

## Common Pitfalls in Administering a 3rd Party Funded Supplemental Needs Trust or OBRA '93 Special Needs Trusts

- Commingling savings, income or government benefits which belong to the beneficiary with a 3rd party funded Supplemental Needs Trust.
- Not reviewing instructions regarding types of distributions allowed for Supplemental Needs Trust and OBRA '93 Special Needs Trust.
- Making improper distributions from the trust which results in a reduction or ineligibility for certain needs based benefits.
- Not applying for and using Tax Identification Number when trust is funded.
- Not consulting with your attorney prior to funding the trust to discuss income and estate tax consequences of funding the trust.
- Failure to file income tax returns.
- Not keeping adequate records (e.g., cutting a check to guardian or parent for \$200 without tracking what the \$200 was used for; better to use SSI/SSDI check for spending money.)
- Not reviewing estate plan every 3 - 5 years to keep up with changes in the law or family circumstances (e.g., new changes in Massachusetts estate tax) and Massachusetts health income/asset deeming rules.
- Not changing ownership and beneficiary designation on insurance policies (cash value of life insurance policy may be a problem; minor policies become owned by person with disability when he or she turns 18 or 21).
- Not changing beneficiary designation on IRAs, 401(k)s, etc.
- U.S. Savings Bonds can be a problem if forgotten and value of bonds plus other assets are over \$2000 for an extended period of time.
- Failure to write a plan of direction - hopes/dreams/wishes.
- Failure to select an appropriate trustee and assuming family will step in to manage trust.
- In the case of OBRA '93 trusts, not advising the Estate Recovery Unit of death of recipient.
- Using general "Per Stirpes" language in parents' grandparents' estate plan may cause a disabled individual to receive an inheritance which may trigger a loss of benefits.
- Failure to direct child support to an OBRA'93 Trust following a change in child support settlement agreement.

### RESPONSIVE SOLUTIONS

Two simple words that explain our commitment to you. Being responsive is a critical element in building a strong attorney-client relationship. Whether you are a new or existing client, we'll be quick to respond to your needs with the knowledge necessary to find solutions to your legal concerns.

### WE HAVE ANSWERS

To learn how we can assist, contact our Special Needs Practice Group Leader Frederick M. Misilo, Jr. at 508.459.8059 or [fmisilo@fletchertilton.com](mailto:fmisilo@fletchertilton.com).

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