



THE UNIVERSITY OF TEXAS SCHOOL OF LAW
AND THE WEALTH MANAGEMENT AND TRUST
DIVISION OF THE TEXAS BANKERS ASSOCIATION



2009

CHANGES AND TRENDS AFFECTING SPECIAL NEEDS TRUSTS

A Guide for Attorneys, Financial Advisors and Trust Officers

Attorneys: Earn up to 11.75 Hours of MLCE Credit including 1.50 Hours of Ethics

Accountants: Earn up to 14.00 Hours of CPE Credit

This course has been accepted for credit by the CFP Board

Specialization Expected for: Estate Planning & Probate Law; Tax Law



February 19-20, 2009

InterContinental Stephen F. Austin

Austin, Texas

Sponsors

THE CENTER FOR SPECIAL NEEDS TRUST ADMINISTRATION

ENCORE TRUST

WELLS FARGO, THE PRIVATE BANK

2009 CHANGES AND TRENDS AFFECTING

SPECIAL NEEDS TRUSTS

A Guide for Attorneys, Financial Advisors and Trust Officers

February 19-20, 2009 • InterContinental Stephen F. Austin • Austin, Texas

THURSDAY MORNING, FEB. 19, 2009

Presiding Officer:

Patricia F. Sitchler, San Antonio, TX

10:00 a.m. Registration Opens

Includes light refreshments sponsored by Wells Fargo, The Private Bank

10:50 a.m. Welcoming Remarks

11:00 a.m. .75 hr including .25 hr ethics

Special Needs Trusts Overview

This presentation examines the underlying laws special needs trusts are based upon and provide examples that give rise to their use and purpose. The information will include how to spot opportunities to use SNTs, analyze the options available and understand potential ethical issues.

Wesley E. Wright, Bellaire, TX

11:45 a.m. .75 hr including .25 hr ethics

Protecting and Maximizing Public Benefits

Planning options—and related ethical issues—to ensure a trust's beneficiary qualifies for the most important disability benefits: Supplemental Security Income, Medicaid, Social Security Disability Insurance and Medicare; and how to manage trust distributions to avoid losing benefits while enhancing the beneficiary's quality of life.

H. Clyde Farrell, Austin, TX
Christina Leshner, Houston, TX

12:30 p.m. Lunch on your Own

THURSDAY AFTERNOON

1:45 p.m. .50 hr

The Third-Party Special Needs Trusts

A discussion on the use of the Third-Party SNTs in special needs planning, including the contrast with self-settled SNTs. It will also explore current Medicaid law in Texas defining the corpus as an "unavailable resource" as compared to national trends under the UTC and Restatement Third; plus implementing these trusts in veteran benefits planning.

Randy Drewett, Beaumont, TX

2:15 p.m. .75 hr

Court Created Trusts: What Makes Them So Special?

The focus of this presentation is on the use of self-settled, court-created trusts established under Section 142.005

of the Texas Property Code, Section 867 of the Texas Probate Code, and 42 U.S.C. Section 1396. Includes a discussion of the current rules and methods used to adapt the trusts for special needs beneficiaries.

Moderator: Shari M. Scholten, Austin, TX
Deborah A. Green, Austin, TX
Glenn M. Karisch, Austin, TX

3:00 p.m. .75 hr

Pooled Trusts

This session recaps the history of both third-party and self-settled pooled trusts and addresses current national pooled trust activity and trends. Experienced pooled trust administrators discuss the benefits and challenges of operating pooled trusts.

Moderator: Renée C. Lovelace,
Dripping Springs and Austin, TX
Leo Govoni, Clearwater, FL
Christopher Joseph Oglesby, Austin, TX

3:45 p.m. Break

4:00 p.m. .75 hr

Winding Up Trusts

A discussion of the steps required to wind up a special needs trust upon the death of a beneficiary, including, but not limited to reimbursement of Medicaid, payment of federal estate taxes (including valuing annuities and paying taxes in an illiquid estate), and administering the deceased beneficiary's estate.

David J. Reber, Dallas, TX
Nancy Sosa, Austin, TX

4:45 p.m. .50 hr

The Deficit Reduction Act Requirements for Annuities Paying into a Special Needs Trust

The Bernstein Letter and its ramifications on structured settlements paying into special needs trusts.

Pi-Yi Mayo, Baytown, TX

5:15 p.m. .50 hr

The Language of Poverty

The language of poverty as a means to understanding and connecting with the culture of poverty.

Rev. Ed Gomez, Austin, TX

5:45 p.m. Adjourn

FRIDAY MORNING, FEB. 20, 2009

Presiding Officer: Renée C. Lovelace Dripping Springs and Austin, TX

7:45 a.m. Conference Room Opens

Includes continental breakfast sponsored by Wells Fargo, The Private Bank

8:15 a.m. .75 hr including .25 hr ethics

Planning for Children with Special Needs Trusts

A presentation highlighting Medicaid benefits available to children with disabilities, and to children of needy families, plus trusts and other planning techniques that can be implemented to protect both types of Medicaid benefits. Additionally, the presentation includes an overview of possible trust distributions focused on providing the highest quality of life for these little ones.

Patricia F. Sitchler, San Antonio, TX

9:00 a.m. .50 hr including .25 hr ethics

Special Education: Advocacy and Trust Distributions

The Individuals with Disabilities Education Act requires that every eligible special education student receive a free appropriate public education. Do special education students and their families need an advocate to ensure their right to appropriate special education services? How can trust distributions help students get what they need from the school and provide supplemental services to address needs that are not met by school district special education services?

Rona W. Statman, Austin, TX

9:30 a.m. .75 hr

Advocating *Olmstead*: How Far Do You Go?

A review of the 1999 *Olmstead* vs. L.C. 527 U.S. 581 (1999) decision, and its holding that individuals with disabilities have the right to live and receive services in the least restrictive setting possible. It will then explore whether the ADA and *Olmstead* applies to SNTs, and how trustees can successfully promote independence in a cost-effective manner.

Patricia E. Kefalas Dudek, Bloomfield Hills, MI

10:15 a.m. Break

10:30 a.m. .75 hr including .25 hr ethics

Advising Trustees

Whether the trustee is an unsure or cautious corporate trustee, a clueless family member or a well-meaning but over-reaching professional, problems with trust administration regularly arise. What can you tell the trustee about his or her duties and responsibilities? How involved should you be—in advising the trustee, monitoring expenditures and investment decisions or providing training and periodic reviews? This presenter provides unusual insight—both as an attorney and as a trustee—into what trustees must do and how you can help them.

Robert B. Fleming, Tucson, AZ

11:15 a.m. .75 hr including .25 hr ethics

Administering an Inadequate Trust with a Challenging Beneficiary/Family in an Imperfect World

Your trust has to operate in a world notable for its imperfections. Beneficiaries—and their families—fail to understand limits or the reasons for the rules. Benefit agencies misconstrue the facts or misapply the law. Trustees and lawyers forget, bend or ignore the rules. How do you administer a special needs trust in the real world, what ethical issues and problems arise most frequently, and how have real trustees managed to address those problems?

Moderator: Robert B. Fleming, Tucson, AZ
Leah Cohen, Austin, TX
Allyson Nelson, Dallas, TX
Nancy Sosa, Austin, TX

FRIDAY AFTERNOON

Presiding Officer:

Nancy Sosa, Austin, TX

LUNCHEON PRESENTATION

Sponsored by

The Center for Special Needs Trust Administration

12:00 p.m. Pick up Box Lunch

12:15 p.m. .75 hr

Case Law Update

This presentation will cover recent cases involving special needs trusts as well as other cases of note.

Mary Alice Jackson, Sarasota, FL
Rebecca C. Morgan, Gulfport, FL

1:00 p.m. Break

1:15 p.m. 1.00 hr

Agency Panel: Questions, Answers and Options

A panel of government experts will address emerging issues arising in such programs as Supplemental Security Income and Medicaid.

Moderator: Patricia F. Stichler, San Antonio, TX
Shari L. Nichols, Austin, TX
John Stockton, Austin, TX

Federal Agency representatives will attend if scheduling permits

2:15 p.m. .50 hr

What You Need To Know About the New Medicare Set Aside Rules and Their Impact on SNTs

An overview addressing the basic Medicare set aside (MSA) concepts; the history of the expansion of the MSA requirements from the workers compensation arena to all personal injury cases; the current positions of the Center for Medicare Services; the application of the Medicare Secondary Payer Statute and the Medicare, Medicaid, and SCHIP Extension Act of 2007; and practical recommendations of what to do in light of the new MSA developments including the possibility of MSA provisions embedded in SNTs.

Ronald R. Cresswell, Dallas, TX

2:45 p.m. .75 hr

Medicare Set Aside Panel: Current MSA Issues and Possible Solutions

The impact of the new MSA developments upon the drafting, funding and administration of special needs trusts from the standpoint of both the Center for Medicare Services agency policies and from the viewpoint of practicing elder law and trust attorneys.

Moderator: Ronald R. Cresswell, Dallas, TX
Deborah A. Green, Austin, TX
Patricia F. Stichler, San Antonio, TX
Sally Stalcup, Dallas, TX
Author: Pi-Yi Mayo, Baytown, TX

3:30 p.m. Adjourn

REGISTRATION FOR SN09

Mail this registration form to: The University of Texas School of Law, Attn. SN09
P.O. Box 7759, Austin, TX 78713-7759 **or fax a copy to: (512) 475-6876**
Online registration available at www.utcle.org

PLEASE PRINT CLEARLY

Bar Card# _____ ☐ TX ☐ Other State: _____ ☐ N/A

Name [Mr. / Ms.] _____

Firm _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

Registrant's Email (required) _____

Assistant's Email (optional) _____

Invoices, confirmations, and receipts are emailed to these addresses.

REGISTRATION

Includes Course Binder and Friday Box Lunch Presentation

☐ Early Registration Fee due by Wednesday, February 11, 2009 \$425.00

☐ Registration Fee after Wednesday, February 11, 2009 \$475.00

CONFERENCE PUBLICATIONS AND MEDIA

Allow 2-4 weeks from conference date for delivery.

☐ Course Binder \$225.00

Note: Conference registration includes Course Binder.

☐ Audio CD Set \$175.00

☐ eBinder on CD (PDF format) \$225.00/\$50.00

(\$225 purchased alone, \$50 with registration or purchase of Course Binder or Audio CD Set)

In-House CLE: Bring the conference in-house and learn at your convenience.

Allow 2-4 weeks from conference date for delivery.

☐ In-House CLE for 2 includes Audio CD Set and 2 Course Binders \$750.00

_____ Add participants (includes Course Binder) for \$225 each \$ _____

TOTAL ENCLOSED \$ _____

METHOD OF PAYMENT

☐ Check (make checks payable to: **The University of Texas at Austin**)

☐ VISA or ☐ Mastercard (sorry, no AMEX or Discover)

Card # _____ - _____ - _____ - _____

X _____
Authorized Signature Exp. Date (mm/yy)

AUSTIN

February 19-20, 2009
CONFERENCE LOCATION



InterContinental Stephen F. Austin

701 Congress Avenue
Austin, TX 78701
512-457-8800

Special room rate \$199
good through January 28, 2009
(subject to availability).

Parking: \$12 valet daily;
additional self-parking nearby
(subject to change)

KEY DATES

Registration & Cancellation

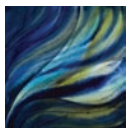
February 11, 2009–5 p.m.
last day for early registration
add \$50 for registrations
received after this time

February 13, 2009–5 p.m.
last day for full refund

February 16, 2009–5 p.m.
last day for partial refunds
\$50 processing fee applied

February 19, 2009–11 a.m.
conference begins

ABOUT THE COVER



"Cabo Seven", 8 x 8", watercolor
on paper is by Austin artist, Jan
Heaton. For more information on
the artist visit:

www.janheaton.com

CONFERENCE FACULTY

LEAH COHEN
Case Management and
Guardianship Services
Austin, TX

RONALD R. CRESSWELL
Locke Lord Bissell & Liddell, LLP
Dallas, TX

RANDY DREWETT
Attorney at Law
Beaumont, TX

PATRICIA E. KEFALAS DUDEK
Patricia E. Kefalas Dudek & Associates
Bloomfield Hills, MI

H. CLYDE FARRELL
Attorney at Law
Austin, TX

ROBERT B. FLEMING
Fleming & Curti, PLC
Tucson, AZ

REV. ED GOMEZ
El Buen Samaritano
Austin, TX

LEO GOVONI
The Center for Special Needs Trust
Administration, Inc.
Clearwater, FL

DEBORAH A. GREEN
Attorney at Law
Austin, TX

MARY ALICE JACKSON
Boyer & Jackson, P.A.
Sarasota, FL

GLENN M. KARISCH
The Karisch Law Firm, PLLC
Austin, TX

CHRISTINA LESHNER
Attorney at Law
Houston, TX

RENÉE C. LOVELACE
Attorney at Law
Dripping Springs and Austin, TX

PI-YI MAYO
Attorney at Law
Baytown, TX

REBECCA C. MORGAN
Stetson University College of Law
Gulfport, FL

ALLYSON NELSON
Encore Trust Company
Dallas, TX

SHARI L. NICHOLS
Health and Human Services Commission
Austin, TX

CHRISTOPHER JOSEPH OGLESBY
The ARC of Texas
Austin, TX

DAVID J. REBER
Locke Lord Bissell & Liddell, LLP
Dallas, TX

SHARI M. SCHOLTEN
Wells Fargo, The Private Bank
Austin, TX

PATRICIA F. SITCHLER
Schoenbaum, Curphy & Scanlan, PC
San Antonio, TX

NANCY SOSA
Encore Trust Company
Austin, TX

SALLY STALCUP
Centers for Medicare & Medicaid Services
Dallas, TX

RONA W. STATMAN
The ARC of Texas
Austin, TX

JOHN STOCKTON
Health and Human Services Commission
Austin, TX

WESLEY E. WRIGHT
Wright Abshire Attorneys
Bellair, TX

PLANNING COMMITTEE

RENÉE C. LOVELACE—CO-CHAIR
Dripping Springs and Austin, TX

PATRICIA F. SITCHLER—CO-CHAIR
San Antonio, TX

LEAH COHEN
Austin, TX

RONALD R. CRESSWELL
Dallas, TX

H. CLYDE FARRELL
Austin, TX

DEBORAH A. GREEN
Austin, TX

PI-YI MAYO
Baytown, TX

SHARI M. SCHOLTEN
Austin, TX

NANCY SOSA
Austin, TX

ELIZABETH (LIZ) YZAGUIRRE
Corpus Christi, TX



Wealth Management & Trust, a Division of the Texas Bankers Association, is a one-of-its-kind state organization dedicated to serving the unique needs of wealth management, trust and estate planning organizations and professionals. We offer a diverse menu of continuing education events such as our Annual Conference (March 18-20, San Antonio), and our Advanced Trust Forum (November 5-6, San Antonio). We also offer news, professional reference publications and advocacy products and services. To learn more about us, please visit our Web site: www.texasbankers.com/trust

UTCLE

THE UNIVERSITY OF TEXAS AT AUSTIN
THE UNIVERSITY OF TEXAS SCHOOL OF LAW
P.O. Box 7759 • Austin, TX 78713-7759

This program is not printed or mailed at state expense.

M
C
L
E

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 11.75 hours, of which 1.50 credit hours will apply to legal ethics/professional responsibility credit. The University of Texas School of Law is a State Bar of California approved MCLE provider (#1944).

E-mail us at

utcle@law.utexas.edu

or call us at

512-475-6700

for more information

CHANGES AND TRENDS AFFECTING SPECIAL NEEDS TRUSTS

February 19-20, 2009

InterContinental Stephen F. Austin • Austin, Texas

NON-PROFIT-ORG
U.S. Postage Paid
The University of
Texas
School of Law