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Special Needs Trusts**

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**Court Accountings for Trusts  
Established Under Chapter 1301 of the  
Texas Estates Code**

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# Court Accountings for 1301 Trusts

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# **Court Accountings for 1301 Trusts**

By Scott Stebler & Sarah Sulak

## **1. Introduction and Scope of Paper**

A trust established under Chapter 1301 of the Texas Estates Code is generally viewed as an alternative to a guardianship estate under Texas law. It is somewhat accurate to think of a 1301 trust as a guardianship estate in trust form. These trusts are established by a court with probate and guardianship jurisdiction for someone who is either (1) a minor child, (2) an incapacitated adult, or (3) an adult who is mentally capacitated, but who has physical disabilities. 1301 trusts may contain provisions that are required to permit them to serve as first party special needs trusts in accordance with the requirements of 42 U.S.C. §1396p(d)(4)(A), but not all 1301 trusts are special needs trusts. Some 1301 trusts are simply court-created minors' trusts, which are designed to provide the beneficiary with health, education, maintenance, and support, and which terminate when the beneficiary reaches a specific age (generally either 18 or 25).

With only a few very limited exceptions, all 1301 trusts are required to provide annual court accountings during the entire duration of the administration of the trust, plus an account for final settlement when the trust terminates. These court accountings are required by statute and cannot be waived (again, other than in a few very limited, exceptional situations). The ongoing court accounting requirements make a 1301 trust more costly to administer than a trust established under Texas Property Code §142.005 (often referred to as a "142 trust"), which is the other type of statutorily authorized court-created trust available in Texas. However, administration of a 1301 trust is still generally more cost-effective than the administration of a traditional guardianship estate, and, of course, a 1301 trust may be established with SNT provisions that will protect means-tested benefits such as SSI and Medicaid, while assets in a guardianship estate will be countable resources for purposes of SSI and Medicaid. Consequently, the use of 1301 trusts might rightfully be considered to be a necessary evil in some cases, but not the first choice for planning for an individual with disabilities who might need to protect eligibility for SSI and Medicaid.

This paper is about the requirements, process, and procedure for court accountings on 1301 trusts. As might be expected, this paper will cover such straightforward details as (1) when the accounting must be filed, (2) where it should be filed, (3) who receives a copy of the accounting, and (4) what must be contained within the accounting itself. Beyond these practical considerations, our hope is to help attorneys and trustees anticipate the issues and questions that might arise when the court reviews or audits a 1301 trust accounting,

which, may better enable trustees to administer 1301 trusts proactively to prevent problems at accounting time.

The purpose of a trust accounting generally is to provide full disclosure to all interested parties (as well as the court in which the trust is being administered) of all of the activities related to the administration of the trust, including but not limited to full information about all receipts, disbursements, expenses, fees, commissions, and investment activities. A court accounting that properly informs interested parties about the activities of the trust, and the actions undertaken by the trustee, can serve to preclude those interested parties from later complaining about such activities and actions, and can effectively bar future claims for breach of fiduciary duty and other misconduct on the part of the trustee. Any trust litigator will tell you that a trust accounting is not a foolproof protection, and does not absolutely and completely bar the pursuit of such claims in the future by interested parties. Nonetheless, a good court accounting that provides clear and adequate information about the activities of the trust goes a long way towards minimizing the threat of future claims by interested parties, and certainly provides the basis for a statute of limitations defense to the pursuit of such claims.

As will be explained in more detail in this paper, 1301 trusts will always arise in a court with jurisdiction over guardianship and probate matters, which means either a statutory probate court, a county court, or a county court at law. The level of scrutiny and review conducted by the court on a 1301 trust accounting depends, to a significant degree, upon the type of court, the location of the court, and the resources available to it. Some courts have a full-time court auditor, staff attorney, or other staff member who carefully audits the accounting, conducts an in-depth review of the trust pleading and accompanying financial statements, and will insist on careful documentation of all trust activity. Other courts simply do not have the staff for such an in-depth review. In those courts, an outside CPA may be engaged for an audit of the accounting in some instances; in other cases, the accounting will receive only a cursory review, and the court accounting will be approved with little or no delay.

Nevertheless, it can be important for trustees and the attorneys who represent them to stick to the same high standards (in terms of thoroughness of documentation and information) that are imposed by those courts that do have the resources for a full-time court auditor or review staff. A complete and thorough court accounting will notify the beneficiary, the beneficiary's parent or guardian, and any other interested parties of all activities of the trust, thereby minimizing future complaints by those parties.

Unless otherwise noted, all statutory sections referenced in this paper are sections of the Texas Estates Code. The sections of the Texas Estates Code that are most relevant to 1301

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