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Home Sweet Home

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As anyone that has owned property knows, a house can be a big responsibility with lots of surprise repairs, maintenance and costs along the way. But with that responsibility can come great joy for those who really need a stable, comfortable environment to live in. There is no feeling in the world like owning your first home, especially if that home is specially designed for an individual's needs. A trustee is in a unique situation to bring amazing relief and joy to a family that has faced a tragedy or other burdensome situation by providing a comfortable place to live without the threat of eviction. But the trustee must weigh the joy a house would bring with the reality of the beneficiary's situation. Is buying a house in trust the right thing for a trustee to do? Are there funds available, or will those funds be needed to pay for health care? Is the beneficiary really benefiting, or is it more for the family? Following are some of the important issues that a trustee needs to consider when buying someone's home sweet home.

CONSIDERATIONS BEFORE THE HOME IS PURCHASED

SHOULD THE BENEFICIARY OWN A HOME?

Before a trustee makes a large purchase, such as a home, that trustee needs to analyze the situation with the beneficiary. One of the first considerations must be whether or not the beneficiary is suited for a home environment. In some situations, it might be better for the beneficiary to live in a nursing home, group home or other type of assisted living facility. In determining whether or not a home is a good solution, the trustee needs to evaluate the following:

a. The Health of the Beneficiary. Is the beneficiary healthy enough to live in a house without twenty-four-hour nursing care? Recently I learned of a child that had autism and needed to constantly be on the move. Walking was about the only activity that calmed this child. The loving family owned a large home but had several other children, and the child with autism became aggressive because he was unable to roam. The family made the hard decision of placing the child in a care facility. The facility that they chose was very large with lots of walking area. The aggression has disappeared because the child is now able to roam freely throughout the facility. The family visits often, so for them, the facility was a better alternative than living in a house. In other situations the beneficiary may be bedridden or may need equipment that is too large to take from room to room in a house. In these situations, an assisted living facility or a nursing facility may be more beneficial for the beneficiary. While in other cases, if the disability is only physical and the beneficiary is mentally healthy, a home may prolong the beneficiary's life and provide much more happiness than any facility could. Therefore, the trustee must decide if the beneficiary's health is conducive to living in a house rather than in a facility designed for such a condition.

b. Long Term Solution. Unfortunately, in many cases a beneficiary with a disability will need more intensive care as time continues and does not have the life expectancy of someone without a disability. Since a house is a large investment, it is important for the trustee to consider the length of the stay in the house. If the house is not a long-term investment, does it make sense to buy the house? If the price is right, maybe the answer is yes. But in most situations a house does not significantly increase in value in only a few years and could require a reduction in price if accommodations have been made for the beneficiary that are not valuable to buyers. If the beneficiary will only be healthy enough to stay in the house for only a few years, does it make sense to buy a house that the trustee might not be able to resell at the same or a higher price? However, if the house is a long-term investment, then it may cost less in the long run than paying rent or going into a facility.

c. The Care of the Beneficiary. Many beneficiaries need care during the day and/or night. If this is the case then the trustee must evaluate whether or not the trust can afford to pay someone to stay with the beneficiary twenty-four hours a day while also paying the upkeep, taxes and insurance on a residence. In this situation, it might be less expensive for a beneficiary to live in a care facility. In addition, if a care giver will be living in the house, that care giver will need their own room, meaning that a larger, more expensive house will be needed. Another consideration are the alterations that will need to be made to the house. Those alterations may be as simple as grab bars or they may be much more costly, such as tearing out a bathroom in order to provide a walk-in shower. Those costs will need to be considered when determining the care that is needed for the beneficiary.

d. Other Inhabitants of the House. The primary concern of the trustee is the care of the beneficiary. Many times, the family wants to keep the beneficiary living with them but cannot afford a home that is appropriate for the beneficiary. In this situation, they will look to the trustee to see if the trust can help. Since most special needs trust funds must be used for the sole benefit of the beneficiary, problems can arise when other family members are living in those. For example, if a house is bought with the beneficiary in mind but mom or dad changes jobs to another location, the beneficiary is faced with the potential of selling of the house to accommodate mom or dad's change in location. Another typical example is when there are other children involved, and a house much larger than one needed for the beneficiary is needed for the entire family. These issues can be dealt with by having the other residents pay rent or buy a partial interest in the house, but then there is a risk if those payments are not timely made by the other parties. The trustee may have to evict the beneficiary's parents or sue the parents for their part of the mortgage, which will never end with a positive result.

e. Reduction of Benefits. If a home is purchased for a beneficiary and that beneficiary is on SSI, then SSI considers that the purchase of the home by the trustee to be in kind support and maintenance ("ISM") in the form of shelter. Therefore, in the month that the home is purchased by the trustee, the beneficiary's SSI benefit will be reduced

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