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PROPER PLANNING MAY CREATE PEACE OF MIND



January 2003

Using Structures To Preserve Public Assistance

Structured settlements play an important role in many lawsuits. These include providing tax savings and management for persons unable to properly handle their financial affairs. This article focuses on the treatment of structures by the government agencies.

Structures And Special Needs Trusts:

Under Medicaid and SSI rules assets that fund a properly drafted special needs trust, or pooled trust, are treated as non-countable to the trust beneficiary. Therefore, the disabled person is able to meet the program financial eligibility requirements.

An annuity that directly funds a special needs trust is not a countable resource and the income-stream is not attributed to the trust beneficiary. Only income or assets distributed to the beneficiary become countable.

One important requirement of a special needs trust under federal and state law is that at the beneficiary's death any assets remaining in the trust must first go to repay the Agency for Health Care Administration up to the total Medicaid benefits paid (Medicaid estate recovery lien). This must occur

before assets may be distributed to designated heirs. The annuity contract permits the designation of a beneficiary to receive the balance of the annuity on the death of the annuitant. An annuity payable to a special needs trust which designates beneficiaries selected by the disabled person bypasses the Medicaid estate recovery lien.

Structures Payable Directly to a Public Assistance Recipient: Under most Medicaid programs the public assistance recipient's income must be contributed toward the cost of their care. Therefore, an annuity is not always the best planning technique for an unmarried person. An annuity should be considered by a married couple to preserve the excess assets of the healthy spouse in order to qualify the ill spouse for Medicaid assistance.

An annuity must satisfy specific guidelines in order for the investment not to be a countable resource for Medicaid and SSI. First, the annuity must be annuitized that is in a pay-mode. Second, the term of the annuity cannot exceed the individual's life expectancy as set forth in Social Security actuarial tables. If it does, the client will be viewed as not receiving fair compensation within their lifetime which will result in a

denial of benefits. Third, the contract must state it is irrevocable and non-assignable so the client cannot access the principal.

It is recommended that all facts be reviewed when deciding the role a structure should play in the settlement process and to preserve public assistance.

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