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Protecting Assets for Disabled Beneficiaries

By Dana E. Bookbinder, Esq.

Even individuals receiving public needs-based benefits may receive inheritances without losing their benefits. To ensure that disabled beneficiaries will be able to retain their benefits, individuals may establish an inter vivos or testamentary special needs trust. To be effective, these trusts must only authorize distributions for items beyond the support the beneficiary will obtain through public benefits.

Any in-kind support and maintenance distribution from a special, or supplemental, needs trust will reduce, but not necessarily eliminate, Social Security Income (SSI) benefit payments. As long as SSI is only reduced, Medicaid eligibility is retained. When families erroneously set up a support trust rather than a special needs trust, however, the trust monies are considered available for public benefits purposes.

The trustee of a special needs trust must have complete discretion to make distributions, and beneficiaries must not be able to compel distributions or termination of the trust. Otherwise, the assets in the trust will be deemed available to the beneficiary, which will disqualify him or her from benefits.

Revocable special needs trusts may be used by individuals who do not need to engage in estate tax planning because their estates are well below the federal applicable exemption amount. Those who do wish to use a special needs trust not only for disability planning purposes but also to remove trust assets from their estates for estate tax planning purposes, must use irrevocable trusts. Depending upon specific provisions drafted into the trust, gifts to the trust can qualify for the annual gift tax exclusion. In drafting such provisions, however, practitioners must avoid the many pitfalls which could interfere with the disabled beneficiary's benefits



Begley & Bookbinder, P.C. is a law firm that concentrates on Estate & Tax Planning, Elder Law, Estate Administration, Guardianship and Will Contests, Real Estate, as well as Medicaid Planning. We are based in Moorestown, NJ, with offices in Stone Harbor, Lawrenceville & Philadelphia, PA.

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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 are interested in having an Elder Law Attorney from Begley & Bookbinder speak at an event, please contact Laura Dickens at (856) 787-4233.

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