TRUST SERVICES

It may be appropriate for a claimant to place all or a portion of his or her settlement proceeds in a trust. There are many different types of trusts to consider, each with its own set of requirements.

Sage Settlement Consulting offers assistance with every step of establishing and managing a trust, from providing access to a national network of trust attorneys who can draft trust documents to connecting claimants with reputable nationally chartered corporate trustees.

Special Needs Trusts

Injured claimants who currently receive needs-based government benefits (e.g., Medicaid, SSI, etc.) will likely lose benefits eligibility if they accept their proceeds as a lump sum cash payment. Unfortunately, those same injured claimants may then face insurmountable medical costs. Even a six-figure settlement can be quickly depleted by doctor bills, surgeries, medications, and home modifications to accommodate a disability.

A Special Needs Trust (SNT) may prevent any interruption in needs-based government benefit eligibility if it is set up and managed in accordance with Medicaid (or Medi-Cal[1]) law in the beneficiary's resident state. When settlement proceeds are placed in an SNT, the funds can be used to purchase approved goods and services for the beneficiary that are not covered by government benefits.

Who is eligible for a Special Needs Trust?

Generally speaking, eligibility for First-Party Special Needs Trusts (sometimes referred to as (d)(4)(A) trusts) is restricted to individuals under age 65 who meet government guidelines that qualify them as disabled and are currently receiving needs-based government benefits.

Individuals who do not qualify for a First-Party SNT due to the age restriction may want to consider a Pooled Trust (sometimes referred to as a (d)(4)(C) trust.

Managing a Special Needs Trust

The trustee of an SNT may be a family member, an attorney, or a corporate trustee. The trustee must possess the knowledge and experience to comply with the rules and requirements of an SNT; failure to do so may put benefit eligibility in jeopardy. Regulations for Special Needs Trusts may vary by state, so it is vitally important to work with an experienced team to draft the trust documents.

The "Spend Down" Approach

In some instances, "spending down" smaller settlements may be encouraged to avoid the cost of setting up a Special Needs Trust. However, the spend down must be handled appropriately to avoid financial penalties and the potential loss of benefits.

[1]As of July 1, 2022, California raised its Medi-Cal asset limits. More information can be found at www.dhcs.ca.gov.

With local offices across the country, our team offers award-winning comprehensive settlement planning services.

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Minors' Trusts

Courts typically favor a conservative approach when it comes to minors' settlements. Depending on the jurisdiction and the discretion of the judge, settlement options may include a trust account, a structured settlement annuity, a guardianship account, or a registry of the court. When deciding on an investment strategy, considerations include current and future medical needs, anticipated loss of earnings, future plans (such as college or a home purchase), and the minor's expected ability to handle funds at the age of majority, which varies by state.

If a minor's trust is the chosen financial vehicle, it is best to have documents drawn up by an attorney who specializes in trusts in your area of jurisdiction. There are state-specific (and even county-specific) requirements for minors' trusts that must be adhered to in order to gain court approval.

Once the trust is funded, it is managed by a trustee. The trustee can be a loved one—a parent, grandparent, or guardian, for example—or a professional trustee. In some instances, the court may require that the trust be managed by a professional or bonded trustee. Either way, any distributions from the trust must be made for the benefit of the minor.

Settlement Preservation Trusts

These binding trusts protect the claimant's settlement from irresponsible spending, while still providing funds for life's necessities. Settlement Preservation Trusts typically include a termination date, at which time the funds become available to the beneficiary. Funds within a Settlement Preservation Trust can be managed by an individual trustee or a corporate trustee.

Reversionary Trusts

With this provisional trust available in certain jurisdictions, the plaintiff draws the funds necessary to cover lifetime medical expenses. When the plaintiff dies, the remaining funds revert to the defendant.

Medical Custodial Accounts

If a client requires medical services not covered by insurance or Medicare, a Medical Custodial Account may be used to collect and dispense settlement funds to cover medical expenses. Many Medicare Set-Asides utilize this type of professionally administered trust account.

For more information about trust services, contact Sage Settlement Consulting today.