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**CAN YOU IDENTIFY THE TOP 10 ELDER LAW ISSUES  
IN A DISSOLUTION PROCEEDING?**

1. **Is the petitioning spouse (or other spouse) temporarily or permanently disabled? (i.e. Multiple Sclerosis; Parkinson's; Stroke)** *\*Explore the necessity of a Durable Power of Attorney or, guardianship in order for the divorce to proceed.*
2. **Is the petitioning spouse (or other spouse) incapacitated mentally or, have questionable capacity?** *\*Explore the necessity for guardianship.*
3. **Is there a child of the divorcing couple who is disabled, has developmental disabilities or, special needs? (i.e. Autism; retardation; Spina Bifida; Cerebral Palsy)** *\* Explore the necessity for and benefits of a Special Needs Trust for child support.*
4. **Is either spouse receiving or applying for public assistance such as Medicaid, Food Stamps or, SSI?** *\* Receipt of alimony (lump-sum or, monthly) can affect entitlement to public assistance.*
5. **Is a child of the divorcing couple receiving or, applying for public assistance such as Medicaid, Food Stamps or SSI?** *\*Receipt of child support can affect entitlement to public assistance.*
6. **Does either spouse require long term medical care and may not be medically insurable?** *\*Explore the necessity for Medicare, Medicaid, SSI or Social Security Disability (SSDI).*
7. **Is the petitioning spouse seeking dissolution solely to protect assets because the other spouse is ill?** *\*Explore non-divorce legal options and understand how government agencies view assets and income of both spouses in determining Medicaid or SSI eligibility.*
8. **Have you advised your client to update their Last Will & Testament, Trust, Power of Attorney, Health Care Surrogate Designation and beneficiary designations to remove the divorced spouse?** *\*An order of dissolution results in a spouse being treated as predeceased if named in a Will or Trust but does not affect beneficiary designations in a pension or life insurance policy or, designation of agent in a Durable Power of Attorney or Healthcare Surrogate.*
9. **Is the spouse who will receive alimony or child support unable to manage his/her finances?** *\*Explore the advantages of a Special Needs Trust.*
10. **Have you advised your client to update their estate plan to create a Special Needs Trust to manage the inheritance of a disabled child?**

**“PROPER PLANNING MAY CREATE PEACE OF MIND”<sup>SM</sup>**

## ***WHAT YOU NEED TO KNOW ABOUT THE ADVANTAGES A SPECIAL NEEDS TRUST PROVIDES FOR PERSONS WITH DISABILITIES WHO REQUIRE PUBLIC ASSISTANCE.***

### **1. Why is it important to preserve the client's public assistance eligibility?**

In certain cases, young people with disabilities and older people who require long-term care may not have sufficient assets or income to pay for the medical care and health related services they require. These people can apply for public assistance programs if they satisfy financial eligibility requirements. However, receipt of any type of inheritance or, monetary settlement can render a person ineligible for public assistance due to excess income and/or resources. This will force the disabled person to use all of the inheritance or personal injury proceeds for his/her care which in cases of severe disabilities can be depleted quickly. A special needs trust allows the client to obtain or preserve public assistance and supplement the quality of care and their quality of life using the trust assets. The transfer of assets into the special needs trust does not create disqualification for public assistance eligibility.

### **2. Who is eligible for a special needs trust?**

The person must be "disabled" as defined by the Social Security Act. If the client is already receiving Social Security Disability Insurance or, public assistance it is likely that a disability determination has already been made. The person with disabilities must be under age 65 at the time the trust is created.

### **3. Who can create the trust?**

The trust cannot be created by the disabled person, but it can be created by a parent, grandparent, guardian, or court. If the disabled individual is incapacitated, the guardianship court must approve the creation of the trust. The trust can be funded with assets belonging to the disabled person. Although the trust continues after age 65, no additional assets can be added to the trust after that age.

### **4. What happens to the trust assets upon the beneficiary's death?**

The trust must repay the state for Medicaid benefits paid to the beneficiary (at the Medicaid reimbursement rate). If there are any funds remaining after Medicaid is repaid, they will be distributed to the persons named as beneficiaries in the trust agreement. If the trust funds are depleted by the time the beneficiary dies there is no penalty.

### **5. What is a "pooled trust"?**

A Pooled Trust is a special needs trust established and managed by a non-profit association. It allows the non-profit association to "pool" together the resources of several individuals with disabilities and achieve a greater rate of return on the investment. This trust can be used for the disabled person of any age and may be more suited for smaller sums of money. A separate account and accountings are maintained for each beneficiary of the trust. At the time of a beneficiary's death, a portion of the remaining funds will be paid to the State, a portion to the non-profit association for the benefit of the other trust beneficiaries, and a portion to heirs.