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SPECIAL NEEDS TRUSTS

POOLED TRUSTS

GUARDIANSHIPS

Goal: A person with special needs or, a disability can experience quality of life and receive quality of care.

Strategy: Maintain government assistance eligibility which will cover the basic medical care and utilize special needs trust assets (settlement proceeds, inheritance) to supplement the care with needed services and products.

Requirements:

- ◇ Must be disabled.*
- ◇ Created only by a parent, grandparent, guardian or court.
- ◇ Funded with assets belonging to the disabled person.
- ◇ Can only be used for a disabled person under age 65.
- ◇ No additional assets may be added after age 65.
- ◇ Can be administered by family member, friend, guardian, corporate fiduciary.

Upon the beneficiary's death:

- ◇ The trust must repay the State for Medicaid assistance (at Medicaid reimbursement rate).
- ◇ No penalty if trust funds are depleted.
- ◇ Remaining funds after Medicaid lien is satisfied are distributed to beneficiaries named in the trust.

Requirements:

- ◇ Must be disabled.*
- ◇ Created by a parent, grandparent, guardian, court or the disabled person.
- ◇ Funded with assets belonging to the disabled person.
- ◇ Established and managed by a non-profit association.
- ◇ Pools together resources of several disabled individuals to achieve better rate of return and reduce administrative expenses.
- ◇ Can be used for a disabled person of any age even those over age 65.
- ◇ Separate account maintained for each beneficiary of the trust.

Upon the beneficiary's death:

- ◇ Remaining funds are not required to be repaid to the state. Non-profit association can use remaining funds for the benefit of the other trust beneficiaries.
- ◇ No penalty if trust funds are depleted.

Minor Guardianships:

(Fla. Stat. § 744.301-744.3021; 744.387)

- ◇ Parents can settle a claim or cause of action and collect proceeds if net proceeds is less than \$15,000.00
- ◇ Legal guardianship required when net proceeds exceed \$15,000.00

Guardian ad Litem: (Fla. Stat. § 744.3025)

- ◇ May be appointed when minor has claim for personal injury, property damage, or wrongful death and the gross settlement exceeds \$15,000.00. Mandatory if gross settlement exceeds \$50,000.00

Guardianships for Adults:

(Fla. Stat. § 744.3031)

- ◇ Required when a person is incapable of administering one's property and/or providing for one's health, care, food, shelter, personal hygiene.

Guardian Advocate:

(Fla. Stat. § 393)

- ◇ Court proceeding designates a Guardian Advocate to provide a developmentally disabled person with assistance for financial and medical decision-making.
- ◇ Person must be diagnosed with a developmental disability: mental retardation; autism; spina bifida; Praeder Willi syndrome, cerebral palsy.
- ◇ Court proceeding does not result in removal of a person's legal rights.

***Social Security Act** – The term “disability” means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens.

“PROPER PLANNING MAY CREATE PEACE OF MIND”SM

Stephanie L. Schneider's Paradigm for Evaluating Personal Injury Settlements and Inheritances

