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PERSONAL INJURY SETTLEMENTS AND SPECIAL NEEDS TRUSTS WRAPPING UP THE LOOSE ENDS

By Thomas D. Begley, Jr., Esquire

Dave, a 26-year old single man, is involved in a motor vehicle accident. He suffers serious injury and recovers \$2 million in a lawsuit. The personal injury attorney is aware that a special needs trust is required and retains the services of an elder and disability law attorney to draft a special needs trust, which is eventually approved by the court. A professional trustee is selected. Is the work of the lawyer who drafted the trust completed? The answer is “no.” There are several steps which need still to be taken.

- (1) *Counseling Session.* Few trustees are familiar with the administration of special needs trusts. It is wise for the attorney drafting the trust to have a counseling session with the beneficiary, if possible, family members, the personal injury attorney and the trustee to discuss how the trust will work. The agenda should include a determination as to the immediate cash needs of the beneficiary for such items as a residence, a handicap van, vacation, furniture, a funeral, repayment of outstanding debt and any other items that are needed right away.

The attorney drafting the trust should also review the legal requirements, such as “for the sole benefit of,” “pro rata share,” legal obligation of support, bond, accounting, notice of expenditures, and the fact that the trust is irrevocable, but can be amended to comply with changes in state law.

At the counseling session the family should prepare a budget as to anticipated needs and an agreement should be reached as to who will pay for what.

- (2) *Trust Approval by the Social Security Administration.* If the disabled beneficiary is receiving Social Security benefits, the trust must be approved by the Social Security Administration. Distributions from the trust must be accounted for on an annual basis to the Social Security Administration.
- (3) *Trust Approval by Medicaid.* The special needs trust must be approved by the County Board of Social Services. It must also be filed with the Bureau of Administrative Control. An accounting must be given on an annual basis to the

bureau, which tracks disbursements and monitors repayment on the beneficiary's death.

- (4) *Trust Filing With Bureau of Administrative Control.* A signed copy of the trust must be filed with the Bureau of Administrative Control and notices of various changes must be filed with the Bureau. Annual accountings must also be filed with the Bureau.
- (5) *Estate Planning for Parents.* Often parents have existing wills that name the surviving spouse as beneficiary and all surviving children as contingent beneficiaries. On the death of the second spouse, the share of the disabled beneficiary would go directly to that person and they would lose all public benefits, including Medicaid. Therefore, it is necessary for the parents to establish a third party special needs trust for their disabled child. That trust would be drafted in such a manner so that the funds in the trust and distributions from the trust would not disqualify the disabled child from Medicaid or other public benefits.
- (6) *Beneficiary Designations.* Parents often have beneficiary designations on their life insurance, retirement plans, and annuities, which name the surviving spouse as primary beneficiary and the children equally as contingent beneficiaries. Where there is a disabled child, the receipt of funds under the beneficiary designation will disqualify that child from public benefits. Therefore, the beneficiary designations must be changed so that the share going to the disabled child go instead to the trustee of the special needs trust for the benefit of the disabled child. This enables the disabled child to benefit from the parent's estate while preserving important public benefits,
- (7) *Estate Planning for the Disabled Person.* The fact that a person is disabled does not mean that he or she is incompetent. If the disabled person is 18 years of age or older and is competent, he or she should have estate planning documents, particularly a power of attorney and a living will.
- (8) *Care Management.* The purpose of the trust is to ensure that the disabled person lives as good a lifestyle as possible. If there are no family members nearby, the trustee should engage the services of a care manager to prepare a care plan for the person, to obtain services from necessary providers, to monitor those services and to re-evaluate the disabled person on no less than an annual basis.
- (9) *Respite Care.* If the disabled person does live with family members, they will need some respite from the extraordinary demands that caring for a disabled person involves. The trustee can pay for care managers to provide care to relieve family members to have some time for themselves.



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On Wednesday, April 5, 2006, our host will be **CHRISTOPHER REEDY**. The guest will be **NAN BROWN** of **FEDERATED LENDING** and the topic will be **REVERSE MORTGAGES**. Tune in for an hours worth of lively discussion on this important topic. Call in questions are encouraged.



Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and Lawrenceville, New Jersey and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania.

The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley & Bookbinder at 800-533-7227.

Begley & Bookbinder has prepared **Special Reports** concerning *Special Needs Trusts, Vacation Area Homes – Tax and Management Issue and Utilizing Special Needs Trusts in Matrimonial Cases*. Please contact Begley & Bookbinder at 800-533-7227 or visit our website at www.begleylawyer.com to obtain a **Special Report**.

Our web site contains a library of firm newsletters, articles, on-line forms for Medicaid, Estate Planning and Guardianship, as well as our upcoming speaking engagements, our products, and other relevant information.

If you have any comments, e-mail us at ccaruso@begleylawyer.com

If you are interested in having an Elder & Disabilities Law Attorney from Begley & Bookbinder speak at an event, please contact Colleen Caruso at (856) 787-4237.

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