're 21. okay but if you want that trust to last their lifetime that fifty thousand dollars isn't going to do anything it's going to get eaten up by the trust because they're going to be fees because you've got to pay the trustees they're probably going to be bank fees taxes depending on what kind of trust you've set up um so i think again when you're doing a plan you need to look at what am i putting in there and what realistically how long is this going to last that makes sense and how much yeah dolores did you have a

question no no heidi has a question yes part of the thoughts would be too is it depends on the composition of your assets and you you pointed you alluded to it earlier if you have an ira you have to make special provisions um certainly and i think also if all you're putting in the trust is say your house um so yeah the house may be worth 200 000 but you have cash in that trust to pay the land taxes and the insurance and again the trustees fees so again that's why we need you know you want to seek advice um a trust isn't certainly something you would do on your own if you don't have um haven't spent three years in the hell that is called law school and past bar it's not something i recommend trying yourself i do i have run occasionally into a client who's got a trust document off the internet and it's not pretty it's not pretty at all but certainly seek advice and i think that way you'll have a better idea of what your goals are so and i'm just checking my notes here to make sure no relatives

so again another pro of having a trust if you have an illness let's say you've been diagnosed with some illness that right now is maybe at the beginning stages but it's going to progressively get worse so again kind of going back to that idea of anything happens to you who can help help you and take care of those assets for you now the one thing i will say with a revocable trust is that there is no tax benefit to it i'm talking about a revocable trust because really a revocable trust if you're not only the grantor but the trustee you still control the assets and that's all the irs cares about if you have any control it's still your asset in their eyes um so there's no tax benefit to it on the other hand there are certain types of irrevocable trust that may have a tax benefit so kind of yeah that's a summary of what a revocable trust is so before i move on to an irrevocable trust does anybody have any questions

i think that's a great timing for questions i would just say a comment on the irrevocable trust maybe because you alluded to if you have pre-existing health conditions that could get worse uh i like to see people establish them as a conduit so that in an event they can no longer manage their assets they've put in place to cast some characters to help them though there's no tax benefits on the rest of your lifetime management i think it really matters to have people you trust helping you absolutely absolutely one of the harder things is trying to explain to a client um after some kind of catastrophic diagnosis or event that i can't help after that because in order to make all of these documents whether it be a will a trust a power of attorney the person has to have capacity they have to have an understanding of what's going on and if you have suffered um say a massive stroke um if you are in a coma you you know i can't help at that point it's too late so with any type of estate planning um we we plan for worst-case scenarios in the hopes that we don't have to use them but you know the reality is sometimes you do sometimes you know certain things happen um one of the examples i always give and only because i am this isn't for sympathy but it is to me the perfect example and um probably because you know this this was my family so i made sure everything was in line um one friday night um my mother had a horrible headache and i thought she had the flu she woke up saturday wasn't feeling well so i went to the store to get ginger ale and crackers because that's what you do um when somebody's not feeling good when i came back she still wasn't feeling well and her eyes were listing to the left and i thought oh my god i think she's had a stroke so off to the er we go um and many hours later the er doctor then tells me my mother has a malignant brain tumor and she has brain cancer um this happened within a span of let's say 12 hours from friday night to saturday morning everything in my family's life changed now as you can imagine none of us my brother and sister none of us were thinking straight none of us were um even remotely had an idea that this is something that could happen to us throughout the next eight months as she went through treatments and progressively got worse one of the things that struck me was i had prepared a power of attorney for her i had a health care proxy for her my brother sister and i knew what her wishes were we had everything in line and i have to say in all of those eight months there wasn't a moment where i couldn't just handle something without having to worry about fighting my brother and sister about having to worry about going to court to get guardianship or you know dealing with whatever paperwork because i had all of these things in place and that's what any of these documents do whether like i said whether it be a trust a power of attorney a healthcare proxy that's kind of an aside but still um there was no warning you know my mother was perfectly healthy and then literally woke up the next day with you know um a diagnosis that eventually would uh lead to her death yeah and so it's a harsh example and i say this only because i know people always think well nothing bad is gonna ever happen to me or my family it does you know it can and so the best thing you can do to protect you and your family is have this stuff in place get advice go to professionals and you get things set up and you know hopefully you never have to use it but if you do trust me you're going your family is going to be thrilled you did because they don't need the added stress so that was an aside sorry about that but that's just the example i always use to kind of pound how found home the point about how important it is to have these things in place well thank you for my lovely tangent um well actually i have a couple of follow-up questions yes yes so one has to do with your mother um if she had not had those documents in place and she's diagnosed with a brain tumor would she have been able to execute those documents at that point um given her condition not immediately afterward there may have been a period there were a couple of months where her capacity was fine and she could have but certainly not immediately okay i'd say for the first month absolutely not she'd had major surgery between the chemotherapy and all of that stuff her capacity she was aware and knew what was going on but her short-term memory was shocked she had none so to me that wasn't an indication of capacity um and certainly towards the end absolutely not there was no recognition there was no memory nothing um so fortunately like i said you know this is what i do for a living and i can't uh preach to you all about having these documents in place if i didn't have in place for my family right yeah so that's why it's so important to have these sorts of things in place to begin with because you don't know no we run into it all the time yep it does tend to be something that people procrastinate about nobody wants to think about it and we try to drive home how critical it is to get your affairs and work so you don't have to think about it again yeah and that's why i give that example i know it's you know probably more personal than most professionals would give but simply because it is um exactly what you would want to happen if you're going to be in a really bad situation you know that's exactly why you have a power of attorney that is exactly why you have a health care proxy um if my mother had money i'd had her had a trust if she had you know assets we would have put them in a trust um so yeah that it's just the the best example i have and it's because people see me you know you know it's a real thing it's not something that i meet up so to say so uh could you excuse me for one moment yes absolutely hold on one second anybody have any questions out there for when she gets back no but i have something to say this is brenda hi brenda hi hi everybody um when we came to heidi she said i'm not going to work with you if you don't do these papers go get them done before you come back and that was the best advice we ever had and heather your story really brings that home so thank you very much for that you're welcome thank you brenda had to go unlock a door so my sister could get into the house sorry about that oh that's so funny you locked her out heather ever out so everybody always wonders how much do estate documents cost when you go see an attorney and i know there's a large range but it seems to be a pretty popular opinion or question and then you can always talk about what the rural law center is doing right now certainly so typically if you do the basics let's say a will power of attorney healthcare proxy depending on how complicated it is it could be anywhere from let's say six hundred dollars to a thousand um i do know that again depending on where you're going it could go up to a couple thousand or sort of the basic things i think it depends on what firm you're going to the more complicated obviously the more expensive um if you're talking about a trust probably a couple thousand for that but again if you've got assets to protect even though it sounds like a lot it will be well worth it if you've protected them and again if something bad happens that thousand dollars is going to be nothing compared to how good or bad things run if something happens to you so yeah i don't trust me i don't make light of the of the fees um but and since you brought it up uh i do work at the rural law center uh we are a not-for-profit uh we help low-income new yorkers in any of the 44 rural counties of new york we offer free legal services um whether that be consoles or paperwork including drafting wills powers of attorney healthcare proxies we do have um some grants with the local office of the aging with essex and clinton where we don't have to take into account your income level uh we can't do anything super fancy i can't do any trust work because that's just way beyond the scope of what i can do at the rural law center but certainly will's powers of attorney health care proxies if you have questions i can certainly help with that as well and it's not limited to just estate planning or state administration we do landlord tenant consumer um bankruptcy pretty much the whole gamut uh if you're in a criminal matter we don't do that and we don't do litigation because i cannot drive all over new york state to show up in court for anybody so that's our limitation now with those grants there was an age 60 and above yep and i know that um heather held my grandparents just last year they are in their 90s and they have never had anything written up and or drafted and i've been telling them for years and they finally listened and went and saw heather and they absolutely loved the entire process and she was great with them thank you it really is wonderful heather is a rockstar oh thank you uh so are there any other questions about the revocable trust part

okay so we're going to talk about irrevocable trust so where the revocable trust is the hokey pokey of state documents of irrevocable trust is the opposite it's where you put assets in and they don't come out until a triggering event so if you put your house in an irrevocable trust it should not come out usually until after your death and it's going to an air which is so your death is the triggering event or maybe a certain time frame depending on why you're doing an irrevocable trust um you may be the grantor and the trustee or you may not be the trustee again it depends on what you're doing it for so like i said irrevocable trust it still serves all of those purposes that i just told you about um but there are a couple of different advantages one there may be tax benefits to it now this was a bigger issue when we had to worry about estate taxes when estate taxes were down to a million dollars even when they were down to five million dollars there may have been um some clients who could benefit from an irrevocable trust and again depending on the type of an irrevocable trust these days with the estate tax credit at 11.5 or you know a lot of us are not going to be worried about estate taxes anymore and certainly not if you're a couple because you can double that and you get 22 almost 23 million dollars worth of estate tax credit um so the purpose of that is probably gone to the side um but there are other reasons and there are two really popular irrevocable trusts one is for medicaid planning right and the other something called a supplemental or a special needs trust so i'm just i'm just going to give you kind of an overview these are types of irrevocable trusts there are probably a thousand different types of trust because there are a thousand reasons to have a trust it's all what again your situation is but the two most common i'd say are medicaid and supplemental needs so a medicaid irrevocable trust is where folks are trying to protect assets so in the event that they should need nursing home care their assets are protected from what's called the medicaid spend down so just to kind of in you have to kind of always backtrack medicaid is um a program it's a state and federal program that can pay for nursing home care if you meet the income guidelines um usually though these guidelines are towards the lower income and lower assets so if you need nursing home care it is astonishingly expensive i'm sure you all know this but just to kind of give you some sticker shock um i'm thinking 12 000 a month for nurse income care so again unless you're in that 11 million dollar field good for you um most of us though aren't going to be able to afford that kind of money um not without running through our assets right people have spent their lifetime building up these assets and they don't want to give them up they want to make sure that their assets left for their heirs that's what they've worked for they want to make sure that their family is taken care of but that's hard to do if you're going to need nursing home care one of the first rules about medicaid that i tell every single one of my clients when we start talking about this is the first rule is medicaid does not want to pay for you right sadly that's just the way it is and if you keep that in mind then everything else that follows sadly makes sense in order to protect your assets you can't own your assets i know that sounds strange but welcome to the world of medicaid planning what you could do and there are so many factors that play into this so so hard but if you were to put your assets into an irrevocable trust meaning you can't get those assets back out and you are not the trustee meaning you don't control those assets and you time it just right if you then apply for medicaid you might be able to not even include those assets when you're talking to them about what um available assets you have so the biggest trick with medicaid is there's this thing called a five year look back period um and i'm not sure i don't know how many of you are familiar with this so i'm just again if i'm explaining things you already know i apologize but um i just want to make sure we're all on the same page for medicaid purposes when you apply for medicaid they look at the assets and the income you have at the time you apply and they look at the things that you had five years prior to applying so why are they doing that they're looking to see if you transferred or made gifts within those five years if you did and even if you don't have that asset any longer you gave it away they're still going to count it against you right so that five-year look pack period is the opportunity for medicaid to take a look at your finances and say oh look you gave away a hundred and twenty thousand dollars two years ago well you could have used that hundred and twenty thousand dollars to pay for your care so we're still gonna count it against you even though you gave it away what happens then is they take the value of that gift or that transfer and they divide it by whatever the monthly regional rate is for nursing home care their version of what the monthly cost of a nursing home should be and because i really suck at math i'm going to say let's pretend it's twelve thousand dollars so you made a hundred and twenty thousand dollar gift the regional rate is twelve thousand dollars you divide that into the hundred and twenty you come up with 10. 10 months is the penalty period the penalty period is the time frame that medicaid says yes we're going to accept you into our program but we aren't going to pay for the first 10 months that's the penalty period so those 10 months you're going to have to pay for out of pocket this is all timing so what a medicaid trust does is you put all of your assets the ones you want to protect into this trust hope pray take your vitamins and if five years and one day you have to apply for medicaid as long as you are five years plus one day from the time you made those transfers into the trust they can't touch those assets they no longer count them as the look back period meaning then you don't have a penalty period so the problem with the medicaid trust as i said though it's all timing you don't know when you're going to need nursing home care hopefully never right but if you do yo have you timed it right did you or do you have enough in other assets to make up for the penalty period so if you gave away 120 000 do you have another 120 000 somewhere that can cover those 10 months that you're going to be in the nursing home with no medicaid coverage so the point of the medicaid trust was to try and protect some of those assets so that when you pass medicaid couldn't you know look back on your estate and say oh look you still have money we want to be repaid because medicaid can do that and they also can't count it against you as an asset so if you've given enough away you may qualify under their whatever guidelines there are that year all right so that is kind of a basic basic medicaid trust it's definitely something you want to do with a professional it's difficult not to do in and of itself but for many of my clients the idea of not only giving up their assets but giving up control over those assets is really difficult and there's always the the possibility that you may never need medicaid and you've been taking those assets out of your reach so to say um with a medicaid trust as with any trust you yourself if you are the beneficiary you do get the income earned off of the trust um and that income of course for medicaid purposes is countable uh so even if you beat the five year look back period if your trust is paying you the income from whatever your assets you have in there that income is still counted but at least you've protected your other assets a lot of times that may be the house so you may not actually be getting any income off of that that's a um one of the more popular irrevocable trusts so again like i said it's kind of scary because you're giving up those assets and you're giving up control but if you have assets that you want to protect and yet still qualify for medicaid that's the route you take and like i said there may be another option i'm going to talk about that in a minute the other more popular irrevocable trust is

do you have a question

oh you're on mute so i can't becky or john looks like you guys have a question yes yes go ahead oh here let's unmute you here we go

can you unmute yourself john yeah can you hear me there you go yeah okay so um can can i force you to sell your primary residence no that um i think what happens is people are so afraid that medicaid is going to make you sell your house in order to qualify for medicaid that's not true there is

something that does happen but that's not what happens during your lifetime as long as you are living they aren't going to make you sell your house or even if you go into the nursing home but your spouse is still what they call in community meaning you're not you're not in the nursing home they cannot make you sell your house and it may be part of an exception meaning they won't touch it at all what can happen is if during your lifetime you have used medicaid and you pass away and you have assets you have an estate meaning you're in surrogate's court they can put a lien against your estate and in order to pay that lien you may have to sell the house in order to pay them back that's where losing the house so to say comes into play so if you're looking to save it for your kids there's another option we're going to talk about um but that's what happens but during your lifetime no medicaid's not kicking anybody out of their houses not at all interested in whether our kids would

get in on the conversation because i'm going to talk about that in a second uh okay so uh any other questions about that i know it's kind of specific for that trust but

okay um so a supplemental needs trust or sometimes it's called a special needs trust when you have an heir or a beneficiary that is disabled and has medicaid you should not leave them assets outright whether it's in your will or your trust or giving them gifts because what happens is if they get income um a gift cash medicaid counts that and it could destroy their benefits it could wipe them out and get them kicked off medicaid most of the time there's no gift that's worth getting kicked off of medicaid right but so what would happen is when people would do to stay planning or do us trust uh they'd hate to do it but they wouldn't leave their child who had a disability and had medicaid they would basically disinherit them just to make sure that they didn't get kicked off medicaid the way to avoid that is creating a supplemental needs trust or special needs trust and you can do this it is an irrevocable trust you can do this during your lifetime the fancy interviews trust or you can do it in your will you could create a testamentary trust but in any event what happens is whatever assets you're putting in there for the disabled person they go into an irrevocable trust you have a trustee not the beneficiary who can then use the income or if necessary the principal from that trust to pay for things that are not covered by benefits like vacations or maybe clothing or rent the beneficiary themselves never has control over the asset and because they don't have control medicaid does not touch it now there is a supplemental needs trust where medicaid can get the uh remainder after the person dies but that's usually a what's called a first person supplemental needs trust meaning the disabled person themselves set it up usually a lot of times i see it so like i see christine's got a question on her face so if um let's say a person suffers a terrible accident and becomes disabled they can take a settlement and put it into a supplemental needs trust for themselves or their parents can um third-party supplemental needs trust somebody else is making that trust for the person usually maybe a grandparent aunt uncle even a parent can set up a supplemental needs trust in a will but that way you haven't disinherited that person they're still going to get the benefit of the asset but you don't endanger their benefits and then after they pass away the trust will pay out to whomever you want it to whether it be your other children other heirs charity whatever you would like it to be so basically that's what irrevocable trusts do i mean you put the assets in there they're protected um it's not that different from for purpose wise from an er from a revocable trust uh same reasoning you may want to create an irrevocable trust uh for to your protection protection of family members like i said those special cases where maybe you have medicaid planning or a disabled person in your family you want to protect um any of those may be good options or maybe your trust may be a good option for those things so any questions about irrevocable trust i kind of stuck to the two specific ones um but like i said there are you know dozens of reasons to have irrevocable trust anybody have any questions i have a couple go ahead heidi i i would just make a comment that people often will do this with legal counsel and they won't consider the income tax consequences they'll fail to file a gift tax return and then the person setting this up and gets a boomerang so i think there's a lot of dangers of doing irrevocable irrevocable trusts in that you're giving up you're you're giving away an asset and it's usually a taxable event right well for gift tax purposes i mean they're you know they're a thousand one taxes um again we can use part of that estate tax credit because it's twins it's twinned with the gift tax so that 11 point whatever federal million dollar credit that we have um you can also use that for gifts so a lot of times though you're right people forget to file i mean they may not have to actually pay anything out of pocket but you still have to file correct um and just as an aside uh you can make gifts up to fifteen thousand dollars per person to everybody you know in the world you don't have to file a gift tax return 15 0001 you've got to file a gift tax return and just use some of the credit so heather actually one of my questions had to go with that 15 000 a year gift tax when they look at what you when medicaid looks at what you have for assets now what you had for assets five years ago and so you've been gifting fifteen thousand dollars a year to a child does that count against you or do they allow that no okay often a client has a conversation with an attorney and they're under the impression that they're allowed that free fifteen thousand dollars a person per year and that will not be counted for medicaid purposes it is counted for tactical it's not okay perfect yeah oh no anything gets counted if if and because medicaid asks for copies of all of your bank statements i mean this is what the pain about applying for medicaid is you've got to have your finance copies you've got to have your bank copies your statements all of those things if they see something that looks suspicious they're going to call you on it and certainly and i and i agree i've seen clients do that where or maybe they neglect to tell me because they think well i don't have to pay taxes on it and i do it every year nobody's ever said anything to me so she doesn't need to know i've been doing this for 20 years

yeah i did i i've seen a few irrevocable trusts where the grantor is also the trustee and most of the benefits that i've heard of come from when you're actually giving up control and you're not the trustee in that situation so when would you do something like that be the trustee or not the trustee be the trustee even though it's irrevocable um if you're not worried about medicaid and you're not and you're not the supplemental needs beneficiary um if you're not looking for a tax break again for estate tax purposes that again reasoning because the tax credit is so high that's kind of fallen by the wayside um but if it's not for medicaid purposes you want you can be the trustee you can um just seems like a funky way of doing it yeah why not do that it does i mean you know why would why would somebody put something into an irrevocable trust and but still try and control it i would say family issues and again depending on what the asset is like if you've put your interest in the family business in a trust doesn't it doesn't that make it defective

the family yeah if you have a irrevocable trust and you maintain incidents of control doesn't that make it defective is irrevocable um no because again depending on why you're doing it uh if you can't remove the property right so let's say i put a house in there i'm still the trustee um i can control the house i can sell the house but i don't ever get those proceeds back out unless there's there's a triggering event so the asset itself if it remains in the trust i think that's probably the bigger concern um i have a lot of people who'll do that they'll put a house in the trust decide you know what i'm sick of living here i want to live somewhere else they sell the house and for some reason they think oh i can just take money back out no no you can't not if it's an irrevocable trust the money stays in the trust what you can do is take if you're the trustee you can take the money from the trust buy a house for the trust and depending again on what the terms of the trust are you may have a life estate in that in any of the real property contained in the trust so yeah you still control it but you don't necessarily own it and you don't get your money back so that becomes a problem if somebody's looking to buy something in their own name sure thank you for clarity because people do that and they're not and they don't understand thank you and again it all depends on the purpose of the trust why you're creating this trust so if it's a medicaid thing then yeah if you're the trustee you've blown it already so so we have about five minutes left i know you wanted to talk about life estate real quick but does anybody have a question brenda do you have a question yes oops i am muted yes um so say you're living on some of your assets do not put those in you only put the ones in that you don't need to live on because you won't get anything back once it's in there you still can make yourself the beneficiary of your own trust and if you're the beneficiary you can get the income earned off of that trust it's payable to you um so again i wouldn't i would never do anything that endangers my current standard of living so if you do have assets that you're not using um those were probably be the first things i would put in the trust but you know sometimes people you know if you're looking to put in a savings account um but you're going to want to use that cash uh to pay for something then i wouldn't put that in the trust doesn't make any sense if you're just going to try and take it back out um so yeah

so the fees that you were talking about might be two thousand dollars to set up a trust um but then there are yearly fees annual fees beyond that yes there are trustees fees um because the trustee is what's called a fiduciary position um you can they can be paid to act as the trustees normally people are either going to be their own trustees depending again on the type of trust or a family member's going to be the trustees so they're not really going to take any fees um but certainly you can hire professionals to be the trustees and they're going to definitely have fees like a bank they're going to want to be paid um you'll probably have attorneys fees throughout the lifetime of the trust likely you'll have accountant fees uh depending on the size of the trust you may have planner fees and financial advisor fees um so yeah there there are all sorts of fees and again when we were talking about the size of the trust these are the things you take into consideration thank you maybe you answered all those before we came a little late i'm sorry but thank you brenda you're perfect okay you're great john do you have a question or did becky have another follow-up question

you mentioned uh iras and 401ks and that type of thing where your life savings may still be in that medium and does that preclude you from having a trust or you keep it out of the trust or get out of the trust you can have a trust for whatever purpose you want and nothing there's no not to my knowledge there's no sort of an account that stops you from having a trust um you may not want to put things in that trust but you can certainly have a trust

and actually uh sorry to interrupt with uh with iras they have to be in the name of an individual uh when it comes to trust um there might be an instance where you can name the trust as the beneficiary of that but like heather said it starts getting complicated and there are other issues involved

so just in these last few minutes i just want to kind of briefly tell you about a couple of other options instead of doing a full-blown trust um if controlling the assets is your concern if you know you think you know i if i get sick in the future who's going to be able to help me control all these assets instead of a full-blown trust you may want to do a simple power of attorney that is a document that you can do it's relatively straightforward it's for financial assets you name a person or number of people depending on who you want to name who can act as if they were you in certain financial situations the kind we do is called the durable power of attorney meaning it's good when you have capacity or where you don't have capacity um and the best example i have of that so why would you have one and not the other if you travel a lot you may be perfectly fine and healthy but maybe you're in canada and you know you're selling your house and somebody needs to sign for your property here so even though you have capacity you need a power of attorney so that somebody can sign on your behalf for the sale of the house really the kicker is if you lose capacity a power of attorney allows the person that you've elected to act as if they were you for bank accounts for your stocks bonds basically dealing with insurance anything like that a power of attorney is a good alternative it's usually a lot less expensive i think i used to charge like 50 bucks to do one when i was with the law firm the other option in instead of a trust is if you're interested in giving the house or real property to your children if that's the primary purpose of trying to protect the asset you could do what's called a life estate instead of a trust a life estate is where you give the property to whomever it is but you retain the right to live on the property for the rest of your lives or to use the property for the rest of your lives you still pay the taxes you still pay the upkeep the insurance nothing really changes for you as the owner but once you pass away that property does not go into probate because there are owners you've given the property away and they automatically own the property upon your death and it takes it out of medicaid's reach for a lot of medicaid purposes a life estate is the cheaper and again faster way to do this you're still protecting the asset you still face a five-year look record just like you would with anything else but even after you pass away medicaid cannot put a lien against the property because you don't own it at time of death yes ma'am miss heidi if you maintain if you maintain a life estate there is a value of that life estate so medicaid can't attach on the value of the life of state sometimes the value could be quite high if you were to sell your life a state then yes they would um i've never seen anybody do it though so as long as you're living on the property medicaid's not going to touch it they really are i've never seen them do it i suppose technically they could but really in the 20 years i've been doing this i've never seen them go after a life estate i think if you actively sold your life estate so it happens i again i have never seen it done but let's say you live on a you have a fabulous piece of property you don't want to live there anymore but you have a life estate so you rent it out to somebody for the length of your life estate medicaid can attach that that they'll go after never seen it but who knows yes adam uh so say say you have your plan in mind and you say you know i love this house i'm gonna stay here forever and then for some reason you change your mind after you've done the life estate and you find another house that you fall in love with and you want to sell your current one that has the life estate and move to a new place what would happen in that instance so here's the tricky part about a life estate you don't get to sell it without permission it is not because again remember you don't own the house outright anymore you own an interest in the house so if you gave your house to the kids and the kids really want to keep the house and they say no we don't want you to sell the house that's it that's it you cannot force them to sell the house just as they can't force you to leave the house you can't force them to sell the house and if you sell the house for tax purposes all you are entitled to is your pro-rated share of the sales proceeds so your portion of the sales proceeds is going to be the equivalent of the worth of your life estate and that involves irs tables and life estates and it's horrible but your kids technically get the other they get the remainder money so when you think about doing life estates again it is one of the things i talk about you have better be sure you are never leaving that house because the end i do see this occasionally um you know somebody will give the house to a child and the relationship then breaks down and they want to take back the property not unless the child's willing to give it up so they also may oh sorry they also may lose uh discounts they get for va they in all of a sudden they're taxed they'll have increased tax expenses yeah if you um if you give away of you or i'm sorry if you retain a life estate and that house is your primary residence you do still get to keep your star exemption and your veterans exemption because it's whoever the house the primary residence of the person living there they're the ones who get the tax benefit um so your kids aren't going to be able to claim a star exemption on your house um they should really claim it on theirs but you do still get to keep your exemptions even though technically you just own a legacy

and again with any of the stuff that i've talked about each person is different each case is different what applies to somebody may not apply to anybody else um that's why you have to talk to professionals what you don't mean call up susie orman and get a one call you know what all of you are unique and all of you have different perspectives different interests different goals and so a kind of a you know this is just very general basic information for you all and i know i've spewed out a lot of stuff and um you know there's a lot of things to consider i do think though it is good thing to you know you all are interested you you've joined this um webinar um it's a good starting point these kind of conversations and please feel free to you know if you qualify for the rural law center feel free to reach out to us uh if you have attorneys or other planners somebody like that feel free to discuss this with them i really do hope that everybody has an estate planning an estate plan in place because again you don't know what's going to happen you don't know when time is done and for most of us i think we want to as best we can protect and help our families when even when we're no longer here very well senator john carol do you have any questions carol if she's muted if she does yeah she'll she can unmute herself if she wants to um does anybody have any questions at all

and as always i've spoken over the length of time sorry folks that's okay that was great that was really good thank you let's get on a roll with this sort of thing you know what's the wealth of information help pat heffernan's given a clap thank you very much pat um one last final question we have a document say a living will that has a date on it and it's crossed off and somebody puts in a new date without initialing does that void it um a living will is now when you say a living will are you referring to something about health care are you talking about a last will and testament no the health care the health care um in new york a living will um doesn't have a statute behind it unlike a health care proxy so a living will that has a date crossed out i'd be hesitant it certainly again if it doesn't name a an agent somebody who can make decisions for you on your behalf i'm probably not going to pay that much attention to it it probably would be good to give guidance if there's a question as to what treatment should be given um the courts do allow that yo so if it says you know if i've suffered a heart attack i don't you know dn army i don't want anything um and if a decision has to be made that can be evidence um but living wills like i said there's no there's case law behind it there's not an actual law about living wills there is for health care proxies good to know heidi yeah i i'm new at this and i was trying to unmute myself but i lost the internet connection because we had a thunderstorm as usual and you know this kind of weather but no i'm fine i have no questions um well then i would like oh john no i was just going to say thank you very much very informative thank you yes yeah thanks it was thank you and juanita thank you very much this really hit close to home so thank you good thank you attorney heather deir west we appreciate you taking the time to come and talk to us today and providing so much information we almost could do about five more of these and still not cover everything and sadly i could speak at length on all of those no it's not sad it's excellent all right well thank you all we will let you go hi becky in the background hi i always been off to the side listening it was very interesting good good i'm glad it's great seeing everybody and we'll let you know when the next leak side chat is and we are happy to hear if you guys have any suggestions or need to know anything and we'd be happy to set something up thank you for attending

you