



“The Use of Structured Settlements in Special Needs Trusts”

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The purchase of annuities as part of personal injury settlement is a common practice among personal injury attorneys. It is perfectly appropriate to use structured settlements in funding a Special Needs Trust for a disabled beneficiary provided the investment figures are favorable. There are several issues that should be addressed to ensure that the annuity has been established correctly so that the disabled beneficiary’s eligibility for public benefits is not jeopardized.

In purchasing a structured settlement, it is important that Special Needs Trust be provided with sufficient seed money to ensure the ability of the Trustee to make initial payments necessary for the beneficiary and to allow for choice of corporate fiduciaries. The Special Needs Trust should be initially provided with enough money so the Trustee can meet any needs of the disabled beneficiary without having to wait for funds to come in through the annuity. Further, the choice of corporate fiduciaries to act as Trustees of the Special Needs Trust will be affected by the initial funds going into the Trust. Many corporate fiduciaries will not accept Trusts of smaller sizes, and this should be considered when purchasing a structured settlement.

The Special Needs Trust must be the payee of the annuity, rather than the disabled beneficiary. It is important to remember that the disabled beneficiary cannot be the payee of a structured settlement, as monies paid directly to a disabled beneficiary will affect their eligibility for public benefits. Thus, the structured settlement company must be directed to name the payee of the annuity as the “John Smith Self-Funded Special Needs Trust.”

It is a requirement of the Department of Public Welfare that the Special Needs Trust also be the death, contingent, or residual beneficiary of the annuity. The Department of Public Welfare has a lien on Special Needs Trusts funded with a disabled beneficiary’s own monies. The only mechanism for the Department’s lien to be satisfied when a structured settlement is funding a Special Needs Trust is for the Special Needs Trust to be named as the death beneficiary. This way, upon the passing of the disabled beneficiary, the Special Needs Trust will receive the structured settlement payments, and pursuant to the Trust, the Department of Public Welfare’s lien will be satisfied first. Any remaining assets in the Special Needs Trust will pass to the contingent or residual beneficiaries named in the Trust.

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It is essential that a commutation clause be included in the annuity provisions so that if the disabled beneficiary were to pass prematurely, all remaining assets of the annuity would be paid into the "John Smith Self-Funded Special Needs Trust" within a prompt specified time period to allow timely payment of death taxes and closure of the Trust. The inclusion of such a commutation clause prevents the Special Needs Trust from becoming insolvent before death taxes can be paid should the beneficiary pass prematurely. The commutation clause is also important so that the Trust can be terminated upon the beneficiary's death.

When considering the purchase of a structured settlement to fund a Special Needs Trust for a disabled minor or incapacitated person, it is important to know the position of the county with jurisdiction regarding the allocation of principal and income for structured settlements. Principal of a Special Needs Trust for a minor or an incapacitated person cannot be expended without court approval. Some counties consider almost all of the annuity payments to be income, while others consider a percentage of the payments as income and principal. At least one county considers all of the annuity payments to be principal, which cannot be expended without court approval. Thus, it is important to consider the needs of the beneficiary in conjunction with the position of the county with jurisdiction so that the Trustee is not required to seek court approval for any ongoing needs of the beneficiary.

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