

Special Needs Trusts

Presented By:

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Special Needs Trusts

When should they be used, and why?

When?

When a disabled person is receiving, or might receive, needs-based public benefits. E.g.: SSI and/or Medi-Cal

Why?

SNT's allow a disabled person to remain eligible for needs-based public benefits, while receiving the benefit of assets that would otherwise be disqualifying. The assets in a SNT are used to improve the beneficiary's life.

Special Needs Trusts

- Different than ordinary trusts because they contain specific language that social security understands and expects.
- The beneficiary cannot be the trustee or have power to revoke the trust or control distributions.
- Limitations on expenditures for food and shelter, i.e. in-kind support and maintenance (ISM).

Types of Special Needs Trusts

1. First Party Special Needs Trusts
2. Third Party Special Needs Trusts
3. Pooled Special Needs Trusts

Third Party Special Needs Trusts

- Funded with assets belonging to someone other than the beneficiary.
- SNT is created by someone other than the beneficiary. Most often by parents, as part of their estate plan.
- On death of the parents, assets are given to the SNT, rather than to the beneficiary directly.
- SNT may also be named as a designated beneficiary of a retirement plan.

Third Party Special Needs Trusts

LIMITATIONS:

- Initial cost to do estate planning and set up the SNT.
 - Need a trustee willing and able to do the job.
 - Limitations on expenditures for food and shelter
 - Cannot include any of the beneficiary's own funds.
- ⇒ Consider ABLE account (go to **calable.ca.gov**)

First Party Special Needs Trusts

- Funded with assets belonging to the beneficiary.
- Usually funds from inheritance (when no third party SNT), life insurance, or personal injury award.
- Can be created by the disabled person (with capacity), parent, grandparent, guardian/conservator, or court.

First Party Special Needs Trusts

- Because First-Party SNT's are funded with the beneficiary's own money, they have more restrictions and SSA scrutinizes them more closely.
- Must be for the sole benefit of a disabled person under age 65.
- Must be irrevocable.
- Extra attorney fees and court costs.
- Must contain a Medi-Cal payback provision.

First Party Special Needs Trusts

- If First-Party SNT is created by the Court other requirements may apply:
 - ⇒ Mandatory accountings by trustee
 - ⇒ Trustee bond
 - ⇒ Attorney and Trustee fees must be court approved.

First Party Pooled Trusts

- A pooled SNT is a preexisting trust administered by a nonprofit association
- Pool the resources of many beneficiaries
- May be joined by the beneficiary, parent, grandparent, legal guardian, or the Court
- At death, any remaining funds must remain in the pooled trust or are subject to Medi-Cal payback rules.

First Party Pooled Trusts

- No age restriction, so useful when no one is able to act as trustee or when beneficiary is over age 65.
- Also useful where there is no one willing or able to act as trustee.
- However, they can be inflexible and expensive.

Our Presenters

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Conservatorships

Court Supervised Options for Assisting Individuals unable to
protect themselves or their assets

Presented by Christi McDonald, Deputy County Counsel
for Monterey County Public Guardian

What is the Monterey County Public Guardian?

- ◆ Acts as a conservator of last resort for persons who do not have a willing and able friend or family member to act as conservator.
- ◆ Acts as the conservatorship investigator for all mental health (LPS) conservatorships in Monterey County.
- ◆ Is the only entity with the power to file an LPS Conservatorship petition.
- ◆ Is the only entity that can serve as the Temporary LPS Conservator.
- ◆ Acts as a Representative Payee for Social Security and VA benefits for conservatees and Monterey County Behavioral Health patients (not necessarily conserved) who are unable to manage their financial benefits.
- ◆ Works very closely with various social services agencies including Monterey County Behavioral Health and Adult Protective Services to ensure the most vulnerable in our community are protected, have access to housing, and medical services.

What is a conservatorship?

A conservatorship is the legal process for asking the Court to give a responsible person the legal decision-making power for someone who is unable to handle his or her own financial and/or personal affairs.

The “Conservatee” is the person who is unable to handle his or her financial and/or personal affairs.

The “Conservator” is the person who is legally responsible for making decisions for the conservatee in the conservatee’s best interests.

Types of Conservatorships

Probate Conservatorship of the Person

The court appoints a conservator of the person to take care of the conservatee's daily needs, including ensuring the conservatee has medical care, food, clothing, and shelter.

Probate Conservatorship of the Estate

The court appoints a conservator of the estate to take care of the conservatee's financial responsibilities and protect the conservatee from financial abuse.

Lanterman-Petris-Short (LPS) Conservatorship (Mental Health)

The court appoints an LPS conservator to take care of a seriously mentally ill person who lacks capacity to voluntarily accept psychiatric treatment or requires placement in a secure psychiatric facility.

The powers in this type of conservatorship are generally limited to psychiatric treatment and placement.

Probate Conservatorship v. LPS Conservatorship

	Probate Conservatorship	LPS Conservatorship
How Started?	May be started by any interested party (patient, family member, friend, etc...)	May only be initiated by the public guardian.
Duration of Conservatorship?	Once appointed, the conservatorship continues indefinitely until terminated by court or death of the conservatee.	Only lasts one year (subject to new petition to re-establish).
Types of Medical Powers?	Can include general medical powers to make all medical decisions for conservatee	Medical powers are typically limited to psychiatric medical decisions and/or “routine” medical decisions
Types of Placement?	Home, Residential Care Facility, Board and Care, Skilled Nursing, and many other types of placement, but not a secure perimeter psychiatric facility.	Many options, including a secure psychiatric facility.
Types of Conservatorship?	Can be person only or person and estate.	Typically person only, not estate, as social security benefits can be managed as a Representative Payee.

What kinds of decisions can a Conservator make?

Personal Care / Medical

- Making sure that conservatee's day-to-day personal needs are met for food, clothing, bathing, and shelter
- Selecting Medical Providers
- Selecting caregivers
- What medication should the conservatee take?
- What medical procedures should the conservatee have?
- Obtaining Health Insurance/Health Benefits
- Access to Medical Records

Living Arrangements

- What is the appropriate placement for the conservatee?
- Can the conservatee live at home or does the conservatee's need require placement in some type of facility?

Financial / Contract

- Conservator controls all monies due to the conservatee.
- Conservator can take over the conservatee's financial accounts by presenting letters of conservatorship.
- Conservator can manage the conservatee's public benefits as a Representative Payee.
- Conservator can enter into contracts on behalf of conservatee (such as with facilities, apartments, care providers, etc...)
- Existence of conservatorship of the estate prevents the conservatee from entering into contracts.

Pros and Cons of Conservatorships

Advantages of a Conservatorship

- ◆ A conservatorship offers more protection against abuse of the conservatee because of court supervision.
- ◆ Ability to get prompt services for the conservatee acting as conservator.
- ◆ Ability to protect conservatee's assets and pay bills, manage investments, etc...
- ◆ Ability to help a person who otherwise will not accept assistance voluntarily.
- ◆ Court supervision of conservator's actions makes sure that the conservatee is being appropriately cared for and that the estate is not being wasted.

Disadvantages of a Conservatorship

- ◆ Cost: Court supervision and orders provides protection to conservatee at the cost of attorney's fees, filing fees, and investigator's fees.
- ◆ Public Record: The proceeding is public, so the conservatee's assets become a matter of public record. The conservator must continually return to court for approval of certain transactions, which require hearings and additional fees and can create delays in completing the transactions.
- ◆ Restricts Individual Rights of Conservatee: Appointing a conservator deprives the conservatee of many rights to make decisions about their personal autonomy and financial affairs.

With great power, comes great responsibility:

Duties of Conservator

Conservator of the Person

- ◇ Arrange for the conservatee's care and protection.
- ◇ Decide where the conservatee will live.
- ◇ Make arrangements for the conservatee's:
 - ◇ Meals,
 - ◇ Health care,
 - ◇ Clothing,
 - ◇ Personal care,
 - ◇ Housekeeping,
 - ◇ Transportation,
 - ◇ Shelter, and
 - ◇ Well-being.
- ◇ Get approval from the court for certain decisions about the conservatee's health care or living arrangements.
- ◇ Report to the court on the conservatee's current status.

Conservator of the Estate

- ◇ Manage the conservatee's finances.
- ◇ Locate and take control of all assets.
- ◇ Inventory and obtain an appraisal of all assets
- ◇ Collect the conservatee's income.
- ◇ Make a budget to show what the conservatee can afford.
- ◇ Pay the conservatee's bills.
- ◇ Responsibly invest the conservatee's money.
- ◇ Protect the conservatee's assets.
- ◇ Account to the court and to the conservatee for the management of the conservatee's assets.

Would a Conservatorship Solve the Problem?

Alternatives to Conservatorship

- ◆ It is always important to consider whether a conservatorship would solve the problem giving rise to the discussion.
- ◆ There are alternatives to conservatorships which should be tried first:
 - ◆ durable powers of attorney
 - ◆ living trusts and special needs trusts
 - ◆ money management services like a Representative Payee for social security or VA benefits
- ◆ Even with the legal power of a conservatorship, you may not be able to practically accomplish what you want. For example, in mental health conservatorships, just because you can consent to medication (sign a form), doesn't mean you can force an unwilling patient to actually swallow their medication.

What type of conservatorship is needed?

- ◆ It is possible to have both a probate conservatorship of the person and estate, and an LPS Conservatorship too.
- ◆ Consider an LPS Conservatorship if you answer yes to any of the following questions:
 - ◆ Does the person have a serious mental health disorder (typically, schizophrenia, schizoaffective disorder, bipolar, etc...) which prevents the person from obtaining food, clothing, or shelter?
 - ◆ Does the person decompensate when they discontinue taking psychiatric medication?
 - ◆ Does the person require a secure psychiatric placement, such as an Institute for Mental Disorder (IMD)?
- ◆ Consider a Probate Conservatorship if:
 - ◆ The person is unable to manage their personal or financial affairs for any reason (medical condition, cognitive issues due to age, developmental disability, traumatic brain injuries, etc...)
 - ◆ The person requiring assistance does not have capacity to make any decisions.
 - ◆ There are no less restrictive alternatives to conservatorship or less restrictive alternatives have failed.



A Trust for All Occasions and The Duty of a Trustee

Liza Horvath, CTFA, PLF
Private Professional Trustee



Do we need a Trust ~ What Kind?

Wills ~ Provisions to establish a Special Needs Trust

Revocable Trusts ~

- ~ Can include a Special Needs Trust
- ~ Can include that a SNT be set up “if needed”

Stand alone Special Needs Trust

School District Trusts



Trustee Fees ~

Hourly ~

- ~ Court supervised
- ~ Private Professional Trustee
- ~ Family member

Ad Valorem ~

- ~ Annual fee based on the value of Trust corpus

Example: 1% per year on a \$50,000 Trust
\$5,000 per year or \$416 per month



Picking the right trustee..



Trustee's Qualifications

- Financial and Legal Acumen
 - Keep accurate Trust record
 - Understand Public Benefits
- Understand the needs of the beneficiary
- Ability to gain the Beneficiaries' respect
- Succession

Trustee's Duties



- Administer the Trust according to its terms
- Oversee the investment of Trust assets
- Stay within the terms of the Trust and avoid disqualification from benefits
- Trustee liability

OAHU CEMETERY



The Trustee Must be Part of “The Team”

Health Care Agent

Trustee/Executor

Money Manager




Attorney

Tax Preparer

Other Trusted Advisors



Do Yourself, Your Beneficiaries and Your Trustee a Favor ~

- Where your documents are located
 - What your assets consist of
 - Who your beneficiaries are and how to reach them
 - Plans for your pets, if any
 - Your advisors
 - Discretionary distributions
 - Information for your death certificate
- 



*Thank
you*



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