

OAST & HOOK

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Member, National Academy
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SPECIAL NEEDS TRUSTS AND STRUCTURED SETTLEMENTS

Roger Bernstein, an attorney who practices elder law in Coral Gables, Florida, has shared with Oast & Hook a letter he recently received from the Social Security Administration's (SSA) Associate Commissioner for Income Security Programs regarding self-settled special needs trusts and structured settlements.

A self-settled special needs trust (SNT), also called a (d)(4)(A) trust, is a trust established by the parent, grandparent, or legal guardian of the disabled beneficiary, or by a court. The trust is funded with the assets of the beneficiary, and the beneficiary must be under the age 65 years when the trust is established and funded. At the death of the beneficiary, the SNT must reimburse the state for medical assistance payments made to or for the benefit of the beneficiary. These trusts are normally used when a beneficiary receives an inheritance or proceeds from a personal injury settlement or award. Mr. Bernstein asked the SSA to clarify its policy regarding payments from a structured settlement into an SNT, and specifically payments from the structured settlement into an SNT after the beneficiary reaches age 65, when the structured settlement was established by irrevocable assignment of the annuity payments to the SNT prior to the beneficiary reaching age 65.

A structured settlement is an annuity purchased by a defendant in a lawsuit to satisfy the defendant's monetary obligation to the plaintiff as a result of a settlement or award. The plaintiff does not own the annuity, but the plaintiff has the right to receive the stream of payments from the annuity as the beneficiary. The right to receive the payments is often irrevocably assigned to an SNT so that the beneficiary can continue to receive needs-based benefits such as Medicaid and Supplemental Security Income (SSI). The Trustee of the SNT then becomes the owner of the right to receive the structured settlement payments. According to the letter from the Associate Commissioner, under the SSA's Program Operations Manual System (POMS), because the SNT is not a resource to the beneficiary, when the

structured settlement payments are irrevocably assigned to the SNT, the payments are not considered income to the beneficiary. Further, the right of the trust to receive the payments is not a resource to the beneficiary.

With regard to the payments from a structured settlement to an SNT after the beneficiary attains age 65, the letter from the Associate Commissioner first cited sections from the POMS that state that additions to an SNT after the beneficiary reaches age 65 may be income in the month received by the trust, and those payments may be counted as resources in the following months under other SSI trust rules. The SSA Associate Commissioner then stated that SSA looks to the Center for Medicare and Medicaid Services (CMS) for guidance, because the applicable section of the Social Security Act provides rules to the Medicaid program. CMS has taken the position that when there has been an irrevocable assignment of structured settlement payments to a properly established SNT, payments made into the SNT after the beneficiary reaches age 65 should be treated the same as payments made prior to age 65. The SSA Associate Commissioner stated that because the right to receive the periodic payments is irrevocably assigned to the SNT, and not the individual payments themselves, the payments made to the SNT after the beneficiary reaches age 65 are treated the same as payments made to the SNT prior to the beneficiary reaching age 65. Thus, the payments are not considered income to the beneficiary, and are not not considered resources to the beneficiary in the months following payment. The Associate Commissioner wrote that these statements of policy are clarifications of current SSI policy and are applicable to SNTs established on or after January 1, 2000.

Oast & Hook thanks Mr. Bernstein for sharing this important information with Oast & Hook and the readers of the *Elder Law News*.

Oast & Hook will present a workshop entitled:

“Special Needs Trusts: A Wealth of Information.”

This seminar will be held at the Chesapeake Conference Center, from 9:00 a.m. to 12:30 p.m., Wednesday, March 8, 2006. This seminar has been approved for three CLE credits by the Virginia State Bar. A registration form is attached to this newsletter.

Announcement

Oast & Hook is pleased to announce its sponsorship of a series on WHRO-TV entitled “Boomers: Redefining Life After 50.” This week’s episode is Welcome Home and will be aired at 4:30 p.m., Saturday, February 18th.

Speakers

If you are interested in having an Elder Law attorney from Oast & Hook speak at an event, then please call Jennifer Lantz at 757-399-7506.

Oast & Hook

Oast & Hook is an elder law firm. We represent older persons, disabled persons, their families, and their advocates. The practice of elder law includes estate planning, investment and insurance advice, estate and trust administration, powers of attorney, advance medical directives, titling of assets and designations of beneficiaries, guardianships, conservatorships, and public entitlements such as Medicaid, Medicare, Social Security, and SSI, disability planning, income tax planning and preparation, bill paying and account management and reporting, care management, and fiduciary services. We also handle litigation involving these issues, such as will contests and estate administration disputes. For more information about Oast & Hook, please visit our website at www.oasthook.com.

Oast & Hook is the Virginia member of the Special Needs Alliance, a nationwide network of disability attorneys. As members of this alliance, we assist personal injury attorneys in resolving their cases to enhance the judgments and awards of their disabled clients and to maintain the eligibility of these clients for SSI and Medicaid. We are experienced in protecting the public benefits of persons with special needs and in assisting with the management of their assets. For more information about the Special Needs Alliance, visit its website at www.specialneedsalliance.com.

Distribution of This Newsletter

Oast & Hook encourages you to share this newsletter with anyone who is interested in issues pertaining to the elderly, the disabled and their advocates. The information in this newsletter may be copied and distributed, without charge and without permission, but with appropriate citation to Oast & Hook, P.C. If you are interested in a free subscription to the *Elder Law News*, then please e-mail us at eln@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

Please visit us on the world wide web at:
www.oasthook.com

Our Web site contains information about Oast & Hook and an archive of our newsletters and other estate planning, estate administration, and elder law articles in searchable format.

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OAST & HOOK

presents:

Special Needs Trusts: A Wealth of Information

Date: Wednesday, March 8, 2006

Location: Chesapeake Conference Center
900 Greenbrier Circle
Chesapeake, Virginia 23320

Schedule: Registration: 8:30 a.m. to 9:00 a.m.
Workshop: 9:00 a.m. to 12:30 p.m.

Presenters: Andrew H. Hook
Sandra L. Smith

Tuition: Register on or before January 31, 2006, for an early registration fee of \$15.
The registration fee after January 31, 2006, is \$25.

Space is limited, so please register as soon as possible. Walk-in registrations will not be accepted.
No refunds after February 8, 2006.

Registration Form

Please complete this registration form and either mail it or fax it to Oast & Hook at 757-397-1267.

Name: _____

Company: _____

Address: _____

Telephone: _____ Email: _____

Payment Method:

Mail check payable to **Oast & Hook, P.C.**, Attn: Linda Gerber, at P.O. Box 399, Portsmouth, Virginia 23705-0399.

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Card No: _____ Expires: _____

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For more information, please contact Jennifer Lantz or Linda Gerber at 757-399-7506.