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9th ANNUAL CHANGES AND TRENDS AFFECTING
SPECIAL NEEDS TRUSTS

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Words and Music: Implementing the Words of the Trust

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THE BASICS OF SPECIAL NEEDS TRUSTS

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Words and Music: Implementing the Words of the Trust

Presenters:

Susan Mesenbrink, Certified Financial Planner
Wells Fargo
Seattle, Washington

G. Mark Shalloway, CELA
Shalloway & Shalloway, P.A.
West Palm Beach, Florida

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***Words and Music: Implementing the
Words of the Trust***

***Wells Fargo Special Needs Trust Group
Presented by Susan Mesenbrink
Stetson University College of Law, 2011***

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Words and Music: Implementing the Words of the Trust

I. Introduction:

Mark Twain once wrote: "Anybody can have ideas—the difficulty is to express them without squandering a quire of paper on an idea that ought to be reduced to one glittering paragraph." This quote rings true with many trust officers who frequently read legal documents and are always looking for those "glittering paragraphs" which provide such concise clarity of thought and direction that there can be no equivocation as to the drafter's intent.

The following paper will highlight some of the most common special needs trust language issues encountered by a special needs trust administrator and illustrate the importance of using language which promotes efficient administration, leads to a harmonious relationship between the trustee and the beneficiary, adheres with applicable state and federal rules, attempts to avoid challenges from the court or public benefits agencies, and, most importantly, gives the trustee the flexibility to use the funds to enhance the beneficiary's quality of life to the fullest extent possible.

II. Distribution Standards:

A. "Strict" vs. "Spigot" Language

Although SNT documents usually allow the trustee sole and absolute discretion, the exact wording of the discretionary language can be critical when the trustee is making distributions which might interact with a beneficiary's public benefits. Additionally, the use of overly strict standards can thwart the grantor's intent to provide for a beneficiary. For example, under the "strict" standard, the trustee may not make any

distribution that "reduces, supplants, or replaces" any of the beneficiary's benefits.

No part of the principal or income of this trust may be distributed for food or shelter or to *reduce, supplant or replace* any public assistance benefits for which the beneficiary may be eligible through any local, state or Federal government agency. The trustee may supplement but not supplant any benefits for which the beneficiary may be eligible.

This language can hamper the trustee's ability to support the needs of the beneficiary. The current federal benefit rate (FBR) for Supplemental Security Income ("SSI") is a maximum benefit of \$674 a month. This is the amount that the beneficiary is expected to use to pay all food and shelter (rent or mortgage and gas, water, sewer, electricity, heating, and property insurance/tax) costs. In most cases, the beneficiary will not be able to meet even his or her basic needs since this language bars the trustee from making payments that might cause a "reduction" in the benefits of the client. For example, if the beneficiary's rent is \$1000 per month, and her SSI payment is only \$674, the trust may not pay the difference directly to her landlord because per SSA regulations, this payment would cause a reduction in SSI benefits under the Social Security Administration's "Presumed Maximum Value Rule" (PMV).[^]

Another situation where this language can cause difficulty is when a beneficiary is eligible for a medical benefit through a means-tested benefit program, but that benefit does not adequately address the beneficiary's need. One common example is that of the diapers provided

[']See POMS [SI 00835.200](#) and [SI 00835.300](#) regarding reduction in benefits when a beneficiary lives in the home of another or his or her own home. The PMV rule applies when the beneficiary lives in his or her *own* home and an outside party pays his or her food or shelter expenses. The payment of food or shelter cost under this rule results in a reduction of benefits equal to 1/3 the FBR plus \$20. The VTR rule applies when the beneficiary is living in the home of another person and receives food and shelter from other people living in that household. In this situation, the beneficiary's SSI will be reduced by 1/3 the FBR.

Also available as part of the eCourse

[Drafting Special Needs Trusts: Blatant Mistakes; Understanding the Meaning in Your Words; plus Drafting for Various Beneficiary Circumstances](#)

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