



PROFESSIONAL ADVISORS:

As a thank you to our professional friends, Johnson, Gasink & Baxter, LLP will offer free three hour CE courses this fall:

WILLIAMSBURG

September 29, 2010, 2-5 pm
Verena at The Reserve

VIRGINIA BEACH

October 5, 2010, 2-5pm
Virginia Beach Central Library

RICHMOND AREA

October 13, 2010, 3-6 pm
Verena at Virginia Center

To register, e-mail Lauren at lkn@JGBLLP.com

For updates, see our website www.JGBLLP.com

Special Needs Planning in Virginia

By Spencer Baxter

Everyone wants to protect their loved ones when they are gone. When one of the beneficiaries is a “Special Needs Beneficiary,” the will/trust must be prepared with extra care so that an inheritance does not disrupt the beneficiary’s support system.

WHO IS A “SPECIAL NEEDS BENEFICIARY”?

A “Special Needs Beneficiary” is one who receives funds from a supplemental assistance program because of his or her temporary or permanent disability. Such programs include: Medicaid, Medicare, Social Security Disability Income (SSDI), Military/Civil Service Survivor Benefits, and Supplemental Security Income (SSI). Some programs determine benefit eligibility based on financial need (income and resources), while others do not.

MEDICAID ELIGIBILITY IN VIRGINIA

Aid received from needs-based programs can be very quickly disrupted if a beneficiary receives assets inappropriately. Virginia’s Medicaid eligibility guidelines, released by the Department of Social Services annually, proscribe the income and resource limits for qualification. As such assistance programs are intended to benefit the poor, these limits can be quite low (see the Medicaid Manual for details:

http://www.dss.virginia.gov/benefit/medical_assistance/manual.cgi).

(continued)



JOHNSON, GASINK & BAXTER, LLP

1138 Professional Drive, Suite A
Williamsburg, Virginia 23185
757.220.9800 office • 877.790.4555 toll free
www.JGBLLP.com © 2010 Johnson, Gasink & Baxter, LLP

Many well-intentioned parents accidentally cause great distress to their special needs heirs. For example, a parent acquires a large life insurance policy and designates a Medicaid-receiving child as the beneficiary. While the parent intends to care for their disabled family member, the result is the child's disqualification from Medicaid benefits. Medicaid evaluates eligibility based on "countable resources." Without the protection of a trust, a life insurance payout would exceed a beneficiary's resource limit.

THE SPECIAL NEEDS TRUST

A parent should provide for a Special Needs Beneficiary using a Special Needs Trust. A Special Needs Trust (also called a Supplemental Needs Trust) holds assets on behalf of a beneficiary and does not impede the beneficiary's eligibility for state, local, or federal benefits programs. There are three types of Special Needs Trusts:

Third Party Trust. A family member can take assets that were never owned by the disabled beneficiary and place them in trust for the benefit of their disabled loved one. In other words, the trust's creator chooses a family member or other Trustee to manage an inheritance or other funds on behalf of the Special Needs Beneficiary. The trustee spends as much of the trust assets as possible without exceeding the income limitations of the benefits programs and provides for needs which the state benefits do not. At the beneficiary's death, the remainder of this trust account passes to other beneficiaries according to the trust maker's original instructions.

(continued)

Upcoming Seminars

Please attend our upcoming seminars – Better still, invite a friend!

Virginia Beach

September 28 @ 2 pm

September 28 @ 6:30 pm

September 30 @ 2 pm

Williamsburg

September 7 @ 2 pm

To register, please visit:

<http://www.JGBLLP.com/workshop-registration.htm>

or

Call **Lauren** at **877.790.4555**

JOHNSON, GASINK & BAXTER, LLP

1138 Professional Drive, Suite A
Williamsburg, Virginia 23185
757.220.9800 office • 877.790.4555 toll free
www.JGBLLP.com © 2010 Johnson, Gasink & Baxter, LLP

Pooled Special Needs Trusts. While a third party trust holds assets given for a beneficiary, Pooled Special Needs Trusts (also called (d)(4)(C) trusts) protect a beneficiary's own assets, like those obtained from an outright inheritance or a personal injury settlement. A Pooled Special Needs Trust allows a nonprofit organization to combine the assets of a beneficiary with those of other participants in a larger account for investment. The beneficiary's interest remains available for the disabled person for his or her life, without fear of disqualification from eligibility. At death, any assets in the trust remaining in a Pooled Special Needs Trust must be repaid to the state. Pooled Special Needs Trusts can help a family by protecting smaller amounts that may not be cost-effective in a stand-alone trust.

(d)(4)(a) Medicaid Payback Trusts. Parents, grandparents, legal guardians and courts can create (d)(4)(a) Medicaid Payback Trusts to hold the assets of a Special Needs Beneficiary and maintain his or her Medicaid eligibility. This type of trust can hold a beneficiary's own assets but cannot be created by that beneficiary. Like Pooled Special Needs Trusts, (d)(4)(a) trusts are subject to payback requirements. Due to the payback requirement, (d)(4)(a) trusts are not a good choice for families to set aside any funds that did not originate from the Special Needs Beneficiary.

CONCLUSION

Estate Planning is always important, and it becomes critically so when protecting a beneficiary with special needs. The family must both set up the assets in trust for the Special Needs Beneficiary and also make sure they have selected the proper type of Special Needs Trust for the beneficiary. The attorneys at Johnson, Gasink & Baxter, LLP have years of experience explaining Special Needs Trusts and helping families avoid simple mistakes which might otherwise have caused a disabled loved one to lose his or her benefits

To add another e-mail address,
or to unsubscribe,
please e-mail Lauren at lkn@JGBLLP.com

Community Note:



1st Annual Golf Classic

Thursday
September 16, 2010
1:00 pm Tee Time



Golden Horseshoe Golf Club
Green Course
Colonial Williamsburg,
Virginia

Toby's Dream Foundation ensures that children living with life-threatening illnesses in Greater Hampton Roads have the opportunity and resources to imagine and experience their most fantastic dream.

JOHNSON, GASINK & BAXTER, LLP

1138 Professional Drive, Suite A
Williamsburg, Virginia 23185
757.220.9800 office • 877.790.4555 toll free
www.JGBLLP.com © 2010 Johnson, Gasink & Baxter, LLP