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## CHALLENGES IN SPECIAL NEEDS TRUST ADMINISTRATION

At the recent Stetson Special Needs Trusts IX seminar, William Main, Vice President & Senior Trust Officer of the Wells Fargo Special Needs Trust Group, gave a presentation entitled “Administrative Nightmares: Top 10 Challenges in SNT Administration.” Special needs trusts (SNTs) are designed to maintain the beneficiary’s eligibility for government needs-based benefits, while providing funds for the beneficiary’s supplemental needs. They can be self-settled (funded with the beneficiary’s assets, such as a personal injury award or settlement), or third-party (funded with the assets of a third person, such as a parent as part of the parent’s estate plan.) Trustees of either type of SNT face many similar issues when trying to administer these trusts.

**Challenge #1: Dealing with family members.** A self-settled SNT must be for the sole benefit of the beneficiary with a disability. This means that distributions must be made for the sole benefit of the beneficiary, although family members may receive incidental benefit from the expenditure. The trustee must manage the expectations of the family members. For example, a beneficiary’s parents may want the trust to pay for furnishing their home, for expensive vehicles for the parents’ use, or for the beneficiary to give them gifts. The trust document may place limitations on distributions, and there are several types of distributions that are considered for the sole benefit of the beneficiary, even though family members may receive incidental benefit. These items include telephone and internet expenses, entertainment items like books and videos, vacation travel, a vehicle for the beneficiary’s use (even though the parents are the drivers), exercise equipment, and the purchase of a home for the beneficiary. Prohibited distributions include gifts to caregivers, friends or family members, paying members for “family time,” paying for a companion’s travel expenses if not medically necessary, and, under some circumstances, providing rent-free housing for the other family members residing in the home. If the trustee does not effectively manage the family members’ expectations, then dealing with the family members can be one of the greatest challenges in SNT administration.

**Challenge #2: Communicating effectively with clients.** The trustee must have open lines of communication with the beneficiary and family members. The beneficiary may have disabilities that present communication challenges, like those requiring assistive technology, or the beneficiary may suffer from a mental illness that causes the beneficiary to believe things that are not grounded in reality. A trustee must modify the trustee's communication techniques so that the trustee can involve the beneficiary as much as possible. The trustee should treat the person with a disability as the trustee would any other person, use nonverbal methods when necessary, and always ask before rendering assistance to that person. The trustee may want to have an initial meeting with the beneficiary and the members of the beneficiary's family in their home in order to learn as much as possible about the beneficiary's daily life, as well as the beneficiary's interests, ideas, goals and plans. If the trustee explains the trust document and the financial issues in a way that the beneficiary and the family members can understand, this can help foster a good relationship.

**Challenge #3: Vehicle purchases.** Vehicle purchases can cause major conflicts between trustees and family members. The vehicle that the family members want may be the family members' "dream vehicle" rather than a vehicle that best meets the beneficiary's needs. The trustee may want to hire an occupational therapist to determine the beneficiary's physical needs, and which vehicle or lift system will best meet those needs. The trustee should analyze the family's expected use of the vehicle, including the weather and driving conditions the family may face, as well as the family's recreational preferences. The budget for the vehicle should include the costs of insurance, repairs, and maintenance. The vehicle should not be titled in the name of the trust because of liability issues, and the trust should be listed as a lien holder. The trustee should retain the vehicle title, and the trust should purchase enough insurance coverage to protect the trust's assets.

**Challenge #4: Vacations.** Most trust documents permit distributions for the beneficiary's vacations. The major issues trustees face with regard to vacations are determining which expenses are for the beneficiary's benefit, and balancing the value of the vacation with the beneficiary's other needs. An SNT can usually pay for airfare, food and lodging for the beneficiary, and generally for those same expenses for one companion, unless it is medically necessary for additional caregivers to accompany the beneficiary. The program guidance for the Supplemental Security Income (SSI) program, allows an SSI recipient to receive, without penalty, both food and shelter during a temporary absence of greater than 24 hours from a home for a vacation. The trustee should consider whether the amount requested for the trip is reasonable; a beneficiary may require special accommodation and transportation, and these additional costs should be considered. It may not be necessary, however, for the beneficiary to stay in four-star hotels and dine at the most expensive restaurants. The trustee should pay travel costs directly, and the beneficiary and companion should submit receipts for all purchases made with disbursed spending money. The trustee should request a letter from the beneficiary's physician that gives a detailed explanation of the medical necessity for additional companions. The trustee should carefully analyze the impact of annual vacation spending on the trust's financial future, and the trustee should budget accordingly in coordination with the beneficiary and the beneficiary's family. The beneficiary may have more expensive vacations in alternate years and less expensive vacations in the other years.

Challenge #5: Over allocation of award or settlement to annuity. There are good reasons to allocate a portion of a personal injury award or settlement to a structured settlement paid directly to a beneficiary. A structured settlement often provides a steady source of income to the beneficiary, and it protects a beneficiary who lacks money management skills or knowledge of investments. Conversely, the structured settlement payments may not be sufficient to meet the beneficiary's needs, and if all of the personal injury award or settlement is structured, then the trustee may not have enough funds at one time to be able to purchase a home or vehicle for the beneficiary. Further, having the structured settlement payments made directly to the beneficiary may make the beneficiary ineligible for needs-based benefits. An SNT can provide flexibility to meet the beneficiary's changing needs. Even if the beneficiary would like to have a structured settlement for part of the award or settlement, an initial lump sum can be placed in the trust, and some or all of the structured settlement periodic payments can be paid directly to the trustee. Trust distributions can then be made when appropriate needs arise.

Future editions of the *Elder Law News* will highlight additional challenges to the administration of an SNT.

### **Special Olympics**

Oast & Hook attorneys Sandra Smith and Letha McDowell will represent Oast & Hook at the Chesapeake Special Olympics Open House on Friday, November 9. The Open House is designed for the athletes, family members, volunteers, and supporters, and it will be held from 6:30 p.m. to 8:30 p.m. at Towne Bank on Mt. Pleasant Road in Chesapeake. Oast & Hook is pleased to support this important event.

### **Oast & Hook**

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](http://www.specialneedsalliance.com).

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