**PRESENTED AT**

20th ANNUAL CHANGES AND TRENDS AFFECTING SPECIAL NEEDS TRUST

February 15-16, 2024
Austin, Texas

# WELCOME HOME! BEST PRACTICES WITH SPECIAL NEEDS TRUST REAL ESTATE OWNERSHIP

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**“There is nothing more important than a good, safe, secure home” Rosalynn Carter**

As anyone that has owned property knows, a house can be a big responsibility with surprise repairs, maintenance and costs, but it can also create a feeling of joy, comfort and stability, especially to those who need special help. There is no feeling in the world like owning that first home, especially if that home is specially designed for an individual’s needs and comfort. It can give a sense of independence that a person can get nowhere else. 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 care for a beneficiary in other ways? Is the beneficiary really benefiting or is it more for the family? The following are some of the important issues that a trustee and beneficiary need to consider when buying or renovating a home sweet home.

## CONSIDERATIONS BEFORE THE HOME IS PURCHASED

## WHO SHOULD OWN THE HOME – TRUSTEE OR BENEFICIARY?

Before a trustee or a beneficiary makes a large purchase, such as a home, the trustee and the beneficiary need to analyze the situation so that the best decision can be made. One of the first considerations must be whether the beneficiary is suited for a home environment. Although home ownership is what most beneficiaries desire, there are situations in which it is better for the beneficiary to live in a nursing home, group home or other type of assisted living facility. In determining whether a home is a good solution, the trustee and beneficiary need 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 who 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 so 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 or may need monitoring by a nurse. In these situations, an assisted living facility or a nursing facility may be more beneficial for the beneficiary’s needs. In other cases, especially if the disability is only physical and mentally the beneficiary is healthy, a home may prolong the beneficiary’s life by giving more independence 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 unfortunately, beneficiaries don't always 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 a few years, does it make sense to buy a house that might not be able to be resold 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 night. If this is the case then the trustee must evaluate whether 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 is 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 the house with the beneficiary. For example, if a house is bought with the beneficiary in mind but mom or dad change jobs and now needs to move to a different location, the beneficiary is faced with the potential selling of the house to accommodate mom's or dad's change in location. The change of location would require the sale of the handicapped-accessible house and finding a similar house in a new location, most probably resulting in significant expense including at least a portion of the moving expense. 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, such as requiring the other residents to pay rent or expenses or to buy a partial interest in the house or provide goods and services for the beneficiary, but then other issues can arise with those family members. The trustee may

# Title search: Welcome Home! Best Practices with Special Needs Trust Real Estate Ownership

First appeared as part of the conference materials for the
20th Annual Changes and Trends Affecting Special Needs Trusts session
"Welcome Home! Best Practices with Special Needs Trust Real Estate Ownership"