



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



2010

CHANGES AND TRENDS AFFECTING SPECIAL NEEDS TRUSTS

A Guide for Attorneys, Financial Advisors and Trust Officers



February 11 – 12, 2010
AT&T Conference Center ▪ Austin, Texas

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THURSDAY MORNING, FEB. 11, 2010

Presiding Officer:

Patricia F. Sitchler, Schoenbaum, Curphy
& Scanlan, PC, San Antonio, TX

10:00 a.m. Registration Opens

Includes light refreshments.

Sponsored by
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10:50 a.m. Welcoming Remarks

11:00 a.m. .50 hr

SNT Basics: The Old, the New and the Things Still to Come

This introduction to the program defines the concept of SNTs, including the different types of trusts and when the use of each is appropriate. An overview of some of the hot topics in SNTs—to be covered in subsequent sessions—is provided.

Randy Drewett, Attorney at Law, Beaumont, TX

11:30 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. The session includes updates and new topics such as managing child support for minor or adult SSI beneficiaries and the effect of other income such as alimony.

H. Clyde Farrell, Attorney at Law, Austin, TX
Christina Leshner, Attorney at Law, Houston, TX

12:15 p.m. Lunch on Your Own

THURSDAY AFTERNOON

1:30 p.m. .75 hr

Drafting, Modifying and Interpreting Special Needs Trust Distribution Clauses

A look at several issues that may arise when drafting, modifying and interpreting SNT distribution clauses including: how diagnosis (i.e. MH/DD/Autism Spectrum) may affect your SNT distribution clause; changing a disqualifying distribution clause without the consent of the beneficiary; and interpreting distribution clauses, including administering a discretionary HEMS trust, court-generated restrictions on SNT distributions, and Medicaid agency restrictions on distributions.

Cynthia L. Barrett, Attorney at Law, Portland, OR

2:15 p.m. .75 hr

Hobbs and the Sole Benefit Rule

This session covers the 10th Circuit Court of Appeals (New Mexico) case *Hobbs v. Zenderman* and its impact on "sole benefit" distributions from SNTs when families provide extensive home or other care to an SNT beneficiary. Families of SNT beneficiaries span the financial range from wealthy to impoverished, from helpful to troublesome, and from well-informed to misinformed—which creates a wide range of SNT distribution challenges for trustees. The presentation addresses whether the *Hobbs* case may change trustees' distribution options and the negative impact of distributions that are later re-cast by agencies as not for the SNT beneficiary's sole benefit.

Pi-Yi Mayo, Attorney at Law, Baytown, TX

3:00 p.m. .75 hr

Court-Created Trusts: Changes to Section 142 and Differing Approaches among Texas Courts Regarding Section 867 Trusts

How recent statutory changes affect court-created trusts, plus a look at the varying judicial policies with regard to the 867 trust forms in the statutory probate courts.

Ronald R. Cresswell, Locke Lord Bissell & Liddell LLP,
Dallas, TX

Glenn M. Karisch, The Karisch Law Firm, PLLC,
Austin, TX

Commentator:

Deborah A. Green, Attorney at Law, Austin, TX

3:45 p.m. Break

4:00 p.m. .67 hr

What Records Your Clients Should Keep: SSI and Medicaid Reporting Compliance

SSI and Medicaid recipients are required to report changes in their circumstances that may affect their eligibility for benefits. SSI and Medicaid reporting responsibilities related to trusts are covered, including what to report, when to report, and what records are needed.

Reba Collins, Social Security Administration, Dallas, TX
Barry Ray Browning, Texas Department of Aging
and Disability Services, Austin, TX

Flora A. Fearon, Texas Department of Aging and
Disability Services, Austin, TX

Gayle Sandoval, Texas Department of Aging and
Disability Services, Austin, TX

4:40 p.m. .83 hr

Agency Panel

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

Moderator:

Patricia F. Sitchler, Schoenbaum, Curphy & Scanlan, PC,
San Antonio, TX

Panelists:

Reba Collins, Social Security Administration, Dallas, TX
Beverly Joan Luna, Texas Health and Human Services
Commission, Austin, TX

Shari L. Nichols, Texas Health and Human Services
Commission, Austin, TX

John Stockton, Texas Health and Human Services
Commission, Austin, TX

5:30 p.m. Adjourn to Sponsored Reception

RECEPTION

Sponsored by
Comerica Bank & Trust, N.A.

FRIDAY MORNING, FEB. 12, 2010

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

8:00 a.m. Conference Room Opens

Includes light refreshments.

Sponsored by
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8:30 a.m. .75 hr

Pure Liability MSAs: Start to Finish

Protecting eligibility for government benefits is the point of the SNT. An SNT can be a device to not only protect SSI and Medicaid eligibility but also protect Medicare eligibility by including a Medicare Set Aside allocation when funds arise from a personal injury recovery. The speakers begin with defining an MSA, explaining why protecting Medicare's secondary payer status is now required, how a Trust Officer will administer an MSA, and the assistance available from the private sector to give all parties comfort that the MSA is properly administered.

Moderator:

Patricia F. Stichler, Schoenbaum, Curphy & Scanlan, PC,
 San Antonio, TX

Panelists:

Shari M. Scholten, Wells Fargo-The Private Bank,
 Austin, TX
 Lynn M. Smith, Medical Fund Advisors,
 Exton, PA
 Sally Stalcup, Centers for Medicare & Medicaid
 Services, Dallas, TX
 Scott Lee Stebler, Wells Fargo-The Private Bank,
 Austin, TX
 Medivest Benefit Advisors Representative TBD,
 Oviedo, FL

9:15 a.m. .75 hr ethics

Representation Issues and Engagement Agreements

This presentation focuses on the rules of professional responsibility, the potential ethical issues that arise in representing a client, and the main elements to include in an effective engagement agreement for a client who needs a special needs trust.

David J. Reber, Locke Lord Bissell & Liddell LLP,
 Dallas, TX

10:00 a.m. Break

10:15 a.m. .50 hr

Pooled Trusts and the Special Needs Attorney: Why Can't We All Just Get Along?

Some pooled trusts work to integrate SNT attorneys while others offer themselves as an alternative to legal counsel. The best of all worlds is when pooled trusts and SNT attorneys can integrate their services and outreach. What can be more effective than an army of attorneys with a strong understanding of the disability rights movement who are ready to be called upon at any time? This session covers the basics of pooled trusts, how to determine whether a specific pooled trust serves the needs of a specific client, and the importance of educating others about the need to utilize experienced attorneys in the process. In addition, ABLE accounts are explored and their possible implications for the use of SNTs.

Stephen W. Dale, The Dale Law Firm, PC,
 Walnut Creek, CA

10:45 a.m. .75 hr

Strategies for Working with Troublesome SNT Beneficiaries

A special needs trustee is often placed in the difficult position of answering to both the beneficiary and the main tenet of a special needs trust—the preservation of government benefits. Managing beneficiary expectations while avoiding the accidental loss of critical public benefits is often a complex task. This panel discusses the potential pitfalls of administration and the steps an administrator needs to take to successfully manage the trust with a troublesome beneficiary.

Moderator:

Leo Govoni, The Center for Special Needs Trust
 Administration, Inc., Clearwater, FL

Panelists:

Leah Cohen, arrangeCARE, Austin, TX
 Stephen W. Dale, The Dale Law Firm, PC,
 Walnut Creek, CA
 Christopher J. Oglesby, The Arc of Texas, Austin, TX

11:30 a.m. .75 hr

Approaches to Life Care Plans and Life Care Planning

There is no technical definition of "life care planning" but there is a recognized need to plan more carefully for future events. This session describes some of the multiple terms and approaches to life care planning that may guide future SNT distributions and impact current SNT drafting.

Renée C. Lovelace, Attorney at Law,
 Dripping Springs and Austin, TX
 Wesley E. Wright, Wright Abshire Attorneys,
 Bellaire, TX

FRIDAY AFTERNOON

Presiding Officer:
Nancy Sosa, Encore Trust, Austin, TX

LUNCHEON PRESENTATION

**Sponsored by The Center for
 Special Needs Trust Administration, Inc.**

12:15 p.m. Pick up Box Lunch

12:30 p.m. .75 hr

Case Law Update

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

Mary Alice Jackson, Boyer & Jackson, P.A.,
 Sarasota, FL
 Rebecca C. Morgan, Stetson University College of Law,
 Gulfport, FL

1:15 p.m. Break

1:30 p.m. .75 hr

Dealing with Debt: Options and Resources for the Trustee

Increasingly tough economic times cause more stress on the beneficiaries of special needs trusts and their families, leading to hard questions for the trustees. This session explores some options and resources for the trustee to use in dealing with the beneficiaries' financial problems.

Marilyn G. Miller, Attorney at Law, Dripping Springs, TX
 Nancy Sosa, Encore Trust, Austin, TX

2:15 p.m. .75 hr

The Battle between Special Needs Trusts, Qualified Retirement Plans and Tax Rules

It may be necessary to use qualified retirement proceeds as a source of funds to pay for the special needs trust beneficiary's care. This presentation reviews the applicable qualified retirement plan rules, fiduciary income tax rules that apply to special needs trusts and how they work with third party and first party special needs trusts.

Bradley J. Frigon, Law Offices of Bradley J. Frigon,
 Englewood, CO

3:00 p.m. 1.00 hr ethics

When Worlds Collide: Oh No You Didn't... What Did You Do to My Government Benefits?

Two experienced practitioners explore some common traditional estate planning techniques that may have an impact on your clients' special needs trusts and their qualification for program benefits.

Deborah A. Green, Attorney at Law, Austin, TX
 Stephen Jody Helman, Osborne, Helman,
 Knebel & Deleery, LLP, Austin, TX

4:00 p.m. Adjourn

“

The program gets better every year. I've been to all of them since the beginning.

Wonderful overview, great details.

Speakers are great! Lots of preparation! Materials are well-written and clear.

Good year! Lots of current information.

I took away a lot from this seminar. Very knowledgeable and engaging speakers. Relevant topics.

All materials are very well done, very useful with helpful examples. Great to keep on your desk.

”

ABOUT THE COVER



Contemplation IV, 36" x 36", oil on canvas, is by Rebecca Bennett. For more information, visit rebeccabennettartworks.com or call 512-923-0158. Image acquisition by Sandra Gregor, art consultant, 512-477-2827.

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Medivest Benefit Advisors
Oviedo, FL

*planning committee member

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School of Law
Attn. CLE—SN10
P.O. Box 7759
Austin, TX 78713-7759

Or fax to:
512-475-6876

Or register online:
www.utcle.org

Questions? Call us at 512-475-6700

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Registrant's Email (required) _____

Assistant's Email (optional) _____

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REGISTRATION:

Includes Course Binder, Thursday Sponsored Reception and Friday Sponsored Luncheon Presentation

☐ Early Registration Fee due by Wednesday, February 3, 2010.....\$425.00

☐ Registration Fee after Wednesday, February 3, 2010.....\$475.00

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Allow 3–5 weeks from the conference date for delivery.

☐ Course Binder WITHOUT Conference Registration\$225.00

Note: Conference registration includes Course Binder.

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

(\$225 purchased alone, \$50 with registration or purchase of Course Binder or Audio CD Set or Audio MP3 Speeches on CD)

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Allow 3–5 weeks from the conference date for delivery.

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AUSTIN

February 11 – 12, 2010

CONFERENCE LOCATION



AT&T Conference Center

The University of Texas
1900 University Avenue
Austin, TX 78705
512-404-3600

Special Room Rate: \$159

good through January 11, 2010
(subject to availability)

Parking:

Self-Parking \$5/day;
Valet \$10/day, \$14/overnight
(subject to change)

KEY DATES

February 3, 2010, 5 p.m.

last day for early registration

add \$50 for registrations received after this time

February 5, 2010, 5 p.m.

last day for full refund

February 8, 2010, 5 p.m.

last day for partial refunds

\$50 processing fee applied

February 11, 2010, 11 a.m.

Conference begins



WEALTH MANAGEMENT AND 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 24-26, Grapevine), and our **Estate Administration Seminar** (October 2010, Dallas). We also offer news, professional reference publications and advocacy products and services. To learn more about us or to become an associate member, please visit our website: www.texasbankers.com/trust

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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 2.00 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).