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MEMBER



Special needs require special lawyers.

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POOLED TRUSTS

Oast & Hook certified elder law attorney Sandra Smith has just finished her second term as President of the Commonwealth Community Trust, 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 person ineligible for public benefits. The client could purchase exempt resources, and then reapply for benefits; however, in many cases, there are no

appropriate exempt resources for the person with disabilities to purchase. The person with a disability would then be ineligible for public benefits until these funds are spent down. The 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 client 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 person with disabilities 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
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
Pembroke 3
289 Independence Blvd., Suite 120
Virginia Beach, Virginia 23462
Tel: 757-385-0645
Website: <http://vbcommunitytrust.com>

Norfolk Community Trust
248 West Olney Road
Norfolk, Virginia 23510
Tel: 757-823-1600
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 Harris at 757-399-7506.

Ask Allie

O&H: Allie, last week you gave our readers some tips on holiday safety. Please continue!

Allie: Sure! This time of year can provide some temptation to share holiday food with your pets; however, one bite of certain foods can prove fatal to your pet. Foods containing garlic and onions should never be given to a cat because they contain a toxin that can cause anemia. Pets should not eat chocolate because it contains not only caffeine but also theobromine that can cause high heart rates and occasionally seizures or other neurological problems. Cats who are not exposed to milk products regularly should avoid eggnog. Abrupt changes in food can cause vomiting or diarrhea; however, feeding your pet small amounts of lean, cooked meat such as turkey may be OK. Watch out for the bones; ingested bones can block the intestines or can cut the esophagus or intestines. The hectic holiday season can upset regular household routines. If possible, provide your pet with a quiet room while holiday parties are going on; you may want the room as an escape for your pet, or you may need to actually place the pet in the room before the gathering starts. Time for a snack. See you next week!

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 *Oast & Hook News*, then please e-mail us at mail@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

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