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PROPER PLANNING MAY CREATE PEACE OF MIND



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## Does Your Case Need a 468b Trust?

Trial lawyers may encounter the following problems when settling a case:

- multiple defendants and one defendant is uncooperative;
- a defendant does not want to agree to a structured settlement;
- a defendant disagrees with your proposed allocation among the plaintiffs.
- the funds sitting in the defense counsel's trust account do not earn interest while you wait for a guardianship to be opened or, for court approval of the settlement.

Consider using a section 468B designated settlement fund or, a section 1.468B-1 qualified settlement fund (QSF). The QSF has been used successfully to resolve class action suits and mass tort claims. It can be used with a single plaintiff who has claims against multiple defendants. A qualified assignment is an assignment of a liability that requires a defendant to make periodic payments as damages on account of personal injury or sickness. In this case, the periodic payments must be set at a pre-fixed amount and made at a pre-determined

time. The assignee assumes the liability from a party to the suit or agreement.

The QSF provides the following benefits:

- It receives and invests the settlement proceeds while the plaintiff is deciding how to allocate the sum and whether to purchase a structure or place funds in a special needs trust to preserve government assistance.
- The defendant receives a current year deduction for the payment;
- It can assign an obligation to make periodic payments under I.R.C. 130 (it is a party to the suit or agreement) and allow the plaintiff to receive tax free payments under I.R.C. 104(a)(2).
- The defendant can be immediately released and dismissed, and has no interest in the fund or control over the trustee.

***“Designated or qualified settlement funds may help to successfully resolve class action suits and mass tort claims.”***

The court must approve the QSF/designated settlement fund, authorize the defendant to transfer money to it, and extinguish the taxpayer's tort liability for claims arising out of personal injury, death or property damage. It terminates upon court order directing the trustee how and to whom to distribute the proceeds.

### ANNOUNCEMENTS:

Stephanie has been elected Chair of The Florida Bar Elder Law Section as of July 1, 2003.

Our firm is a proud Business Patron of the Eagle Program of the Academy of Florida Trial Lawyers.

### Meet The Staff

Kathy Russo - CLA

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- Medicaid & SSI
- Nursing Home Resident Rights
- Estate Planning

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