



Protecting Your Client's Settlement Using Trusts

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+ Overview

- Introduction To Special Needs Trusts (SNTs)
- Malpractice Issues
- Administrative Issues
- Incorporating MSAs Into SNTs
- Alternatives
- PI Attorney Considerations

+ Purpose Of SNT

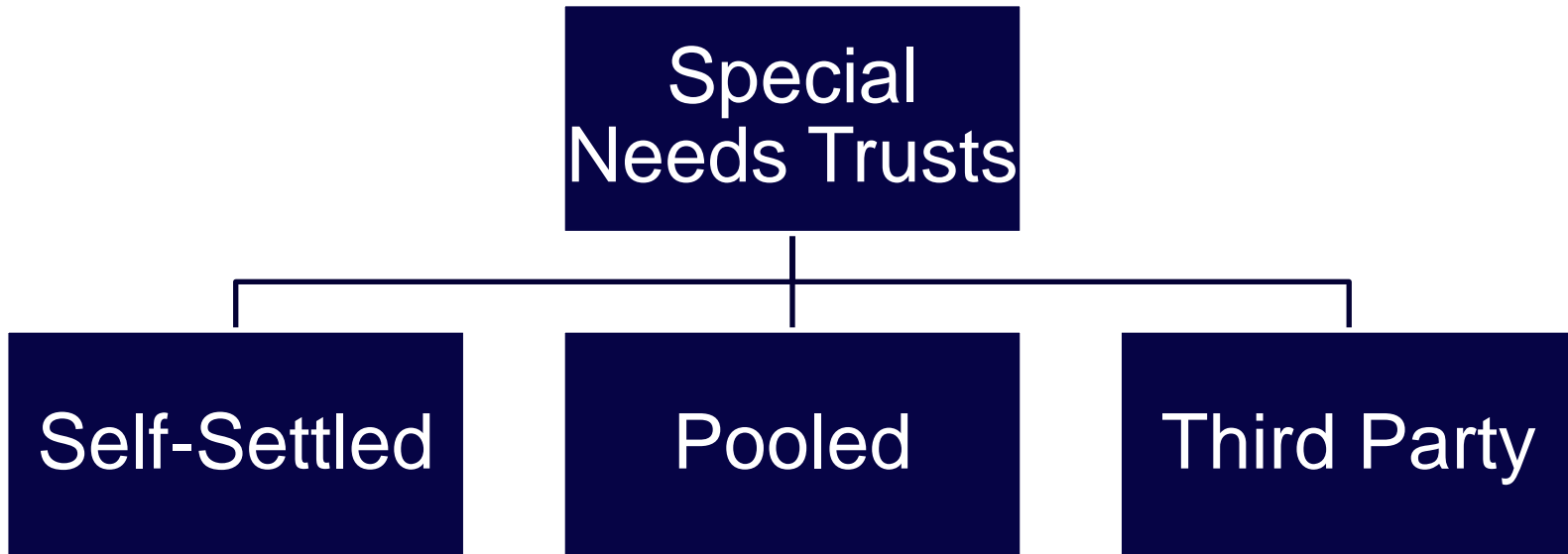
- Retain Resources
 - Settlement
 - Inheritance
- Preserve Public Assistance Eligibility
- Supplement NOT Supplant
 - Needs Beyond Basics



Potential For Malpractice

- *Grillo v. Pettiette*, 96-145090-92 (96th Dist. Ct., Tarrant Cty., Tex.), and *Grillo v. Henry*, 96-167943-96 (96th Dist. Ct., Tarrant Cty., Tex.).
- *Department of Social Services v. Saunders*, 724 A.2d 1093 (Conn. 1999).

+ Types Of SNTs



+ SNT Requirements

- Assets of Individual
- Under Age 65
- Disabled
- Sole Benefit
- Established By
 - Parent, Grandparents, Guardian OR Court
 - Individual
- Medicaid Payback



Considerations

- Public Benefits – Needs-Based
 - Assets – Not Countable
 - Income – Not Countable

- Disabled
 - Timing Of Disability Determination

- Administrative Expenses

- Irrevocability
 - Amendment
 - Termination

- Deeming

+ Public Benefit Basics

■ Benefits NOT Based On Financial Need

- Social Security Disability Insurance (SSDI)
- Medicare
- Special Education
- Veteran's Compensation Benefits

■ Benefits Based On Financial Need

- Supplemental Security Income (SSI)
- Medicaid
- Veteran's Pension Benefits
- Food Stamps, Legal Aid, & Utility Assistance
- Housing Subsidies
- In-Home Support Services Or Waiver Services
- State Benefits

+ Trustee Requirements And Duties

- Must Meet Typical Trustee Requirements
 - Act In Best Interest
 - Investment, Tax, & Bookkeeping Expertise
 - Insurable, Bondable, Or Deep Pockets

- Understand Public Benefits
 - *Matter of JPMorgan Chase Bank N.A. (Marie H)*, 2012 NY Slip Op 22387 (December 31, 2012 Sur Ct New York County).
 - *Liranzo v. Jewish Education/Research*, N.Y. Sup. Ct., Kings Cty., No. 28863/1996, June 25, 2013

- Fewer Trust Companies Are Serving As Trustees Of SNTs

+ Counseling Session

- Should Include:
 - Person With Disability
 - Family Member
 - Trustee
 - Drafting Attorney

- Purpose:
 - Manage Expectations
 - Trustee Limitations
 - Prepare Budget
 - Payment Responsibility
 - Trustee
 - Beneficiary
 - Credit Card

+ Counseling Session (cont'd)

- How Long Will Trust Last?

- Budget Factors
 - Total Assets
 - Life Expectancy
 - Living Expenses
 - Extraordinary Expenses

- Involve Beneficiary/Family With Budget
 - Cash/Structure
 - Immediate Cash Needs
 - Home
 - Vehicle
 - Vacation
 - Debt Repayment

+ Medical Insurance

- Employer-Provided
- COBRA
- High Risk Pool
- Affordable Care Act
- Medicare (A,B, & D)
 - Supplement
 - Medicare Advantage
 - Open Enrollment
- Medicaid
- Medicaid Waiver
- Worker's Compensation
 - Work-Related
 - 30%

+ Types Of Income

- Direct
- In-Kind
 - Pay Third Party For Goods And Services
 - Trustee Delivers
 - Provider Delivers
 - Credit Card
- In-Kind Support And Maintenance (ISM)
 - Payment For Food & Shelter

+ Effect Of Distributions

- One-Third (1/3) Reduction Of SSI
- Dollar-For-Dollar Reduction Of SSI
- One Dollar (\$1) Of SSI Qualifies Individual For Medicaid
- SSI/SSDI Combination
- Avoid Inadvertently Eliminating SSI
 - \$721 Federal SSI (2014 Numbers)
 - \$600 SSDI
 - \$121 SSI
 - \$200 Cash Distribution

Elimination Of SSI Payment

+ Dual Eligibility

- Medicaid Supplements Medicare
 - LTC & Home Health
 - Payment Of Medicare Premium, Deductible, And Co-Insurance
 - Medicaid Beneficiaries Enroll In Medicare Part D
 - Likely That Medicare Will Have Recoverable Payments For Dually Eligible Situation

+ MSA Considerations

- Consideration Of Structure
- Must Be Contained Within The SNT
 - Does Not Protect Funds From Recovery But Not An Asset
 - Caution Should Be Used In Conversion Trusts

+ Alternatives to SNTs

- Medicaid Options:
 - Spend Down
 - Transfer of Assets – Penalty Period
 - Accept The Money
 - ABLE Accounts – Limit of \$14,000
- Qualified Settlement Funds
- Settlement Trusts
 - Consider Conversion Clause
 - Revocable vs. Irrevocable

+ Considerations For The PI Attorney

- Ask If A Beneficiary Has A Disability Or Is On Public Benefits
- Retain Experienced Disability/Elder Law Attorney
 - Advise About Any Needs Of Beneficiary
- Do Not Undertake On An Occasional Basis
 - Requires Particular Expertise
 - Not A Forms Practice

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+ Areas of Practice:

- Estate Planning
- Asset Protection Planning
- Long-Term Care Planning
- Life Care Planning
- Veterans Benefits
- Financial Planning
- Tax Planning
- Guardianship & Conservatorship
- Estate Administration
- Trust Administration
- Special Needs Trusts
- Care Management
- Business Planning