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INSIDE THIS ISSUE

- Pooled Trusts
- Ask Allie
- Announcement

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POOLED TRUSTS

Oast & Hook certified elder law attorney Sandra Smith has been elected President of the Commonwealth Community Trust (CCT) for a second term. Commonwealth Community Trust is one of several pooled trusts in Virginia.

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. For self-settled, or (d)(4)(C) pooled trusts, each subaccount is established by the person with a disability, a parent, grandparent, guardian, or a court, and the trust is funded with the assets of the person with a disability. The trust provides that, upon the death of the disabled beneficiary, if there are funds remaining in the beneficiary's subaccount, the trust must pay to the state an amount up to the total amount of Medicaid assistance provided to the beneficiary, to the extent that the funds are not retained by the trust. The pooled trust should be irrevocable to avoid being treated as a resource.

Third-party pooled trust subaccounts can also be established by family members who want to leave inheritances for persons with disabilities. Because these accounts are not funded with the assets of the person with a disability, they do not include a Medicaid payback provision. The remainder of this article will discuss the self-settled (d)(4)(C) pooled trust.

When is a (d)(4)(C) Pooled Trust used?

Elder law attorneys often assist persons with disabilities who receive public benefits, including Supplemental Security Income (SSI) and Medicaid, and then receive a modest inheritance, divorce settlement, or personal injury settlement or award. The receipt of 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. The disabled 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 are the advantages of a (d)(4)(C) Pooled Trust subaccount compared to a d(4)(A) SNT?

The person with a disability under 65 years of age 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. Additionally, because the 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 (d)(4)(C) 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 may 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 (d)(4)(C) Pooled Trust?

Oast & Hook represented a client under the age of 65 years with a disability who was receiving SSI and Medicaid. This client 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 the client's resources were less than \$2,000 and there was no resulting period of ineligibility, the client continued to qualify for SSI and Medicaid assistance. The funds in her pooled trust subaccount may be used for goods and services, such as dental care, that SSI and Medicaid do not pay.

Where do you find a Pooled Trust in Virginia?

Self-settled and third-party trusts:

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

ARC of Northern Virginia
98 North Washington Street
Falls Church, Virginia 22040
Tel: 703-532-3214
Website: www.thearcofnova.org

Third-party trusts only:

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
Website: www.norfolkcsb.org

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

You can visit Oast & Hook's website at www.oasthook.com or the Special Needs Alliance (SNA) website at www.specialneedsalliance.com. Oast & Hook is a Virginia member of the Special Needs Alliance, and certified elder law attorney Andrew Hook is a past president of the SNA. Oast & Hook also makes presentations about pooled trusts, special needs trusts, and other elder law issues to organizations and groups. If you would like for an Oast & Hook attorney 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 phone Jennifer Lantz at 757-399-7506

Ask Allie

O&H: Allie, we've heard about a recent survey regarding pet families and emergency care. Please tell us about it.

Allie: Sure! A recent article by the Associated Press reported the results of an Associated Press-Petside.com poll, with some interesting results. For example, 58% of pet owners would be at least somewhat likely to perform CPR on their pets in case of a medical emergency. Few pet owners, however, are actually prepared to handle pet emergencies. Twenty percent of pet owners have a pet first aid kit in their homes, and 54% do not have a fire evacuation plan for their pets. The survey also revealed several dangerous practices that can lead to injuries and accidents, including feeding cats and dogs bones from table scraps, allowing pets to ride in vehicles unrestrained rather than in a pet carrier, or leaving pets unattended in a car or truck. Most pet owners, however, said they would go the extra mile to rescue their pets, and many families make decisions with their pets' safety in mind. Many resources are available for pet families to plan for emergencies and disasters, for example, the American Red Cross, and many private companies offer pet safety and CPR training. For more information on the survey and the Pet Net Safety Event, visit www.petside.com. Hmmm, I'd better see if my mom has scheduled a pet safety class for us. See you next week!

Announcement

Oast & Hook will hold its quarterly Social Workers and Administrators Breakfast on November 19th at the Russell Memorial Library, 2808 Taylor Road Chesapeake, Virginia. Registration begins at 9:15 a.m. and the presentation begins at 9:30 a.m. Questions will be answered from 10:30 a.m. to 11:00 a.m. The breakfast is designed to be both a networking opportunity and also an educational opportunity for area professionals who work with seniors, the disabled, and their families. Seats are limited, so please register early. To register for this breakfast, please phone Linda Gerber at 757-967-9704.