

LIESCHE & REAGAN, P.A.

...and justice for all.

SPECIAL NEEDS TRUST BRIEF

PURPOSE

To keep Medicaid benefits while, at the same time, giving an inheritance to a family member or friend

REQUIREMENTS OF A SPECIAL NEEDS TRUST

- The Trustee must have discretion as to disbursements
- The trust is not a general health, support and maintenance trust
- The Beneficiary should have no control over the administration of the trust, such as:
 - Removal or nomination of trustees
 - Control distributions of income and principal
 - Terminate the trust

DRAFTING

- Intent of trust maker is to direct the trustee to supplement, but not replace, government benefits
- Not necessary to prohibit the trustee from making any distribution that will reduce or eliminate government benefits
- Should give the trustee discretion to determine if a distribution from the trust is appropriate even if it will reduce government benefits temporarily, as it is possible that it will be in the best interest of the beneficiary to forego government benefits at some times and have the trust replace the government benefits

TAX ISSUES

- A credit shelter trust can be a special needs trust, if the spouse is disabled or likely to need government benefits when the first spouse dies
- A marital or QTIP trust can be a special needs trust but the mandatory income

distributions from the trust will reduce government benefits in the month the distribution is made

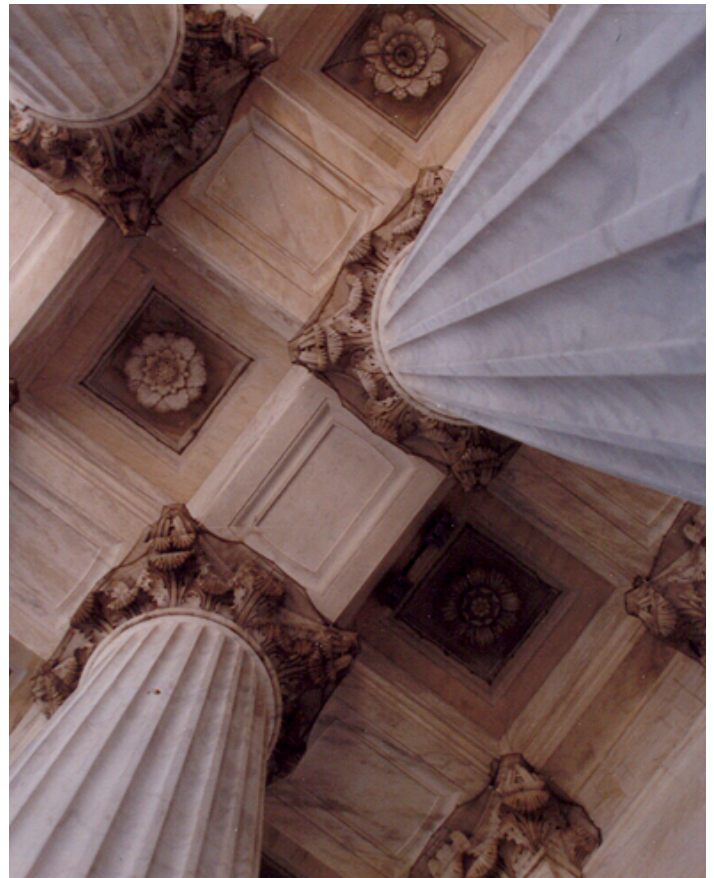
- If the trust or wants to make annual exclusion gifts to a special need trust for the benefit of a disabled or elderly person who receives needs based benefits, the trust must be irrevocable and should grant Crummy withdrawal powers only to the remainder beneficiaries. The disabled/elderly beneficiary should not be given the Crummy withdrawal powers because the withdrawal powers will disqualify the beneficiary from needs based government benefits

DISBURSEMENTS FROM A SPECIAL NEEDS TRUST

- - The trust estate will not be counted as an available resource
- Cash payments from the trustee to the beneficiary will reduce government income benefits; dollar or dollar, in the month the cash is received
- If the trustee pays a third party directly for food, clothing or shelter, the payment is treated as in-kind income and SSI benefits will be reduced by almost one-third
- If the trust purchases an exempt asset such as a house or car with a market value below \$5,000 or handicapped modified van, the purchase will not reduce or terminate government benefits or SSI or Medicaid
- The trustee can pay for services not covered by Medicaid as long as payment is made directly to the third party provider, such as a private room in a nursing home, wheelchair, psychiatric visits, etc.
- As long as the trustee pays the provider of services directly for travel, entertainment,

hobbies, etc., the disbursement would not be treated as income to the recipient

- As long as the trustee pays the educational or training facility directly for services, the disbursement would not be treated as income to the recipient
- The trustee can pay bills of the SSI recipient directly to the creditor including car insurance, tax liabilities, etc. (except if the bill is for food, clothing or shelter for an SSI recipient the payment should result in a one third reduction of the SSI benefit amount
- The trustee can make a bona fide loan to the SSI or Medicaid recipient without it being considered income, but there should be a repayment agreement if the trust is going to loan cash to the beneficiary



©2011 Liesche & Reagan, P.A. All Rights Reserved.

Special thanks to “Foqus” and “Dan4th” of Flickr.com for the photography, available under Creative Commons license.