

Tips By E-Mail: Special Needs

September 25, 2002

When the beneficiary of a trust is on some sort of public assistance (e.g., SSI), he may lose his entitlement(s). This is because most trusts provide for the beneficiary's "support and health care," the very things which public assistance is designed to provide. In most cases, the trust will need to be consumed before public assistance can be restored.

The key to planning for these "special needs" beneficiaries is to provide for their supplemental care from the trust so they can keep their public assistance.

We have added this feature to our trust document, so that it applies to all beneficiaries. Under the revised trust (paragraph 6.7 in the married couple's trust, paragraph 4.7 in the unmarried person's trust), the trustee is instructed to administer any beneficiary's trust under the special needs provision if the beneficiary currently qualifies for public assistance or if it appears to the trustee that the beneficiary may qualify for public assistance at some point in the future.

When a special needs trust is set up by the trustee, the trustee has almost unfettered discretion to make (or to refrain from making) distributions to the beneficiary. It is important that your client has complete trust in the trustee to make good decisions!