

# UPDATE ON THE LAW

## SPECIAL NEEDS TRUSTS

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### WHO NEEDS A SPECIAL NEEDS TRUST?

Rudy was diagnosed with downs syndrome at birth. His parents want to leave him some money when they die but they don't want to jeopardize his public benefits.

Margaret, fifty-four, is schizophrenic and receives Supplemental Social Security (SSI). She just inherited \$100,000. The funds disqualify her from her income and more importantly from her medical benefits.

Martin was in a car accident and received a small settlement. He receives Social Security Disability Income (SSDI) and lives in a group home. If he keeps the money he will need to private pay.

These are just a few examples of situations where a Special Needs Trust could save benefits and improve the quality of life for people receiving public benefits.

### WHAT IS A SPECIAL NEEDS TRUST?

A trust is a legal arrangement where one person puts funds in the hands of a trustee, who manages the funds according to the terms of a legal document for the beneficiary. A Trust is a legal method for tailoring the distribution of money to a loved one with special needs and protecting public benefits. A Special Needs Trust is a very unique type of trust that allows for funds to be set aside for a person who is receiving (or may in the future receive) public benefits. The funds in a Special Needs Trust must be managed by a Trustee. The trustee cannot

be the same person as the beneficiary. The funds placed in trust may come from the beneficiary or from third parties, like parents or friends.

The money in a Special Needs trust is for the beneficiary's extra, special or supplemental needs. Generally, the money may not be used for support. The funds are used to provide for the things that are NOT covered by public benefits.

Special Needs Trusts are allowed because of an exception under federal law.

### TYPES OF SPECIAL NEEDS TRUSTS

The federal law provides for three types of Special Needs Trusts: Self Settled, Pooled Trusts and Income Trusts. There is a fourth type called third party trusts.

**SELF SETTLED.** Self Settled Special Needs Trusts are trusts set up with funds owned by the person receiving or about to receive public benefits. The funds may be funds that the person earned, inherited or received from a personal injury law suit. The trust can be set up by the person herself, her legal guardian, a parent or a court. The key factor is that the funds are owned by the person who is to be the beneficiary. A self settled trust must have a 'pay back' provision. If at the death of the beneficiary, there are funds remaining in the trust, the trustee must pay back any funds paid for public benefits.

**POOLED TRUSTS.** Pooled trusts are created by a non-profit group. The trust is called 'Pooled' because many people may join the trust and the money is managed as a group. Each person has a separate account in the 'Pool'. The Pooled Trust is managed by a bank. Each person participating in the Trust has an advisor who works with the Trustee bank to recommend how money distributions are made. Fees for the management are assessed against the trust funds. There are two pooled trusts operating in Texas.

**INCOME TRUSTS.** Income trusts are a unique trust used only when someone is in a nursing home only and for the purpose of lowering the nursing home resident's income.

**THIRD PARTY TRUST.** Third party trusts are Special Needs Trusts created with funds from someone other than the beneficiary, like a parent or friend. The creator of the trust usually acts as the Trustee of the trust and manages the funds for the beneficiary. Because the trust is created with funds belonging to someone other than the person receiving public benefits, there is no 'pay back' requirement. It is very important that the funds which belong to the beneficiary and funds from a third party parent or friend not be mixed in the same trust.

### **WHO SHOULD BE TRUSTEE?**

The Trustee is the person or corporation who manages the money placed into trust. The Trustee can be another family member, friend or a bank. Banks will charge a fee while family and friends may not. No matter who the Trustee is, it is important that this person be honest, understand how to handle money, and be willing to seek advice. The rules for public benefits change frequently. The rules vary from program to program. The Trustee must understand the benefit rules before distributions are made, or public benefits

may be jeopardized. Distributions which are not made according to the rules of a public benefit program may cause the loss of benefits.

One option may be to have a Bank manage the money and have a family member act as a "Trust Advisor". The Trust Advisor would help the Trustee understand the unique issues of the beneficiary and the Trustee would be responsible for managing the money and insuring that all the distributions are made within the benefit guidelines.

Special Needs Trusts are a valuable tool for making sure a loved one with special needs has some additional resources.

### **WHERE TO GET ADVICE**

People often shy away from attorneys, but this is one area where only an attorney can give you complete advice. Good legal advice can save thousands of dollars and prevent the loss of public benefits. Only a handful of attorneys practice in this area of the law. Make sure that the attorney you contact has experience in drafting Special Needs Trusts.

Certified Elder Law Attorneys have passed a national exam which includes knowledge about public benefits. *The Elder Law Certification is recognized but not certified by the Texas Board of Legal Specialization.* It gives the public assurance that the professional they are consulting has the background necessary to advise them. **UPDATE ON THE LAW** is provided to you by ***K.T. Whitehead, Certified Elder Law Attorney.***

K.T. has been practicing in San Antonio since 1992. To receive additional copies of this newsletter or permission to reprint portion please contact **K.T. Whitehead**

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