THE UNIVERSITY OF TEXAS SCHOOL OF LAW

THE WEALTH MANAGEMENT AND TRUST DIVISION
OF THE TEXAS BANKERS ASSOCIATION

9TH ANNUAL CHANGES AND TRENDS AFFECTING

SPECIAL NEEDS TRUSTS

A Guide for Attorneys, Financial Advisors and Trust Officers

February 7–8, 2013

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THURSDAY MORNING, FEB. 7, 2013

Presiding Officer:
Patricia F. Sitchler, Schoenbaum, Curphy & Scanlan, P.C., San Antonio, TX

9:30 a.m. Registration Opens
Includes light refreshments.

10:20 a.m. Welcoming Remarks

10:30 a.m. 1.00 hr

Special Needs Trusts Basics, Part I: The ABCs of SNTs

This introduction to the program defines the concept of SNTs, including the different types of trusts and when the use of each is appropriate.

Randy Drewett, Attorney at Law, Beaumont, TX
Patricia F. Sitchler, Schoenbaum, Curphy & Scanlan, P.C., San Antonio, TX

11:30 a.m. .50 hr including .25 hr ethics

Special Needs Trusts Basics, Part II: 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; plus how to manage trust distributions to avoid losing benefits while enhancing the beneficiary's quality of life.

H. Clyde Farrell, Farrell & Pak PLLC, Austin, TX
Christina Lesher, Attorney at Law, Houston, TX

12:00 p.m. Pick Up Lunch
Included in conference registration.

> "Very practical information, extremely knowledgeable speakers, well-chosen topics. Well done!
>
> Good breadth of issues and perspectives. I especially enjoyed the focus on administration and trustee issues.
>
> Program and speakers were terrific.
>
> I am most impressed with the level of heart in the people involved in the program. Atticus Finch may yet live!"

THURSDAY AFTERNOON

Presiding Officer:
Shari M. Scholten, Wells Fargo–The Private Bank, Austin, TX

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LUNCHEON PRESENTATION

12:15 p.m. .75 hr

Case Law Update

A look at recent regional and national cases involving special needs trusts as well as other cases of note.

Mary Alice Jackson, Attorney at Law, Austin, TX
Rebecca C. Morgan, Stetson University College of Law, Gulfport, FL

1:00 p.m. Break

1:15 p.m. .50 hr

Public Benefits Update

Recent changes in the Supplemental Security Income (SSI), Medicaid and other programs needed by SNT beneficiaries, plus other advanced topics and strategies.

H. Clyde Farrell, Farrell & Pak PLLC, Austin, TX
Christina Lesher, Attorney at Law, Houston, TX

1:45 p.m. .75 hr

Everything You Ever Wanted to Know Regarding Medicare Set-Aside Trusts

Since the government began applying the workers compensation Medicare set-aside rules to personal injury liability recoveries, issues around establishing a Medicare Set-Aside Trust (MSAT) within a special needs trust frequently arise. This presentation discusses the circumstances when an MSAT is required, determining the amount necessary to fund the MSAT, practical tips when drafting MSAT provisions as well as recent developments affecting MSATs.

Ronald R. Cresswell, Johnson Jordan Cresswell Monk, PC, Dallas, TX
Sally Stalcup, Centers for Medicare & Medicaid Services, Dallas, TX

2:30 p.m. .50 hr

Subrogation and Liens in Personal Injury Claims

Medicaid, Medicare, health insurers, workers' compensation carriers, the Department of Veterans Affairs (VA), and others all want a share of the injured plaintiff's personal injury claim. What you don't know can hurt you.

Judy Kostura, Judge, Kostura & Putman P.C., Austin, TX

3:00 p.m. .50 hr

Subrogation and Medicaid Managed Care

An overview of subrogation and the statewide expansion of managed care in Texas.

Kathleen Anderson, Texas Health and Human Services Commission (HHSC), Austin, TX
Diane Broadhurst, Texas Health and Human Services Commission (HHSC), Austin, TX

3:30 p.m. Break

3:45 p.m. .50 hr

What Happened to MHMR?

The Texas Council of Community Centers is the new name of the Texas Council of Community MHMR Centers. This presentation addresses national trends in disability terminology, federal law on respectful language, the role of the Texas Council in state governance, what services are provided through the community centers and how the services are provided.

Danette Castle, Texas Council of Community Centers, Austin, TX
Lee Johnson, Texas Council of Community Centers, Austin, TX

4:15 p.m. .50 hr

Effective Communication with the Social Security Administration

Learn practical and unique maneuvers, gained from decades of working within and outside the agency, including basic strategies for corresponding with local field offices, state agencies and appeal components; and what works and what doesn't in SSA's paper and electronic terrain. Understanding national and local tactics, such as using SSA's own readily available and not so well known operating procedures, open the agency's portals and grease the wheels for effective communication and timely responses.

Robert Edwards, DACR, Inc., Austin, TX

4:45 p.m. .75 hr

The View from HHSC

Officials from the Texas Health and Human Services Commission (HHSC) discuss current issues in long-term care Medicaid eligibility.

Moderator:
H. Clyde Farrell, Farrell & Pak PLLC, Austin, TX

Panelists:
Shari L. Nichols, Texas Health and Human Services Commission (HHSC), Austin, TX
John Stockton, Texas Health and Human Services Commission (HHSC), Austin, TX

5:30 p.m. Adjourn

FRIDAY MORNING, FEB. 8, 2013

Presiding Officer:
John Brigance, Texas Bankers Association, Austin, TX

7:30 a.m. Conference Room Opens

Includes continental breakfast.

8:30 a.m. .75 hr ethics

Avoiding Fiduciary Litigation

Panelists address their years of experience with fiduciary litigation, identifying pitfalls that drafters often miss and that could increase the risk of fiduciary litigation. Grantors, trustees and beneficiaries all lose time, money, health and well-being when faced with costly disputes or litigation, the drafters' goal is not just helping clients avoid liability, but also helping them avoid—or reduce—fiduciary litigation.

Moderator:
Kathleen Ford Bay, Richards Rodriguez & Skeith, LLP, Austin, TX

Panelists:
James J. Hartnett Jr., The Hartnett Law Firm, Dallas, TX
Dean M. Kilgore, Attorney-Mediator, Austin, TX
Hon. Polly Jackson Spencer, Bexar County Probate Court No. 1, San Antonio, TX

9:15 a.m. .75 hr

SNT Language Roadmap: Understanding the Meaning in Your Words

The SNT is more than just the words on the page. This session looks at the words used in the SNT and how the trustee implements those words to give them meaning.

G. Mark Shalloway, Shalloway & Shalloway, P.A., West Palm Beach, FL

10:00 a.m. .50 hr

Drafting for Various Beneficiary Circumstances

Different disabilities and different circumstances may call for significantly different approaches to drafting SNTs and collateral documents. This presentation provides guidance on a range of disabilities and factors that affect whether certain trust provisions are helpful or harmful, along with a listing of disability-related resources and suggested language.

Renée C. Lovelace, The Lovelace Law Firm, P.C., Austin, TX

10:30 a.m. Break

10:45 a.m. .50 hr

The Dirty Dozen, Part II: Blatant Drafting Mistakes, Nos. 13-24

A sequel to the first dozen mistakes presented in 2012, this presentation offers another twelve drafting mistakes in special needs trusts that you don't want to make when drafting your trusts.

Wesley E. Wright, Wright Abshire, Attorneys, Bellaire, TX

11:15 a.m. .75 hr

When You Are Right and SSA Is Wrong, What Do You Do?

Emergency steps to take and alternatives when SSA denies your perfectly drafted first- or third-party special needs trust.

David J. Lillesand, Lillesand & Wolasky, PL, Clearwater, FL

12:00 p.m. Pick Up Lunch

Included in conference registration.

FRIDAY AFTERNOON

Presiding Officer:
Renée C. Lovelace, The Lovelace Law Firm, P.C., Austin, TX

LUNCHEON PRESENTATION

12:15 p.m. .75 hr

Training Trustees on Working with the Disability Advocacy Community(ies)

A discussion on the value of maintaining a practice that is actively involved in the disability community as an attorney, trustee, care manager or advisor. The current community social service system for persons with disabilities is changing dramatically. Merely preserving eligibility for welfare programs such as Supplemental Security Income (SSI) and Medicaid will likely have diminishing relevance for the special needs trust practice. Hear how being actively involved with the disability community helps the special needs trust practitioner better understand the issues and challenges that persons with disabilities and their families face and how even a minimal level of involvement can help professionals address these important issues.

Stephen W. Dale, The Dale Law Firm, PC, Pacheco, CA

1:00 p.m. Break

1:15 p.m. .50 hr

SNT Funding: Top Ten Financial Planning Mistakes

Funding mistakes arise when integrating advisors and financial products with special needs trusts. Learn how to identify "red flag" assets, poor financial strategies and unfavorable financial products, with a focus on proper funding structures, clear advisor roles and practical implementation to ensure successful special needs trust and asset integration.

Naomi Duke, The K Corporation, Houston, TX

1:45 p.m. .50 hr

Thinking out of the Box: Creative Ways to Make SNT Distributions

Over the years, trust beneficiaries have suddenly lost benefits such as SSI and Medicaid due to trust distributions for various purposes, including distributions that had always been acceptable before such a benefits denial. As doors close to efficient methods for helping beneficiaries access the goods and services they need—and that are permitted by benefits program rules, fiduciaries must use new approaches. A long-time trustee provides experiences and insight into these challenges and offers creative solutions.

Nancy Sosa, Cadence Bank, Austin, TX

2:15 p.m. .50 hr ethics

Trust Protectors and Trust Committees: Do These Tools Have a Viable Role in SNT Drafting and Planning?

Trust attorneys and trust officers often encounter the use of trust protectors/trust committees in the context of various irrevocable trusts outside of the realm of special needs trusts. The presentation explores the utilization of these flexible tools in the context of SNTs, including: advantages and disadvantages, what provisions of the Texas Trust Code are applicable, whether the statutory provisions of court-created §142 and §867 trusts permit these provisions, the utilization of these tools in third-party-settled SNTs, fiduciary liability of trust protectors and members of trust committees, and whether these provisions really work in practice.

David J. Reber, Locke Lord LLP, Dallas, TX

2:45 p.m. .50 hr

Mental Capacity Categories and Quality of Life

The presentation addresses situations where capacity or lack of capacity is clear versus situations where capacity is not entirely clear. Using hypothetical examples, the presenters discuss approaches that providers, trustees and attorneys may be able to use to document an individual's capacity when making decisions and/or providing accurate information, or to take actions without having to question an individual's capacity. Medical advances to promote or enhance capacity are also discussed.

Dr. Jim S. Misko, CORE Health Care, Dripping Springs, TX
Dr. Richard O. Temple, Clinical Psychologist/Neuropsychologist, Austin, TX

3:15 p.m. Adjourn

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Texas Health and Human Services Commission (HHSC)
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Richards Rodriguez & Skeith, LLP
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DAVID J. REBER
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NANCY SOSA
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SALLY STALCUP
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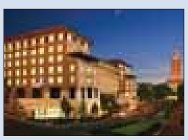

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February 1, 2013
last day for full refund

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February 7, 2013, 10:20 a.m.
conference begins

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