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Inside This Issue:

What Types of Assets Are Subject to Probate?	1-2
Special Needs Trust—The Basics	1-2
What Our Clients Say About Us	2



What Types of Assets Are Subject to Probate?

Special Needs Trust—The Basics

The probate process is the judicial process in which a will or living trust is being accepted in the court of law. Since people acquire many different assets in their lifetime, there is often dispute over who is the rightful beneficiary of the assets when the owner passes away. When the probate process is complete, there will be a valid public document that lists how the assets will be divided up.

Most families prefer to keep their will out of probate. Unfortunately, many people do not update their trust and estate documents before passing away. When this happens or when the estate is greater than \$150k, the beneficiaries are forced to go into the probate process.

What Types of Assets Are Subject to Probate?

Probate is necessary only for property that was:

- owned solely in the name of the deceased person—for example, real estate or a brokerage account (think stocks and bonds) in that person’s name alone, or
- a share of property owned as “tenants in common”—for example, the deceased person’s interest in a warehouse owned with his brother as an investment.

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If you want to leave money or property to a loved one with a disability, you must plan carefully. Owning a house, a car, furnishings, and normal personal effects does not affect eligibility for SSI or Medicaid. But other assets, including cash in the bank, will likely keep your loved one from qualifying for government benefits.

A special needs trust will help support that person financially after you die. Leaving money or other assets to a special needs trust, allows you to improve the quality of life for your loved one, without jeopardizing eligibility for benefits.

In the trust document, the person setting up the trust (usually called the “grantor” or “settlor”) places property in the hands of another person to manage the trust (called the “trustee”). Typically, the grantor of a special needs trust names himself or herself as trustee and another trusted person successor trustee. The grantor serves as trustee until he or she dies, becomes incapacitated, or resigns; at that time the successor trustee takes over. Each person who serves as trustee is legally obligated to follow the terms of the trust document to use the property for the benefit of the person with special needs, identified in the trust document (the “beneficiary”).

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What Types of Assets Are Subject To Probate ...*Continued From Pg 1*

In the event that there is no mention of ‘separate property’ in the trust, there is an even more complex probate process that takes place.

Assets Not Subject to Probate

Almost every person leaves behind some assets that do not need to go through probate. This should be seen as good news because the assets that are not subject to probate can be transferred to the people who inherit them much more quickly.

Below is a list of assets that do not need to go through probate:

- **Retirement accounts**—IRAs or 401 (k)s-for which a beneficiary was named.
- **Life insurance proceeds** (unless the estate is named as beneficiary, which is rare)
- **Property held in a living trust**
- **Funds & U.S. savings bonds in a POD** (payable-on-death) bank account
- **Co-owned U.S. savings bonds**
- **Securities registered in TOD** (transfer-on-death) form
- **Real estate subject to a valid TOD deed** (allowed only in some states)
- **Pension plan distributions**
- **Wages, salary, or commissions** (up to a certain amount) due to the deceased person
- **Property held in joint tenancy** with right of survivorship
- **Property owned as tenants by the entirety with a spouse** (not all states have this form of ownership)
- **Property held in community property with right of survivorship** (allowed only in some community property states)
- **Cars or boats registered in transfer-on-death form** (allowed only in some states)
- **Vehicles, household goods, and other items that go to immediate family members** under state law

Source: www.mcampbellcpa.com
Please contact our office for more information.†

“Optimism is the faith that leads to achievement. Nothing can be done without hope and confidence”

~ Helen Keller

What Our Clients Say About Us

“I have found Marcia to be kind and considerate. I think of her as a friend” —WV

Special Needs Trust—The Basics ...*Continued From Pg 1*

Initial Funding of The Trust

When the trust has been established and you get the trust’s tax identification number from the IRS, you can add a little cash to the trust by opening a bank account with a minimal deposit. At that point the trust is ready to be funded through the wills, living trusts, beneficiary designations, or other estate planning tools of those who want to help support the beneficiary with special needs.

How Trust Funds Can Be Spent

The trustee cannot give money directly to your loved one. However, the trustee can spend trust assets to buy a wide variety of goods and services for your loved one. Special needs trust funds are commonly used to pay for :

- Caregiving, such as a personal attendant or therapies not paid for by Medicaid.
- Experiences, such as travel or concerts.
- Services, such as a cell phone, internet, or cleaning service.
- Pet care, such as pet food or veterinarian care.
- Personal items, such as a computer, clothing, or new furniture.

Terminating the Special Needs Trust

The trust ends when it is no longer needed, most commonly, at the beneficiary's death or when the trust funds have all been spent.

Source: www.nolo.com/legal-encyclopedia
Please contact our office for more information.†



You can e-mail us at
Amanda@MCampbellCPA.com to receive
your newsletter by e-mail!