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POOLED TRUSTS

Elder law attorneys often assist persons with disabilities who receive public benefits, including Supplemental Security Income (SSI) or Medicaid, and then receive a modest inheritance, divorce settlement, or personal injury settlement or award. These funds may make this disabled person ineligible for public benefits. The disabled person could purchase exempt resources, and then reapply for benefits; however, in many cases, there are no appropriate exempt resources for the disabled person to purchase. This person would then be ineligible for public benefits until these funds are spent down. The disabled person could give the funds away, however, the gifts would result in a period of ineligibility for SSI and Medicaid long-term care benefits. If under 65 years of age, the disabled person could transfer the funds to a d(4)(A) Special Needs Trust (SNT); however, it is frequently difficult to find an appropriate trustee for this type of trust, and the administrative expenses may be high for a trust funded with \$100,000 or less. A fourth alternative is to transfer the funds to a d(4)(C) ("Pooled Trust") subaccount.

What is a Pooled Trust?

A Pooled Trust is a trust established and administered by a non-profit organization. A separate account is established for each beneficiary of the trust, but for the purposes of investment and management of funds, the trust pools these accounts. Each subaccount is established by the person with a disability, a parent, grandparent, guardian, or a court. The trust provides that, upon the death of the disabled beneficiary, to the extent any amount remaining in the beneficiary's subaccount are not retained by the trust, the trust must pay to the state the amount remaining up to the amount equal to the total amount of Medicaid assistance provided to the beneficiary. The Pooled Trust should be irrevocable to avoid being treated as a resource.

What are the advantages of a Pooled Trust subaccount compared to a d(4)(A) SNT?

The person with a disability may create his or her own Pooled Trust subaccount. Because the Pooled Trust is managed by a non-profit organization,

it is not necessary to find a trustee who is willing to manage the trust. And because the Pooled Trust funds are pooled for investment and management purposes, the administrative expenses of these trusts are frequently lower than those of a d(4)(A) SNT.

What are the disadvantages of a Pooled Trust compared to a d(4)(A) SNT?

The d(4)(A) SNT is a trust managed by a trustee for the sole benefit of the disabled beneficiary. A family member or friend of the disabled person may serve as the trustee, or a corporate or professional trustee might serve. The d(4)(A) SNT permits the trustee to customize the management and investment of the trust to meet the unique needs of the beneficiary.

Can you give me an example of the use of a Pooled Trust?

Oast & Hook recently represented a client who needed nursing home care, and was receiving SSI and Medicaid. She received an inheritance from her mother of approximately \$50,000. Oast & Hook assisted the client in establishing a Pooled Trust subaccount to hold the inherited funds. Because her resources were less than \$2,000 and there was no resulting period of ineligibility, the client continued to qualify for Medicaid long-term care assistance. The funds in her Pooled Trust subaccount can be used for goods and services for which SSI and Medicaid do not pay, such as dental care.

Where do you find a Pooled Trust in Virginia?

Commonwealth Community Trust
P.O. Box 29408
Richmond, Virginia 23242-0408
Tel: 888-241-6039
Website: <http://www.commonwealthcommunitytrust.org/>

Virginia Beach Community Trust
c/o Mental Retardation/Developmental Disabilities
Pembroke Six, Suite 218
Virginia Beach, Virginia 23462
Tel: 757-473-5223

Norfolk Community Trust
248 West Bute Street
Norfolk, Virginia 23510-1404
Tel: 757-441-5300

How can I find out more about planning for the financial management and care of persons with disabilities?

Oast & Hook attorney Sandra L. Smith is a member of the Board of Directors of the Commonwealth Community Trust. You can also visit the Oast & Hook website at www.oasthook.com or the Special Needs Alliance website at www.specialneedsalliance.com. Oast & Hook also makes presentations about

Pooled Trusts, Special Needs Trusts and other elder law issues to organizations or groups. If you would like for one of the attorneys of Oast & Hook to make a presentation to your organization or if there is a subject that you would like to see as the subject of an article in this newsletter, then please telephone Jennifer Lantz at 757-399-7506 or e-mail her at lantz@oasthook.com.

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, 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.

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.

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

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