

### **1. What type of client might use this technique?**

In the purest sense, a special needs trust is generally used for children, or other family of a client, that may or already does, qualify members for need based government benefits. As examples:

- **A child has a severe physical or mental illness and qualifies for Medicaid or SSI benefits that would be lost if the child received an inheritance.**
- **A parent is receiving Medicaid benefits that would be lost if the children provided in their revocable trusts that their parents, if living at the death of the surviving spouse, receive an inheritance.**
- **Protecting against unforeseen events that would make an heir ineligible for need based government benefits.**

The examples of a child or parent already qualifying for Medicaid or SSI are fairly common and easy to understand and protect against. However, assume no special needs trust or other special needs language is included in the parents' revocable trust. Further, the parents' revocable trust provides that, after the death of the surviving spouse, each child receives their share of the trust property when that child attains age 35. Assume all of the children are healthy and there is no consideration given to the potential for Medicaid benefits for any of the children. The surviving spouse dies when the youngest child is 30. That means that the youngest child's share will be held for 5

years and then distributed outright to the child at age 35. What happens if the child is seriously injured in an accident and qualifies for Medicaid benefits? When the child attains age 35, the child's share of the trust will terminate and the inheritance will be lost to medical expenses prior to Medicaid payments beginning.

### **2. How does a special needs trust work?**

Medicaid benefits are based on the applicant's total assets and income. The rules are very state specific, so this Estate Planning Brochure deals in a very general sense and should not be relied upon as legal advice. The typical special needs trust provides that the trustee has total discretion as to making distributions that benefit the special needs beneficiary. What this means, is that neither the assets of the trust or the income of the trust are treated as "owned" by the special needs beneficiary. Medicaid will pay for the medical expenses and basic living costs, but the assets in the special needs trust can be used to provide the beneficiary with dignity and some of the nicer benefits of life. An example might be a wheelchair more expensive than the government will provide or trips that the government will not provide. The trust property can also be used to allow the beneficiary to stay in a single room rather than a group room.

### **3. How does the client benefit from a special needs trust?**

The client knows that a properly prepared revocable trust will protect a child's inheritance from being consumed by medical expenses even if the need is not currently known, as in the accident example. This is a great sense of relief for many of our clients who are concerned about their children when the clients are no longer there to protect and care for them. The special needs trust enables a special needs child to use their inheritance for the nicer things in life after Medicaid has paid for the necessary support items.

### **4. What does the estate planner do in these types of engagements?**

That really depends on the estate planner. Our firm includes "backup" special needs language that protects beneficiaries who are known to need a special needs trust as well as a beneficiary that becomes "needy" in the future through some unfortunate circumstance. In effect, our firm's revocable trusts provide protection if it is needed and no limitations on the clients' goals if special needs protection is not needed.

## 5. What are the clients' responsibilities?

Primarily, clients need to alert the estate planner to the potential special needs of a beneficiary they want to benefit. The "backup" language is in the document anyway, but the clients should always alert the estate planner to the potential, to the extent the client is aware of any potential special needs problems.

## Our Practice Focus

Buckley Law Offices, P.C. limits its practice to legal advice on all aspects of estate planning and corporate law, both within the U.S. and internationally. Our services include:

\* **Estate Planning**, to include: **all phases of tax planning**; advising client objectives to match client needs with client goals (irrespective of financial resources within the client's family); Use of trusts, corporations, limited partnerships, and limited liability companies in order to meet client goals; selection of offshore structures and jurisdictions that maximize liability protection for clients in professions facing high litigation exposure; charitable planning to meet client's desire to meet important social and/or religious objectives that continue long after the client is gone; advising clients concerning the appropriateness of the plethora of financial planning products available in the marketplace, including the use of offshore financial tools.

\* **Corporate planning** and counsel, to include: identifying business structures that maximize tax savings for entrepreneurs; providing counsel on avoiding shareholder conflict, and the drafting of conflict resolution mechanisms that insure the survival of the business entity in the event that conflict between shareholders occurs.

\* **International business** counsel, to include negotiating, preparing, and implementing international agreements; providing advice on insuring monies owed to clients by a foreign partner are paid, especially in the event that a conflict between the U.S. client and the foreign partner arises.

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**PROTECTING THE  
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