

# LAW OFFICE OF STEPHANIE L. SCHNEIDER, P.A.

CERTIFIED ELDER LAW ATTORNEY BY THE FLORIDA BAR

1860 N. PINE ISLAND RD, SUITE 111, Plantation, FL 33322

TELEPHONE (954) 382-1997

[www.fl-elderlaw.com](http://www.fl-elderlaw.com)

FACSIMILE (954) 382-9997



PROPER PLANNING MAY CREATE PEACE OF MIND



July 2005

## DIVORCE & SPECIAL NEEDS TRUSTS

Special needs trusts are not meant just for the proceeds of a lawsuit, or an inheritance. They can be a very valuable planning tool for a disabled divorcing spouse. A special needs trust can receive monthly alimony payments, or even lump sum alimony and allow the spouse to receive SSI and Medicaid.

*The Tale:* Mr. & Mrs. H divorced. Mrs. H had a chronic illness and required health insurance coverage. However, due to the pre-existing illness she could not pass medical underwriting requirements. She applied for and was approved for SSI which entitled her to Medicaid benefits.

She petitioned the Domestic Relations Division of the Court and it entered an order whereby the Court created a special needs trust for her. Mrs. H was a competent adult. The Court Order directed the ex-husband to issue the monthly maintenance check payable to the special needs trust.

The trust provided that the assets were to be used to supplement Mrs. H's needs with benefits and services that were not otherwise available to her from other

sources. The trust also stated that at Mrs. H's death, the State would receive reimbursement for assistance paid under the public benefit programs; after that debt was satisfied any remaining trust assets were to be distributed to the beneficiaries named in Mrs. H's will.

*The Tip:* The trust was properly drafted to satisfy federal requirements for a pay-back special needs trust. It was approved by SSI legal counsel who also determined that the monthly maintenance payments were not counted as income to Mrs. H. In addition, SSI legal counsel concluded that the trust assets were not a countable resource to Mrs. H.

A special needs trust can be drafted so that maintenance payments made into the trust can be consistent with the state law's purpose of assuring that the spouse can maintain the standard of living established during the marriage.

Federal law, 42 U.S.C. section 1396p, does permit a Court to create a Medicaid payback trust for a competent adult if it is established by court order.

***“A special needs trust can receive monthly alimony payments, or even lump sum alimony and allow the spouse to receive SSI and Medicaid.”***

### ANNOUNCEMENTS:

Stephanie is the Former Chair of The Florida Bar Elder Law Section.

Our firm is a proud Business Patron of the AFL Eagle Program.

“A Government of Laws not of wo/men.” — John Adams 1851.

Happy July 4th



### Meet The Staff

Cheryl Handley, Esq.  
Associate

Flo Koplo, CLA  
Guardianship Probate

Trust Administration Court Appointments

Kathy Russo, CLA

Special Needs Trusts Medicaid & SSI

Nursing Home/ALF Resident Rights Estate Planning

Myrna Hambro  
Office Administrator

Regina Walsh, Assistant

Hillary Josephs  
Client Development & Communications

Ask about participating in our **Florida Bar Approved** Continuing Education Seminar at your office.