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POOLED TRUSTS

Oast & Hook certified elder law attorney, Sandra Smith has been elected President-elect of the Commonwealth Community Trust (CCT). She will become president in November 2008. 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. 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 funds remain in the beneficiary's subaccount, 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.

When is a 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. 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 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. Additionally, 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 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 Medicaid long-term care assistance. The funds in her pooled trust subaccount may 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: 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
Website: www.norfolkcsb.org/PDF%20Files/LeaveBehind.pdf

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

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

You can visit the Oast & Hook 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 the current SNA President. 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 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.

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