THE HOYT & BRYAN, LLC

FAMILY FOCUS™

November December 2009

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WHAT IS A POOLED TRUSTS AND HOW DOES IT PROTECT MY FAMILY?

Beneficiaries of programs like Supplemental Security Income (SSI) and Medicaid must be impoverished to qualify for benefits. They can lose their benefits if they come into an inheritance, receive money in their own names from an accident settlement, or merely accumulate too much money in a bank account. Beneficiaries can prevent this from happening by transferring their excess assets into an individual self – settled or "first-party" special needs trust, also known as a (d)(4)(A) trust (referring to its authorizing statute). However, these trusts can be costly to set up, they must be created by a beneficiary's parent, grandparent, guardian, or a court. They are only available to individuals under the age of 65. A "pooled trust" presents another option.

A pooled trust, also known as a "(d)(4)(C) trust," is a special needs trust with a twist. While a (D)(4)(A) special needs trust is created by someone for the benefit of a specific beneficiary, a pooled trust is established by a non-profit organization. Each individual beneficiary has an account within the larger trust. Because a pooled trust accepts contributions from many beneficiaries, the trust is able to make more stable investments and provide additional management services. On top of these benefits, transfers into a pooled trust, like transfers into a first-party special needs trust, do not prevent a person with special needs from accessing government benefits, even those over the age of 65.

Although the funds placed in a pooled trust are invested together, each beneficiary's account remains his own. As with an individual special needs trust, funds in a pooled trust are used to supplement a beneficiary's government benefits, and the funds can be used to pay for reoccurring bills, clothes, and other expenses. Importantly, beneficiaries that need to spend down their assets in order to qualify for, or remain on, government benefits can transfer funds directly into a pooled trust account without having to rely on a family member's help.

Like most trusts that allow people with special needs to qualify for benefits, pooled trusts come with a catch. As with an individual (d)(4)(A) trust, upon a beneficiary's death, the funds held in a pooled trust account must be used to reimburse the government for any medical services provided while the beneficiary was alive. However, the state often allows the non-profit organization that established the pooled trust to retain a percentage or all of a deceased beneficiary's account to support its mission and/or other disabled individuals.

When should a person with special needs consider a pooled trust? While each beneficiary's situation is different, a person with special needs often uses a pooled trust when they are over the age of 65 or do not have someone to create an individual first-party special needs trust for them and they need to transfer funds in order to qualify for, or maintain, government benefits. A beneficiary who has only a small amount of money in their name may also like the low cost of a pooled trust. Others appreciate the fact that their funds will be used to help others with special needs.

To learn more about planning for your special needs family, join us on Thursday, December 10, 2009 at 6:00 p.m. for "Special People, Special Planning"

FEATURED WORKSHOP

WHAT TO DO WHEN SOMEONE DIES

"THE BEFORE & AFTER OF LOSING A LOVED ONE"

CO-HOSTED BY BALDWIN FAIRCHILD

At this complimentaryworkshop we will review the step-by-step process you need to know before and after losing a loved one. Learn more about pre-need funeral planning, the probate and estate administration process, fiduciary responsibilities, and many frequently asked questions.

Wednesday, November 18, 2009 at 6:00 p.m.

Call 407-977-8080 to RSVP!

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UPCOMING EDUCATIONAL WORKSHOPS & EVENTS

NOVEMBER

Advisor Lunch & Learn
"Alternative Investments"
Don Nestor & Sean Casterline
Tuesday, November 3, 2009 at 12:00 p.m.

Truth About Medicaid Planning
Wed., November 4, 2009 at 9:30 a.m.

Opportunities in Estate Planning
November 5-6, 2009 from 9am-5pm
16 hrs. CE, CFP, CPE credits

Truth About Estate Planning
Thursday, November 12, 2009 at 6:00 p.m.

What To Do When Someone Dies
Wed., November 18, 2009 at 6:00 p.m.

DECEMBER

Advisor Lunch & Learn
4th Annual Holiday Social
Tuesday, December 1, 2009 at 12:00 p.m.

Truth About Medicaid Planning
Wednesday, December 2, 2009 at 9:30 a.m.

Truth About Estate Planning
Tuesday, December 8, 2009 at 9:30 a.m.

Special People, Special Planning
Thursday, December 10, 2009 at 6:00 p.m.

Office Closed - Holiday Break
December 24, 2009 - January 1, 2010

JANUARY

Advisor Lunch & Learn
"Philanthropy Today"
Mark Brewer - Community Foundation
Tuesday, January 5, 2010 at 12:00 p.m.

Truth About Medicaid Planning
Wed., January 6, 2010 at 9:30 a.m.

Truth About Estate Planning
Tuesday, January 12, 2010 at 6:00 p.m.
Thursday, January 21, 2010 at 9:30 a.m.

All public workshops are complimentary and are held in our Learning Center. To RSVP please call 407-977-8080 or visit www.HoytBryan.com for more information.

PRALINE PUMPKIN DESSERT

1 can (15 oz) pumpkin (not pie mix)
1 can (12 oz) evaporated milk
3 eggs
1 cup sugar
4 teaspoons pumpkin pie spice
1 box yellow or spice cake mix
1 1/2 cups chopped pecans/walnuts
3/4 cup butter or margarine, melted
Whipped cream, if desired
Pumpkin pie spice, if desired

1. Heat oven to 350°F. Spray bottom and sides of 13x9-inch pan. Beat pumpkin, milk, eggs, sugar and 4 tsp. pumpkin pie spice with wire whisk until smooth. Pour into pan.

2. Sprinkle dry cake mix over pumpkin mixture. Sprinkle with pecans. Pour melted butter evenly over top.

3. Bake 50 to 60 minutes or until knife inserted in center comes out clean. Cool 30 minutes.

4. To serve, cut dessert into 4 rows by 3 rows. Serve warm or chilled with dollop of whipped cream sprinkled with pumpkin pie spice. Store covered in refrigerator.

MINIMIZING A PERSONAL REPRESENTATIVE'S (PR) PERSONAL LIABILITY TO PAY TAXES

A personal representative ("PR") is personally liable for paying the decedent's remaining tax bills, be they income taxes, gift taxes or estate taxes. When you say "yes" to being someone's PR, you also say "yes" to personally guaranteeing the IRS that ***all*** of their taxes are paid. But how can a PR make sure the decedent wasn't cheating on his or her taxes? And how can a PR make sure he's uncovered all those skeletons in the closet before distributing any assets of the estate to the heirs?

Even if you're working with a CPA who's supposed to be taking the lead on all the tax issues, you need to know these protective measures exist and ensure your PR gets the full benefit of them. Here's why:

IRS Form 56: A Form 56 needs to be filed twice: when the PR first gets appointed to let the IRS know who the PR is and where to send all tax notices; and again when the PR finishes his job and is discharged. What you're doing here is making sure that any correspondence from the IRS having to do with the decedent's taxes gets to the PR right away; the last thing you want is the PR to get sued for failing to pay the decedent's back taxes because the deficiency notices went to the wrong address. Also, the instructions to Form 56 state that the filing of a Form 56 when your PR is discharged will "relieve [the PR] of any further duty or liability as a fiduciary."

IRS Form 4810: Not only do you want to make sure the IRS knows the PR exists and that this is the person they need to contact for all matters related to the decedent, you'll also want to make sure there are no unpaid back taxes involving the decedent. You do this by filing a Form 4810 (Request for Prompt Assessment for Income and Gift Taxes). A cautious PR will wait for the IRS to respond to this assessment request prior to making any distributions to the estate's beneficiaries.

IRS Form 5495: At the same time the PR files a Form 4810, he'll also want to simultaneously (but separately) file a Form 5495 (Request for Discharge from Personal Liability for Decedent's Income and Gift Taxes). This is another way to make sure the PR gets the heads up on any of the decedent's unpaid back taxes. If Form 5495 is properly filed, the IRS has nine months in which to notify the PR of any deficiency for the decedent's applicable income or gift tax returns. If the PR pays the additional tax, or if no notice is received from the IRS within nine months from the date of filing Form 5495, the PR is then discharged from personal liability.

One way to manage a PR's personal tax-liability risk is to not pay a cent to anyone until every conceivable tax issue is identified and taken care of. But we all know this isn't possible. In order to properly manage an estate there are certain payments that can't wait. Primary examples include court costs, reasonable compensation for the PR and the PR's attorney, and expenses incurred to collect and preserve assets of the estate. Fortunately PR's don't have to guess which payments they can and can't make without exposing themselves to personal liability. If a PR follows F. S. §733.707, which lists the distribution priorities for *in*-solvent estates under Florida's Probate Code, he'll be alright. The only discrepancy between Florida's and the IRS's list of priority payments has to do with the payment of a family allowance. Under F. S. §733.707, a family-allowance payment is considered a "Class 5" priority, below the U.S. Government "Class 3" priority, but the IRS considers a reasonable family allowance payment to have priority over its claims for payment of taxes (see IRS Manual 5.17.13.6 (10-16-2007)). In other words, the IRS approach is more lenient than Florida's Probate Code.

For the full article or for more information please contact us at 407-977-8080 or info@HoytBryan.com