

Table of Contents

Features

What Is A Trust? 1
John Kantke

Supplemental & Special Needs 5
Trusts: The Same, But Different
Jeffrey W. Schmidt

Special Needs Trust Administration: 9
It's Special
Janet Trotter

Would I Rather Be 12
a Conservator or a Trustee?
Craig P. Goldman

Remembering R. Thomas Greene, Jr. 14

Welcome New Members! 21

Columns

President's Letter 2

Focus on Standards. 15

MAGiC at the Movies. 19

Departments

News 21

What's So Special About Trusts?

WHAT IS A TRUST?

By John Kantke

A three-act play.

Trusts are an essential estate-planning tool, but for many individuals, Trusts are confusing and intimidating. In an attempt to make Trusts more “fun” and “approachable” I offer you the following three-act play. There are many different types of Trusts, many benefits to Trusts, and many reasons to set up a Trust. The principles presented today are meant to be general. Remember, at its core, a Trust is simply a contract and can therefore be customized in an almost unlimited number of ways.

Act One: Creation

An empty city street, smoke pours out of a manhole cover. Sirens in the distance. Our two characters enter stage left, caught in a lover's quarrel.

Edmund: Don't you trust me, Virginia?

Virginia: No, Edmund, I don't trust you. I have been telling you for months that we need a Trust! If something happened to us today, those flimsy little Wills of ours would leave our family stuck in probate for years!



The chief lesson I have learned in a long life is that the only way to make a man trustworthy is to trust him; and the surest way to make him untrustworthy is to distrust him and show your distrust.

—Henry L. Stimson

What Is a Trust?, continued on page 3

MAGiC MISSION STATEMENT

The Minnesota Association for Guardianship and Conservatorship, MAGiC, is a non-profit membership organization focused on the practice and issues of substitute decision-making for vulnerable persons. MAGiC promotes best practices and ethical provision of service in the least restrictive manner possible through education and advocacy for its members and the community. We affirm the following values: 1. We believe services are to be provided in the least restrictive manner possible, respecting the rights and dignity of vulnerable persons. 2. We strive for the highest professional standards and ethics in providing service. 3. We are committed to the education and training of our members. 4. We believe in professional collaboration and legislative advocacy in working toward the well-being of vulnerable persons.



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Shirley R. Homan	Associate Editor
John Kantke	Associate Editor
Terry McCool	Associate Editor
Elizabeth Powers	Associate Editor
Brent Primus	Associate Editor
Mary Watson	Associate Editor

For information regarding advertising, please contact:
Helene Shear Noyola,
(651) 203-1764
hbs@hbsconsultingusa.com

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PRESIDENT'S LETTER

Dear MAGiCians:

We talk a lot about trust—trust in our professions, trust between our members, trust of service providers, etc. We don't, however, talk much about legal trusts, and many of our members serve as trustees of revocable living trusts and special needs trusts.

This issue of the *Journal* will give you some basics of what is a trust, the different types of trusts, and how you can best serve your clients as trustee. As always, if you have questions regarding your role as trustee you should seek appropriate legal counsel.

I would also like to welcome our new administrator, Helene Shear Noyola. Helene has already jumped in and is working hard. She looks forward to meeting our members, so feel free to give her a call and introduce yourself. Helene brings much experience with her, and we look forward to having her help keep us growing and moving in a positive direction.

Part of our growth comes from attendance at our annual fall conference. Mark your calendars for November 4, 2010! The conference will be held at the University of Minnesota Continuing Education and Conference Center.

We are also excited about the upcoming launch of our new website! Watch for an announcement on the list serve.

Thank you all for your service to your clients and our organization. Please be sure to let us know what we can do to best serve you ☺

Sincerely,

Nick Newton



Mistrust the man who finds everything good, the man who finds everything evil and still more the man who is indifferent to everything.

—Johann K. Lavater

What Is A Trust?, continued from front cover

Edmund: But what is a Trust? Isn't a Will the same thing as a Trust?

Virginia: No, a Trust is different from a Will. A Trust is a contract; a Will is just a set of instructions left behind to instruct the Court. A contract is a much stronger legal arrangement.

Edmund: A contract? Who else is involved in this contract?

Virginia: A Trust contract involves three parties: the Grantor; Trustee; and, Beneficiary. Setting up a Trust involves the GRANTOR making an actual transfer of assets into the Trust to be managed by a TRUSTEE while providing for a lifetime BENEFICIARY and a plan for distribution at death. If you set up a trust today, you can serve in all three roles. You will be the Grantor, or the person starting the trust. You will be the Trustee, the person controlling the Trust. Lastly, during your lifetime you can also be the Beneficiary, or the person receiving income and/or assets from the Trust.

Edmund: What are the benefits of a Trust?

Virginia: Some of the benefits may include: avoiding probate; possible estate tax savings; distributing assets to beneficiaries over time; and, reducing the risk of a will contest.

Edmund: That just sounds like a bunch of lawyer talk. I don't want to lose control of my assets!

Virginia: Edmund, don't worry. You retain total control of the Trust assets during your lifetime. Remember, that while you are alive you are both the Trustee controlling the trust and the Beneficiary receiving assets from the trust.

Edmund: But what if I want to change the trust?

Virginia: Trusts are easy to review and amend. Also, Trusts can help protect your assets in case of incapacity.

Edmund: Does everyone need a Trust?

Virginia: Good question. A Trust isn't necessary for everyone. Someone considering a trust should talk to an attorney about their goals and the types of assets they own to determine whether a Trust is right for them.

Act Two: Funding

The 13th floor break-room of a busy downtown brokerage firm. The smell of microwave popcorn wafts through the air.

Sal: Edmund, what are you smiling about? The Dow is down 85%!

Edmund: I was just thinking about my new Trust. It makes me so happy.

Sal: That's great. So what kind of assets are you holding in your Trust?

Edmund: Well, I am pretty sure everything is in my Trust, isn't it?

Sal: Did you transfer anything into your Trust?

Edmund: Well, no . . . I just thought everything was automatically in the Trust.

Sal: Ed, a Trust doesn't just fund itself! You have to put assets into the Trust! You've got a fish bowl without any fish in it!

Edmund: But where is my Trust and how do I fit everything I own into the Trust? Will I have to buy a bigger Trust?

Sal: Don't be silly, Ed. Putting assets into the Trust simply means you make the Trust the owner of your assets. You are shifting ownership from you, as an individual, to you, as the Trustee of your Trust.

Edmund: Should I put everything I own into the Trust?

Sal: Good question. Some assets cannot be placed in Trust. For example, retirement accounts such as IRAs, 401(k)s, 403(b)s, etc., cannot be placed into the Trust. An individual must own these types of accounts. However, you should consider transferring all of your other assets, especially real estate, into the Trust.

Edmund: How will I know if something I own has been transferred to the Trust?

Sal: If an asset has been transferred into the Trust, the title of the asset will read something like, "Ed as Trustee of the Ed Family Trust." If it only says "Ed," it isn't in the Trust.

Act Three: Administration

Sometime in the not too distant future. Frank and Dorothy, lifelong friends of Edmund and Virginia, are teleporting home to the moon from Edmund's funeral back on earth.

Frank: When was the last time we spent any time back on earth?

What Is A Trust?, continued on page 4

What Is A Trust?, continued from page 3

Dorothy: Oh it's been years. I wish we had more time to visit earth; I always love going back there, especially to Minnesota.

Frank: Well, old man Edmund lived a good life.

Dorothy: Yes, he really lived life to the fullest. Luckily, in his zest for life, he didn't neglect to plan for his death.

Frank: Yes, I spoke to Edmund's sister and she said that all of Edmund's assets were owned by his Trust.

Dorothy: Did Edmund's Trust include instructions for distribution of the assets upon his death and also appoint someone else to act as Trustee of the Trust?

Frank: Yes, Edmund's daughter was able to step in as successor Trustee after Edmund's death, pay all of his last expenses, and then distribute the remaining assets according to the terms of the Trust without ever having to go through the probate process.

Dorothy: Just waiting for Ed's real estate to sell, especially in this market, would have kept that probate open for months, or even years. Also, did you know that if Edmund's winter home in Florida had not been owned by the Trust the estate would have been required to open a second probate in Florida? The Trust saved the family from not only one, but two probates!

Frank: I never thought about that, but you're right. Edmund's sister also told me that several years ago when his wife, Virginia, died Edmund was able to utilize Virginia's estate tax exemption and pass money to the Trust tax-free. So, not only did the Trust save the estate from multiple probates, but it also helped reduce the estate tax burden as well!

Dorothy: On a slightly different note, did you know that a Trust can hold money for distribution over time? Not all of Edmund's Trust assets were distributed immediately. Edmund's son told me that some money would continue to be held in the Trust and given to Edmund's grandchildren over time. According to the terms of the Trust, the successor Trustee can distribute money to them for educational expenses, getting married, buying a house, or even starting a business.

Frank: It is great to see how much thought Edmund put into taking care of his family even after his death.

Dorothy: Yes, we had much more in common with Edmund than we ever knew!

Curtain closes. ☺

John A. Kantke is a frustrated playwright and a partner in the law firm of Houk & Kantke, PLLC in Roseville, MN. He practices in the areas of guardianship and conservatorship, elder law, estate planning and probate. Additionally, Mr. Kantke serves on the Governing Council for the Elder Law Section of the Minnesota State Bar Association, has been appointed by Hennepin County to serve on the Attorney Panel for Guardianship and Conservatorship, and is Treasurer on the Board of Directors for Twin City Christian Homes.



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A human being is only interesting if he's in contact with himself. I learned you have to trust yourself, be what you are, and do what you ought to do the way you should do it. You have got to discover you, what you do, and trust it.

—Barbra Streisand

SUPPLEMENTAL & SPECIAL NEEDS TRUSTS: THE SAME, BUT DIFFERENT

By Jeffrey W. Schmidt

*“What’s in a name? That which we call a rose
By any other name would smell as sweet.”*

—Romeo and Juliet (II, ii, 1-2)

Shakespeare was not always right. What we call something matters, and calling something by an incorrect name can be confusing or worse. Supplemental and Special Needs Trusts have always suffered from the confusion (and worse) of incorrect naming. This article will attempt to sort out the differences between the two types of Trusts, why those differences matter and how you can determine what type of Trust you are administering no matter what it is called.

In Minnesota we have a naming convention for these two types of Trusts generally accepted by all government workers, practitioners and professionals involved in special needs planning and public assistance administration. A “Special Needs Trust” contains the assets of the individual with the disability and derives its authority under federal law. A “Supplemental Needs Trust” contains assets that belong to someone other than the person with the disability and derives its authority under state law.

The first step to determine what type of Trust is before you is to ignore the title. What it says on the top of the first page in bold face type does not contribute to the substance of the agreement. The title does not tell us how it should be administered or how it will be viewed under the law (although give the trust a “correct” title is a helpful first step). In fact, it does not matter whether the Trust is called Montague or Capulet, supplemental or special, what matters is the text of the agreement and the circumstances that surround the agreement’s establishment. As a result, a trustee must read the trust document and be informed about when and how the trust was created.

Supplemental Needs Trust

A Supplemental Needs Trust is an exception to the general rule that a trust provision attempting to suspend, terminate, limit or divert trust resources “if the beneficiary applies for, is determined eligible for, or receives public assistance or benefits

under a public health care program is *unenforceable as against the public policy of this state*” Minnesota Statutes, Section 501B.89, Subd (1)(emphasis added). Subdivision 2 of section 501B.89 then sets out the requirements for a Supplemental Needs Trust:

1. It must be established for the sole benefit of a person with a disability. “Disability” must be certified **before** the trust is established through eligibility for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), a State Medical Review Team finding or “by the written opinion of a licensed professional who is qualified to diagnose the illness or condition, confirmed by the written opinion of a second licensed professional who is qualified to diagnose the illness or condition.” Minn.Stat. 501B.89, subd. 2(c).
2. It must be “funded by someone other than the trust beneficiary, the beneficiary’s spouse, or anyone obligated to pay any sum for damages or any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment.” Minn.Stat. 501B.89, subd. 2(b)
3. It must contain provisions that prohibit disbursements that would have the effect of replacing, reducing, or substituting for publicly funded benefits otherwise available to the beneficiary or rendering the beneficiary ineligible for publicly funded benefits. Minn.Stat. 501B.89, subd. 2 (d)

A Supplemental Needs Trust is an estate planning tool used by people who care about someone with a disability. Most often it is used by parents to allow the inheritance for a child with a disability to be used for the benefit of that child without jeopardizing eligibility for public assistance. Another identifying feature for Supplemental Needs Trusts, as a result, will be funding that comes from individuals other than the person with the disability. Keep in mind however, this can be funding from several sources beyond parents, including grandparents, other relatives, friends or the proceeds from a benefit fundraiser held for the person with the disability.

Special Needs Trust

A Special Needs Trust is also an exception to a general rule; the rule that the assets in a trust created by the Medical Assistance applicant or recipient will be treated as available for purposes of determining eligibility. See generally, 42 U.S.C. § 1396p(d). A Special Needs Trust is often identified by the

Supplemental & Special Needs Trusts . . . , continued on page 6


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Supplemental & Special Needs Trusts . . . , continued from page 5

federal statute that authorizes its use.¹ 42 U.S.C. § 1396p(d)(4)(A) says:

(4) This subsection [1396p(d) describing the availability of trusts] shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to any amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.

This “(d)(4)(A)” trust is a functional tool used for the sole purpose of preserving financial eligibility for Supplemental Security Income (SSI) and Medical Assistance eligibility. It is generally not viewed as an estate planning tool because of its requirement that all assets held in the Trust at the time of the disabled individual's death must be repaid to the state. Instead, it is viewed as a means for the person with the disability to use his or her own financial resources for his or her sole needs and desires, and when those needs and desires no longer exist because of the individual's death, any remainder is recovered by the state.

Another type of Special Needs Trust created under federal law is a Pooled Special Needs Trust. 42 U.S.C. § 1396p(d)(4)(C). A Pooled Trust is administered by a not-for-profit corporation which pools the resources of many individuals with disabilities, but maintains separate accounts for each person. A Pooled Trust operates in the same fashion as a standard Special Needs Trust; providing “extras” that the beneficiary would ordinarily not have available under public assistance programs. Federal law allows the individual with the disability to join a Pooled Trust on their own, without the intervention of a parent, grandparent, guardian or court (although these establishments are available for a Pooled Trust as well). When the beneficiary dies, a small amount of the beneficiary's account (usually 10%) remains in the Trust the beneficiary's remaining account balance must be repaid to the State for Medical Assistance benefits paid.

The Distinctive Features

Supplemental and Special Needs Trusts have more in common with each other than distinctions that help you tell them apart. In general, both Trusts will be administered in a similar

Supplemental & Special Needs Trusts . . . , continued on page 7

Supplemental & Special Needs. . . , continued from page 6

fashion. The differences are critically important for a trustee, however, to specifically administer the type of trust to match with the Beneficiary's public assistance programs and to manage accounting and tax issues correctly. Other articles in this issue will explain these distribution and administration details. The big differences are described here and summarized in the table you will find with this article.

Only a parent, grandparent, guardian or court can "establish" a Special Needs Trust, which means that they authorize the creation of the Trust that will be funded with the beneficiary's resources. Often with a parent or grandparent, however, the first small amount used to "seed" the Trust will come from the parent or grandparents' personal funds fulfill an SSI technicality that the parent complete all three of the elements required to establish a Trust under State law; entering into the agreement, naming the trustee and providing the initial funding for the Trust. Only someone other than the beneficiary, the beneficiary's spouse or someone obligated under a settlement or judgment can create a Supplemental Needs Trust for the person with the disability.

Age limits can also be a helpful distinction between Trust types. A Special Needs Trust can only be established for an individual with a disability who is under the age of 65. As a result, most Special Needs Trusts identify the individual's age or date of birth and specifically state that no resources may be contributed to the Trust after the individual reaches the age of 65. A Supplemental Needs Trust has no age limit. The State statute authorizing Supplemental Needs Trusts, however, does provide that the Trust will no longer treat assets as exempt for purposes of Medical Assistance eligibility if the individual is over the age of 64 and will be a resident in a nursing facility or state hospital for 6 months or more. Often, this 65-and-in-the-nursing-home termination clause will help identify what type of Trust you are administering.

The beneficiary of both kinds of Trust must be a "person with a disability." For both trusts, this includes a determination of disability by the Social Security Administration or a State Medical Review Team. With a Supplemental Needs Trust, however, the written certification of two medical professionals, as described above, will also suffice. Keep in

mind that with a Supplemental Needs Trust, the certification of disability must be in hand before the Trust is created while with a Special Needs Trust a retroactive certification of disability back to the date the trust was created is fine.

As a trustee, you will always have a duty to account for the financial activity of the Trust. With the Special Needs Trust, you must provide an accounting with specific information to the Minnesota Department of Human Services if the beneficiary is a recipient of Medical Assistance. Minn.State § 501B.89, subd 4. For a Supplemental Needs Trust the accounting you prepare will only need to be provided to the beneficiary or other parties named in the Trust.

When the beneficiary dies, Supplemental and Special Needs Trusts will generally have differing distribution provisions. The federal statute authorizing Special Needs Trusts mandates that the state or states where the individual received Medical Assistance benefits will be reimbursed from the Trust before any distributions other than approved administrative expenses. For Supplemental Needs Trusts, which is an estate planning tool of the parents or other loved ones, the post-death distribution provisions will vary as widely as the desires of the parents or other family members who created the Trust in the first place. A Supplemental Needs Trust might leave remaining resources to other siblings, charities or a broad array of other relatives.

Once you look past the title, the words in the trust agreement will tell you whether you are working with a Supplemental or a Special Needs Trust. Asking a few simple questions, as a result, should point you to language in the Trust Agreement that will tell you what kind of Trust you have been asked to administer. Who created the trust? Whose money is in the trust? What kinds of accounting requirements are included? Where does the money go when the beneficiary dies? With the answers to these questions you will be able to give your trust the right name. ♡

Jeffrey W. Schmidt has been writing Supplemental and Special Needs Trusts since 1993; helping hundreds of special needs families navigate the complex maze of government assistance programs and ever-changing planning tools available to people with disabilities. He is a shareholder with Schmitz & Schmidt, P.A., a leading Elder Law and Special Needs Planning firm in St. Paul

1 Identifying a Special Needs Trust by its statute can be confusing, however, because Minnesota law specifically authorizes the courts of this state to establish Special Needs Trusts at Minnesota statutes, Section 501B.89, subd 3. As a result, it may be critically important to determine whether you are working with a "subdivision 2" (Supplemental Needs Trust) or a "subdivision 3" (Special Needs Trust).

TABLE: SUPPLEMENT & SPECIAL NEEDS TRUST SUMMARY COMPARISON

Comparison Item	Special Needs Trust	Supplemental Needs Trust
Statutory Authority	Federal Law 42 U.S.C. § 1396p(d)(4)(A)	State Law Minn.Stat. § 501B.89, Subd. 2
Who Can Establish	Parent, Grandparent, Guardian, Court (or the Individual Beneficiary for a Pooled SNT)	Anyone Other than the Beneficiary, his Spouse or Anyone Obligated to Pay Under a Settlement or Judgment
Whose Resources Can Fund	Resources that Belong to the Beneficiary (Except for Parental "Seed" Money)	Anyone Other than the Beneficiary, Spouse or Anyone Obligated to Pay Under a Settlement or Judgment
Person With Disability	Disability Certified as of Date SNT Created by SSA or State Medical Review Team. Retroactive Certification Acceptable.	Certified by SSA, State Medical Review Team or Two Qualified Medical Professions Before the Trust is Created. Retroactive Certification Not Acceptable.
Age Limit	Must be Under Age 65 to Establish and No Additions After Age 65.	No Age Limit, but Trust Loses Protective Properties if Beneficiary is Over Age 64 and Permanent Hospital or Nursing Home Resident.
Accounting	Must Account to Beneficiary, Others Named in Trust, Minnesota Department of Human Services and Court (If Supervised)	Must Account Only to Beneficiary and Others Named in Trust (Generally Not Court Supervised)
Termination	In General, Termination Only Upon Death of Beneficiary or Court Order	Termination Upon any Occurrence Designated in the Trust Agreement (Commonly: Death of Beneficiary, Over 64 and Resident of Nursing Home or Loss of Public Assistance Eligibility)
Distribution at Death	Approved Administrative Expenses Then Reimburse State Remainder As Designated in Trust Agreement	Administrative Expenses and Individuals Designated in Trust Agreement

SPECIAL NEEDS TRUST ADMINISTRATION: IT'S SPECIAL

By Janet Totter

A disabled person¹ is eligible for publicly funded programs in support of basic living needs and medical care if they are impoverished. A recipient of supplemental security income (SSI) may not have countable resources in excess of \$2,000² in any given month. And a recipient of medical assistance (MA) may not have countable resources in an excess of \$3,000³ in any given month. If the disabled person is receiving both benefits, they are bound by the lower resource limit. One way a disabled person may reduce their available resources to establish or retain program eligibility is to agree to the creation and funding of a special needs trust.⁴ The provisions of the trust provide shelter⁵ for the assets owned by the disabled person (also known as the trust beneficiary⁶), which defers the Social Security Administration and Minnesota Department of Human Services (DHS) claim that these assets are an available resource for basic living needs and medical care provided to the disabled person. However, the special needs trust's protective provisions are by no means permanent or indestructible. An inappropriate act, even an unintentional act by the trustee could result in an agency claim that the assets are now an available resource. With the recent change in law, the Commissioner of the Department of Human Services has begun to tract distributions made from this type of trust by requiring that the trustee provide an annual accounting to the State of Minnesota.⁷ Failure by the trustee to provide the annual accounting and/or failure of the trustee to properly account for distributions from the trust may result in a claim that the remaining trust assets are available to the disabled person. A potential outcome is that the disabled person would be denied continued access to various publicly funded programs or worse, be required to repay the State for services previously provided.

Sustaining the protective nature of a special needs trust is extremely difficult because of the continuous interplay between the statutory authority of government agencies to limit access to publicly funded programs based on one's available resources with the reality that a disabled person is not truly impoverished if they are the beneficiary of funds

held in a special needs trust. Disputes may arise with disagreement over how the commonly articulated standard of a special needs trust is administered. The standard which controls distributions from a special needs trust generally states, *[t]he trustee may expend such sums from the principal of the trust for the sole benefit of the trust beneficiary, but only for purposes which supplement, rather than supplant, benefits from publicly funded programs.* And the trustee's role is that of a gatekeeper, who has the unenviable task of acting upon this vague standard for the benefit of the disabled person while satisfying the government's regulatory requirements. However, the trustee does not possess an unfettered discretion to approve or deny the trust beneficiary's request for a distribution based on an ascertainable standard⁸ of providing health, maintenance, support and care to the disabled person. Instead, the special needs trust's standard sets out the circumstance in which the trustee can not act and the circumstance in which the trustee may act. First, the trustee is never empowered to authorize a distribution that supplants benefits received by the disabled person from their publicly funded programs. Second, the trustee has a fiduciary duty to authorize a distribution for services and items which support the disabled person above and beyond their programs, for the purpose of improving the person's quality of life.

It is paramount that the trustee has a working knowledge of publicly funded programs that benefit the disabled person. Federal and state programs come in all shapes and sizes. A common misunderstanding is that all Social Security benefits are means-tested⁹ programs. However, Social Security disability income (SSDI) is not based on economic need but on one's wage earnings record. Conversely, Social Security supplemental security income (SSI) is a means-tested program and will include available resources of the disabled person for the purpose of determining eligibility. As such, the question of available resources in the context of a special needs trust arises with eligibility for SSI, not SSDI. The difficulty is that it is not unusual for a disabled person to be eligible for a combination of SSI and SSDI. Further, the trustee must be aware that the agency will change the disabled person's eligibility retroactively. Commonly, a disabled person receives a retroactive Social Security settlement because the agency recalculates the person's eligibility changing it from only eligible for SSI to partial or full eligibility of SSDI.

If a trustee authorizes a distribution in support of the disabled person's basic living needs (food and shelter costs), the person's SSI will be reduced because such a distribution is considered

It's Special, continued on page 10



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It's Special, continued from page 9

in-kind income.¹⁰ Even if there is not a cash distribution made directly to the disabled person, a payment to a third party in support of basic living needs may result in a reduction in monthly SSI. The agency has two ways to calculate in-kind support for reduction of monthly SSI based on the disabled person's circumstances: (1) The One-Third Reduction Rule¹¹ or (2) The Presumed Maximum Value Rule.¹² Regardless, the trustee should not supplant the disabled person's basic living needs by authorizing distributions for food and housing unless the trust agreement clearly authorizes such an act. This applies even when the special needs trust owns the title of the disabled person's residence if there is a mortgage against the residence that is paid partly from the disabled person's monthly SSI and partly by distributions from the trust. Under this circumstance the distribution from the special needs trust may be considered in-kind income to the SSI recipient.

A trustee should not be tempted to allow the disabled person direct access to the monies held in trust. When the disabled person has control over a financial instrument, i.e. credit card, debit card; prepaid gift card; or checkbook, allowing the disabled person to control what is purchased with trust assets this is considered in-kind income, even if the disabled person does not purchase food or shelter. The Social Security Administration has determined that the mere ability by the disabled person to obtain basic living needs is sufficient to recognize in-kind income. But even if the disabled person does not receive Social Security benefits, direct access to monies held in a special needs trust by the disabled person would likely constitute income for the purpose of MA eligibility. DHS considers income from the trust distributed to the disabled person, or on behalf of the disabled person, for their needs as countable income for the purpose of eligibility determination.¹³ Although distributions from a special needs trust are an exception to this policy, the exception only applies to distributions by the trustee for the benefit of the disabled person.¹⁴ The policy does not provide for an exception when the disabled person has direct access to monies held in trust.

Distributions from the special need trust for guardianship and conservatorship fees for the benefit of the disabled person are allowed as long as the fees are based on the fair market value for the services provided.¹⁵ Although payment of services to a guardian and conservator arguably is for the benefit of the disabled person, such justification is not necessary. DHS considers payment of guardian and conservator fees an exception to the rule that disbursements by the trustee to anyone who is not the disabled person whether in cash or in kind are not allowable.¹⁶ However, caution must be exercised by the professional who serves in multiple roles as trustee, guardian, con-

It's Special, continued on page 11

It's Special, continued from page 10

servator and representative payee that all services provided are priced at fair market value. A professional fiduciary should keep accurate billing records which document the following: (1) type of service provided, i.e. trustee or guardian service, (2) the date the service was provided, (3) the length of time it took to render the service and (4) the value of that service. Expenses incurred by the professional fiduciary, i.e. mileage, court filing fees, postage, parking fees, etc. should be documented separately and supported by receipts and vouchers. If the professional fiduciary intends to bill at a flat-rate for services then a written agreement should be established discussing what services will be provided during the billing cycle. A claim of self-dealing¹⁷ may arise when the professional fiduciary pays itself for multifaceted services provided to the disabled person when the services were not needed, inappropriate, unreasonably priced, partially or never performed. In such a case, the trustee is potentially liable for breach of fiduciary duty. However, the disabled person's programs should not be jeopardized.

A trustee's power to administer any trust is vested in the trust agreement. But the day-to-day task of administration of a special needs trust is unique because the trustee must understand the disabled person's needs as these needs relate to federal and state public policy programs. And the disabled person's access to programming is fluid and ever changing. The success of the trustee with the administration of a special needs trust may simply

be rooted the trustee's ability to understand the disabled person, who the trustee has a duty to serve. ☺

Janet Totter is an attorney in private practice at Guzmán Law Firm, P.A. in Apple Valley, Minnesota. Her practice focuses on guardianship and conservatorship law, estate planning, and estate and trust administration. In addition, Janet serves on the Elder Law Section Council of the Minnesota State Bar Association.

1 42 U.S.C. § 1382c(a)(3) (2009).

2 42 U.S.C. § 1382(a) (2009). A person with no spouse is allowed \$2,000 in assets.

3 Minn. Stat. § 256B.056, subd. 3 (2009). A person may not individually own more than \$3,000 in assets.

4 Also known as a self-settled or self-funded trust. 42 U.S.C. § 1396p(d)(4)(A) (2009) ("[a] trust containing the assets of an individual under age 65 who is disabled (as defined in [42 U.S.C.] section 1382c(a)(3)) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan . . ."). Codified under Minn. Stat. § 501B.89, subd. 3 (2009).

5 42 U.S.C. § 1396p(d)(4)(A) (2009) and Minn. Stat. § 501B.89, subd. 3 (2009).

6 For the purpose of this article; person with a disability or disabled person is synonymous with trust beneficiary.

7 Minn. Stat. § 501B.90, subd. 4 (2009).

8 I.R.C. § 2041 (2009) (A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.)

9 A federal or state program that has financial criteria for eligibility for which one must have limited assets and income to qualify.

10 20 C.F.R. § 416.1102 (2009) (In-kind income is not cash, but is actually food or shelter, or something you can use to get one of these.)

11 20 C.F.R. § 416.1131 (2009); Social Security Administration Program's Operations Manual System (POMS) SI 00835.200.

12 20 C.F.R. § 1140 (2009); POMS SI 00835.300.

13 Minnesota Department of Human Services, Health Care Programs Manual (HCPM) § 19.25.35.

14 HCPM § 19.25.35.20.

15 Id.

16 Id.

17 Self-dealing is the conduct of a trustee that consists of taking advantage of the trustee's position of power in a transaction and acting on behalf of the trustee's interests rather than for the interests of the trust beneficiary

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WOULD I RATHER BE A TRUSTEE OR A CONSERVATOR?

By **Craig P. Goldman**

Introduction

There are many similarities between a Trustee and a Conservator, and many professional fiduciaries routinely serve in both capacities. In fact, when asked what the differences are between the responsibilities of a Trustee and those of a Conservator, even experienced professionals can struggle a little bit. The fact is, however, that there are many significant differences between the two jobs, and you can quickly find yourself in hot water if you aren't familiar with them.

It should come as no surprise that the responsibilities of both a Trustee and a Conservator are governed by Minnesota law. The difference in most situations is the level of oversight and involvement exercised by the Court. Generally speaking, a Conservator is under much greater scrutiny by the Court than a Trustee is. In fact, one of the most significant benefits of having a Trust is the ability, in many situations, to avoid Court involvement altogether.

Trusts

A Trustee is governed first and foremost by the terms of the Trust instrument itself, but also by the Minnesota Trustee Powers Act, found in Minnesota Statutes §§501B.79 - 501B.82, and often referenced in the Trust instrument itself. The actual powers and responsibilities of a Trustee are expressly set forth in §501B.81, which every Trustee should have a copy of.

There are many different kinds of Trusts out there, and in most of them, the creator of the Trust has great flexibility in setting out the Trustee's powers and responsibilities. The authority granted to the Trustee may be virtually unlimited (subject to prudent investor standards, etc.) or it may be highly restricted. It all depends on the reasons why the creator of the Trust is creating it, and the purposes for which it is intended to be administered.

Unless the Court is involved in the creation of the trust, or there is some other reason that the Court must stay involved, it is common for a Trust instrument to waive any Court jurisdiction or

oversight. That does not prevent an interested party from bringing an action in Court to address some issue, but by and large, Trustees do not often have to deal with the Court.

The Trust instrument will specify who the Trustee is, and generally will nominate one or more successor Trustees in the event that the original Trustee becomes unable or unwilling to serve. That succession planning in advance is a feature that Conservatorships do not possess, and is a significant advantage for the smooth operation of a Trust over long periods of time.

Conservatorships

A Conservator is governed first and foremost by the terms of the Order Appointing that Conservator. In other words, the Conservator will have only those powers that have been proven to be necessary to protect the Conservatee. The Court is under a duty to employ the least restrictive alternative when granting powers to a Conservator, because granting those powers effectively takes them away from the Conservatee, which we as a society have decided to do only when absolutely necessary for the Conservatee's protection.

The scope of a Conservator's potential powers are set out in Minnesota Statutes §524.5417, which points out in its first sentence that a Conservator "shall be subject to the control and direction of the Court at all times and in all things." Those of you experienced in this field will certainly agree with that! The statute goes on to list six areas of responsibility which the Court may grant to a Conservator. In seeking the appointment of a Conservator, the Petition to the Court will specify which of these powers are being sought. In a nutshell, those powers are as follows:

1. The duty to pay reasonable charges for the support, maintenance, and education of the protected person in a manner suitable to the protected person's station in life and the value of the estate.
2. The duty to pay out of the protected person's estate all lawful debts of the protected person and the reasonable charges incurred for the support, maintenance, and education of the protected person's spouse and dependent children.
3. The duty to possess and manage the estate, collect all debts and claims in favor of the protected person, institute suit on behalf of the protected person and represent the protected person in any court proceed-

Would I Rather . . .?, continued on page 13

Would I Rather . . .?, continued from page 12

ings, and invest all funds not currently needed for debts and charges.

4. The duty to protect and manage the protected person's real estate. (This is a very complicated area, and is addressed more specifically in Minnesota Statutes §524.5-418 as well).
5. The power to approve or withhold approval of any contract, except for necessities, which the protected person may make or wish to make.
6. The power to apply on behalf of the protected person for any assistance, services, or benefits available to the protected person through any unit of government.

Conservators also have a strict reporting requirement that often does not exist for Trustees. A Conservator must file an Inventory with the Court shortly after being appointed, outlining the initial assets under Conservatorship. After that, the Conservator must file an Annual Account each year near the anniversary of their appointment, setting forth every penny that has come into the Conservatorship, every penny that has gone out of the Conservatorship, and every penny that is remaining. Moreover, the Conservator must appear in Court after filing the First Annual Account to prove up their numbers. After that, hearings are held every three years to review the previous three Annual Accounts.

Despite the granting of the specific powers in the Order Appointing Conservator, any experienced professional will know firsthand that the Court wants to be kept apprised of any significant exercises of those powers. In other words, even though the Conservator has the power to purchase things for the Conservatee's support and maintenance, the Conservator would be well-served by seeking the Court's permission in advance before making a significant purchase such as a vehicle or home renovations.

Different professionals will have different comfort levels about the amount that can be spent without Petitioning the Court for advance permission, but I advise a cautious, conservative approach. Some say anything over \$1,000. Some say anything over 10% of the conservatorship assets. Some play it by ear on a case by case basis. In all circumstances I

advise a conservative approach. For example, I had a client who was Conservator for her daughter, who had significant physical and cognitive deficits. The client wanted to put an elaborate track system in her house and out onto the deck so that her daughter could move more easily from room to room, and from inside to outside. There were more than enough assets for this project; in fact the estimate was that less than 2% of the conservatorship assets would be needed, despite the cost estimate in excess of \$30,000.

I told my client that I would rather have an Order granting permission for this project in advance, rather than have the two of us stand before the Court in a couple of years at the Annual Account hearing and have to answer for what the Court may consider an inappropriate expenditure. The likelihood of that was small, to be sure, but "better safe than sorry" is a good mantra whenever dealing with the Court.

Final Thoughts

Whether you are a Trustee or a Conservator, you have been given a significant responsibility and you must act appropriately at all times to avoid serious consequences. Certainly your comfort level about what is appropriate or not will rise with your years of experience, but inevitably a situation will present itself, or a question will arise, that you haven't seen before and don't know how to handle. The best advice I can give is to first look to the authority that has been given to you, whether it is in a Trust instrument or an Order Appointing Conservator. That is where you will find out whether you can or cannot do what you are contemplating. If you still have any questions, or if you simply want confirmation that you are doing the right thing, do not hesitate to contact your attorney. That's why we are here. ☺

Craig P. Goldman is an attorney who concentrates his practice on Elder Law, Estate Planning, Disability Planning, and Probate at Goldman Law Office in Edina, Minnesota. Craig has dedicated his practice to serving the unique needs of the elderly, of persons with disabilities, and of their families.

“ ”

Trust men and they will be true to you; treat them greatly, and they will show themselves great.

—Ralph Waldo Emerson,
Essays, First Series: *Prudence*, 1841
U.S. essayist & poet (1803–1882)

REMEMBERING R. THOMAS GREENE, JR.



Our friend and colleague, R. Thomas Greene Jr. passed away on Wednesday, May 26th, in Clearwater, FL. He was 64 years old. He is survived by his daughters, Elizabeth and Marianna Greene; his mother, Grace Greene Barber; sister Annette Adams; a niece and nephew; and his life partner, Charlene Dueck.

We all knew Tom as the expert in guardianship and conservatorship law in Minnesota and a valued member of MAGiC. He chaired the com-

mittee of the Minnesota State Bar Association that redrafted the Uniform Guardianship and Protective Proceedings Act and adapted it to Minnesota practice. The Act was passed into law in 2003. Tom also co-authored the Guardianship and Conservatorship Law Handbook published by Minnesota CLE. His experience and influence on the law during his life has left an enduring legacy for us all to appreciate and enjoy. Tom was always quick to share his knowledge and experience with anyone who had questions about the law. He enjoyed mentoring young attorneys and teaching them the law and its nuances. Anyone who has worked with Tom was taught his recurring mantra: Read-the-Code, although he sometimes added a word for dramatic effect. He was always approachable and good humored when he interacted with professionals, and he set a standard for collegial relationships within the probate bar.

But Tom was also a man whom we enjoyed as a person for his sense of humor, his sophisticated statesman-like demeanor (I think he would have preferred that description and rightly so) and his diverse interests. Tom was a great lover of music, and he had a wonderful singing voice in his own right and was a talented musician. Tom was a past member of the Board of Directors of The Minnesota Chorale and The Minnesota Opera. Tom also loved his family and spoke of them often and his devotion to his mother, sister and children was obvious to anyone who listened.

As a matter of Tom's life history, Tom received his B.A. degree (magna cum laude, Phi Beta Kappa) and his M.A. degree from Columbia University in 1971 and 1972, respectively. He graduated from The University of Michigan Law School in 1975. Tom had practiced law in Minnesota since 1975, with the exception of 1978-1979, when he practiced with the largest firm in Sacramento, California where he was still admitted in California as an inactive member of The State Bar of California when he died. He practiced in several different firms, ranging in size from one attorney to 150 attorneys. By way of example, for some years prior to its dissolution, Tom was a partner in the Trusts and Estates Department of Rider Bennett, leaving to resume his own private practice in 2004. Tom was a frequent lecturer at continuing legal education and other professional training seminars on guardianship/conservatorship law, estate planning, and probate administration and litigation. He was a member of the American, Minnesota State, California State, and Hennepin County Bar Associations and is a Fellow of The American College of Trust and Estate Counsel (ACTEC), and served for five years as a member of the Elder Law Committee of ACTEC.

He will be missed. ☹️

“ ”

You may be deceived if you trust too much, but you will live in torment if you do not trust enough.

—Frank Crane

Focus on Standards

MN “PRUDENT INVESTOR ACT” SERVES AS A STANDARD WHEN MANAGING TRUST ASSETS

Editor’s Note: *This is a regular column of the Journal where we usually highlight a section of the Standards of Practice, typically in correlation with the theme of the Journal. We hope this provides food for thought and will provoke stimulating discussion on MAGiC’s list serve.*

This is Dan Lodahl’s first column as author of “Focus on Standards.” Since this issue brings readers information about trusts, it’s a good time to inform members of Minnesota’s Prudent Investor Act. Although MAGiC does not currently have a Standard of Practice for trustees, the Prudent Investor Act serves as a standard for trustees when managing trust assets. If you have questions about your duties as trustee, seek appropriate legal advice.

What is The “Minnesota Prudent Investor Act?”

The Uniform Prudent Investor Act (UPIA) was adopted in 1992 by the American Law Institute’s Third Restatement of the Law of Trusts. Under this act, fiduciaries are permitted to utilize modern portfolio theory to guide investment decisions. Therefore, a fiduciary’s performance is measured on the performance of the entire portfolio, rather than individual investments. Following are some of the advantages of UPIA:

1. A fiduciary will not be held liable for individual investment losses, so long as the investment is consistent with the overall portfolio objectives.
2. Diversification is given importance in prudent fiduciary investing.
3. A fiduciary is permitted to delegate investment management and other functions to third parties.
4. Trust account’s purposes and beneficiaries’ needs are considered while determining fiduciary. 44 states of the U.S. and the District of Columbia have adopted the UPIA.

The Prudent Investor Rule became effective in Minnesota on January 1, 1997. The new rule frees trustees from rigid and outdated investment practices and permits them to use the full array of modern investment tools in selecting and managing investment portfolios. The tradeoff for this freedom is a higher level of responsibility borne by trustees in the selection and management of portfolios.

Minnesota Statutes

501B.151 -

Investment and Management of Trust Assets.

Subdivision 1. Prudent Investor Rule.

- (a) Except as otherwise provided in paragraph (b), a trustee who invests and manages trust assets shall comply with the prudent investor rule set forth in this section.
- (b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Subdivision 2. Standard of care; portfolio strategy; risk and return objectives.

- (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
- (b) A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation



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Focus on Standards, continued on page 16

Focus on Standards, continued from page 15

but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

- (c) The circumstances that a trustee may consider in making investment decisions include, without limitation, the following:
- (1) general economic conditions;
 - (2) the possible effect of inflation;
 - (3) the expected tax consequences of investment decisions or strategies;
 - (4) the role that each investment or course of action plays within the overall trust portfolio;
 - (5) the expected total return from income and the appreciation of capital;
 - (6) other resources of the beneficiaries known to the trustee, including earning capacity;
 - (7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
 - (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries if consistent with the trustee's duty of impartiality.

- (d) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.
- (e) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

Subdivision 3. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Subdivision 4. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this section.

Subdivision 5. Investment costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

Subdivision 6. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight. The prudent investor rule is a test of conduct and not of resulting performance.

Subdivision 7. Language invoking standard.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this section: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."



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Focus on Standards, continued from page 16

Subdivision 8. Disposal of property.

Unless the trust instrument or a court order specifically directs otherwise, a trustee need not dispose of any property, real, personal, or mixed, or any kind of investment, in the trust, however acquired, until the trustee determines in the exercise of a sound discretion that it is advisable to dispose of the property. Nothing in this subdivision excuses the trustee from the duty to exercise discretion at reasonable intervals and to determine at those intervals the advisability of retaining or disposing of property.



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Subdivision 9. No limitation on powers of court.

This section does not restrict the power of a court of proper jurisdiction to permit a trustee to deviate from the terms of a will, agreement, court order, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of trust property.

Subdivision 10. Trustees defined.

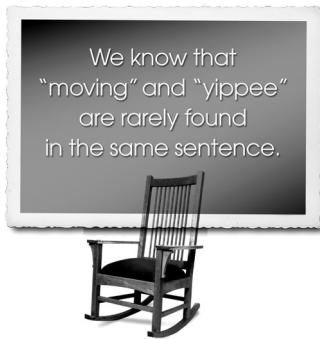
As used in this section, “trustee” means individual trustees and corporations having trust powers acting under wills, agreements, court orders, and other instruments, whether existing on January 1, 1997, or made at a later time.

Subdivision 11. Investment companies.

- (a) In the absence of an express prohibition in the trust instrument, the trustee may acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940. The fact that a trustee which is a banking institution, as defined in section 48.01, subdivision 2, or any affiliate of a trustee which is a banking institution, is providing services to the investment company or trust as investment advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise, and receiving compensation for the services shall not preclude the trustee from investing in the securities of that investment company or trust. A trustee which is a banking institution shall disclose to all current income beneficiaries of the trust the rate, formula, and method of the compensation.
- (b) This subdivision does not alter the degree of care and judgment required of trustees under this section.

Subdivision 12. Application to existing trusts.

This section applies to trusts existing on and created after January 1, 1997. As applied to trusts existing on January 1, 1997, this section governs only decisions or actions occurring after that date. ☞



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TRUSTS, TAXES, AND THE ROLE OF THE TRUSTEE

By Josh Gruber and Shirley R. Homan, NCG

As trustee, it is important to understand that there may be tax issues related to the trust. It is highly recommended you work with a tax professional or CPA having significant experience with trusts. There are some basics to be aware of:

1. Some trusts require their own tax identification number (EIN). The type of trust will determine whether or not you can use the beneficiary's Social Security number as the tax identification number.
2. The timing of the tax return may be different than April 15th time period.
3. When a beneficiary dies and the Trust a distribution to the Trust beneficiaries—they may have tax consequences. That needs to be part of the discussion with them.
4. Form 56 should be completed when filing a tax return as a fiduciary; and remember to terminate the Form 56 when the Trust is closed.
5. When a Trust is closed, a final Trust tax return is filed.

If you are appointed as a trustee and, after consulting with your attorney and tax professional, you need to get a tax identification number for a Trust, the IRS website, is very helpful. You can apply on-line or by phone: (800)829-4933. If you are a successor trustee, the Trust may already have its EIN, in which case there will not be a change.

If you want to read up on Trusts from the IRS perspective, the publication that will cover topics trustees will be most interested in is a "how to" guide to filling out Form 1041, which is what gets filed if a return needs to be filed. As soon as your eyes start glazing over or your eyelids get droopy, find a good tax professional. The IRS can also be helpful and can be reached at (800)829-1040.

Tax rules can be complicated. A tax professional well versed in trust issues can be very helpful and save you from issues down the road. ☺

Josh Gruber is a MAGiC member and professional fiduciary located in St. Louis Park.

Shirley Homan is a professional fiduciary and member of the MAGiC Journal board.



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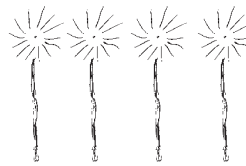
Movie Review by Seymour Flicks

Director: Walter Hill

Release date: May 22, 1985

Running time: 97 minutes

Genre: Comedy



4 out of 5 MAGiC wands.

The ultimate spend down . . . the lighter side of probate . . . evil lawyers everywhere . . . are the phrases that come to mind to describe “Brewster’s Millions.” When the members of the *MAGiC Journal’s* Motion Picture and Entertainment Subcommittee assigned this movie, my first thought was “Well, everyone has seen this a million times. . .” However, after learning that the movie could not be rented at any of the local video stores, it occurred to me that a movie from 1985 was older than many *Journal* readers.

Be that as it may, if you are in the summer doldrums or have had a tough day in court or at the office, this movie might well give you a few chuckles. It stars Richard Pryor as Montgomery Brewster, a minor league pitcher for the Hackensack Bulls, and his friend and Bulls catcher, a very young John Candy.

The premise of the story is that a very distant and very rich relative of Brewster’s leaves him \$300 million dollars—but with a catch. Brewster must first spend down to the very last penny \$30 million dollars in 30 day—without acquiring any assets or merely giving it away. If he fails to do so, the Estate’s law firm will receive the \$300 million dollars.

While it isn’t easy to waste \$1 million a day, Brewster gives it his best shot. All the while, Brewster becomes increasingly attracted to the attractive accountant assigned to monitor every penny. At the same time his friends and counselors are trying to spend the money very conservatively and the attractive accountant’s attorney fiancé and his conniving, but staid, senior partners do their best to devolve the Estate corpus onto themselves. ↻

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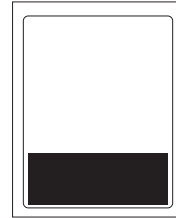
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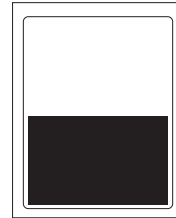


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\$250.00 per issue



1/3 of a page
(3" x 9 1/8")
\$340.00 per issue

1/2 of a page — horizontal
(7" x 4 1/2")
\$355.00 per issue



Journal and Directory Advertising Reservation Form

We would like to place the following space reservation for advertising in the MAGiC Journal:

Size 1/9 page 2/9 page 1/3 page vertical 1/3 page horizontal 1/2 page horizontal

Cost per Journal issue \$ _____ x **number of issues** _____ = **TOTAL \$** _____ for this order.

We will take advantage of the volume discount, by paying for three Journal ads now and getting the 4th Journal ad **free**. (Please begin with the _____ issue of the Journal.)

We would also like to place a space reservation for our ad in the MAGiC Membership Directory. Our payment in the amount of \$ _____ for this ad is enclosed with the payment for our Journal ad.

We understand that this ad is to be camera-ready or a digital file (on a Macintosh disk), and of the specified size.

Company Name _____ Contact _____

Address _____ Signature _____

City _____ Title _____

State _____ Zip _____ Date _____

Telephone _____

Return this form along with camera-ready or digital ad and payment to:
MAGiC c/o Helene Shear Noyola, P.O. Box 7311, St. Paul, MN 55107 • 651-203-1764 • hbs@hbsconsultingusa.com

Welcome New Members! Since the publication of the Spring 2010 Journal:

Cynthia Ann Dallaire
Senior Advocate
508 Third Avenue NE
Brainerd, MN 56401
218-829-4200
bcdallaire@hotmail.com or cdallaire@yahoo.com

Diane Neiman
Managing Partner
Neiman Law
2745 Webster Avenue South
St. Louis Park, MN 55416
612-759-2251
dianne@neiman-law.com

Jeanne Hanson
615 N. 1st Street #109
Minneapolis, MN 55401
612-332-6513
jeanneshanson@aol.com

MEMBERSHIP LUNCHEON

At Risk Drivers: When to Turn in the Keys

*Rich Dohrmann, Deputy State Coordinator,
AARP's Driver Safety Program in Minnesota &
Sgt. Kathy Pederson, Trooper with the Minnesota
State Patrol*

Learn how to assess and recognize when it is time to turn in the keys. How is an assessment completed? Where do you report at risk drivers? How does the conversation start?

**Friday, August 20 • 11:30–12:00
Registration & Lunch 12:00–1:00**

Hosted By: The Wellington Assisted Living,
2235 Rockwood Ave., St. Paul, MN 55116

MAGiC Members: No Cost • Non-members: \$10.00

To reserve your seat please contact: Kim Tophen,
Kim@SeniorOptionsInc.com, 763-792-4472
Please RSVP by August 13th
Certificates of attendance will be provided.

SAVE THE DATE:

November 4th
MAGiC 21st Annual State Conference
www.minnesotaguardianship



MAGiC REGIONAL NEWS

Brainerd Lakes Region

MAGiC is looking for a new area coordinator. If you are interested in arranging gatherings and educational meetings for this part of the state, please contact Nick Newton at (763) 549-2250 or by e-mail at nicknewton@abibonds.com.

Duluth Region

Regional meetings continue monthly in the Northeast. Guardians from the greater Duluth area and Superior, Wisconsin meet for case review and discussion of topics of local interest. We welcome other people who are interested to join us. For more information contact Beth Upshaw Mathews at beth.mathews@lssmn.org or (218) 529-2241.

Southwestern Region – ALERT: NEW MEETING DAY

A network group meets the first Tuesday of each month at the McDonald's in Windom at 8:30 a.m. This is an open invitation to anyone who wants to network with other guardians or conservators and to share resources and tips.

Please contact Regional Representative Julianne Volk if you are a new attendee to the group; or with any future topics you would like presented at a training, any potential speakers or facilities that may be interested in hosting a luncheon or training in the Mankato area, or if you want more information on the network group. She can be reached at 507-662-5236 ext. 237 or email juliannev@habsvinc.com.

Southeastern Region

The SE region is looking for new area coordinators. If you are interested in arranging gatherings and educational meetings for this part of the state, please contact Ann Blide at annblide@hotmail.com. ☺

The MAGiC Journal is distributed to over 450 people throughout Minnesota!

ADVERTISER INDEX

Advertiser	Page
ACR Homes	4
AgeWell Home Care	6
Associated Bonding, Inc.	6
Cremation Society of MN	19
Edina Realty	18
Elder Care Consultants	10
First Fiduciary Corporation	17
Gentle Transitions	18
GHK Real Estate, Inc.	22
Heart to Home	18
LivHome	15
Patrick J. Thomas Agency	11
Senior Options	16
UCare Minnesota	10

Use this publication to inform judges, attorneys, social workers, conservators and other fiduciaries of your EXPERTISE and AVAILABILITY to serve them.

Don't rely on word of mouth alone to inform others about your program or service. *Journal* readers are a target market for your message.

Your ad is also a public acknowledgement of your support for MAGiC and the important work the organization and its members do for the community.

Advertisers in the *Journal* are an invaluable resource to ensure this quality publication's ongoing production.

Please let the advertiser know that you learned of their service from the MAGiC Journal.

For information regarding advertising, please contact Helene Shear Noyola at 651-203-1764 or via e-mail at hbs@hbsconsultingusa.com



MAGiC BREAKFAST

Join your conservator/guardian, social worker and attorney colleagues for listening ears, friendly support, and brainstorming to solve your unique conservatorship/guardianship problems, all while enjoying the most important meal of the



day! Formal case presentation is not necessary, but current participants have found it extremely helpful to be able to consult with their peers to get new ideas, insights, and approaches to those complex problems facing professionals working in the guardianship/conservatorship/vulnerable adult arena.

Guardians/Conservators, Social Service Professionals, and Attorneys are welcome to join the breakfast meeting every second Wednesday of the month starting at 8 a.m. Call Mary Watson at 763-398-5804 for location information.

Mark your calendar!!! Upcoming dates are Wednesdays, Aug. 11, Sept. 8, and Oct. 13. FFI call 763-398-5804. ☺

Peter Vickerman

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nicknewton@abibonds.com

Dan Steinhagen, Past President

Steinhagen & Crist, P.L.L.P.
5001 Chowen Avenue South
Minneapolis, MN 55410
(612) 922-2260
dsteinhagen@steinhagen-crist.com

Pat Murphy, Vice-President

Professional Fiduciary, Inc.
P.O. Box 120389
St. Paul, MN 55112
(612) 781-8799
pat@profidinc.net

Mary Watson, Treasurer

William M. Hansen & Asso., PLLC
7500 Olson Memorial Highway
Suite 100
Minneapolis, MN 55427
(763) 398-5804
mwatson@whansen.com

Beth Upshaw Mathews, Recorder

Program Director
Lutheran Social Service of Minnesota
424 West Superior Street, #600
Duluth, MN 55802
(218) 726-6878
beth.mathews@lssmn.org

Shirley Olson, Member-at-Large

Presbyterian Family Foundation, Inc.
901 North Highway 71
Willmar, MN 56201
320-235-5897
shirleyo@pffwillmar.org
www.pffwillmar.org

Julianne Volk, Member-at-Large

Habilitative Services, Inc.
220 Milwaukee St. Suite 2
Lakefield, MN 56150
507-662-5236
juliannev@habsvinc.com
www.habsvinc.com

Terrence McCool, By-Laws

Advocative Services, Inc.
9374 Rosewood Lane
Maple Grove, MN 55369
(763) 420-3699
Terrence_McCool@hotmail.com

Lori Skibbie, Journal

Henningson & Snoxell, Ltd.
6900 Wedgewood Road, Suite 200
Maple Grove, MN 55311
(763) 560-5700
lskibbie@hennsnnoxlaw.com

Dan Lodahl, Standards

First Fiduciary Corporation
P.O. Box 21385
St. Paul, MN 55121-0385
651-452-1512
dlodahl@firstfidcorp.com
www.firstfidcorp.org

MAGiC Executive Board

Nick Newton, President

Pat Murphy, Vice-President

Dan Steinhagen, Past President

Mary Watson, Treasurer

Beth Upshaw Mathews, Recorder

Eric Jonsgaard, Legislation

Lutheran Social Service of MN
590 Park Street #310
St. Paul, MN 55103
651-310-9400
eric.jonsgaard@lssmn.org
www.guardianoptions.org

Anita Raymond, Communications

Volunteers of America MN
2021 E. Hennepin Ave., Suite 200
Minneapolis, MN 55413
(612) 617-7824
araymond@voamn.org
www.voamn.org

Kim Topphen, Member Services/Conference

Senior Options, Inc.
P.O. Box 49097
Blaine, MN 55449
(763) 792-4472
Kim@SeniorOptionsInc.com

MAGiC BOARD OF DIRECTORS

The MAGiC Board of Directors or the Executive Board meets on the third Friday of the month from 9:30 a.m. to noon. Unless otherwise noted, meetings are held at the office of Steinhagen & Crist, 5001 Chowen Avenue South, Minneapolis. MAGiC members are welcome to attend the meetings; it is suggested that you call 612-922-2260 to verify that the meeting has not been cancelled or moved to a different location. Upcoming dates:

August 20
September 17
October 22 ☞

MAGiC PUBLICATION NOTES

The MAGiC Journal is published quarterly in January, April, July, and October. We will gladly consider printing unsolicited articles and are happy to publish any relevant announcements or news items. Please submit any materials prior to the following deadlines, and remember to include your name, address, and daytime telephone number for follow-up by our editor.

Deadlines for Submission: March 1
June 1
September 1
December 1

Let us know what you think! Is this publication useful to you? What improvements would you suggest? Do you have items or articles you would like to submit? Email lskibbie@hennsnnoxlaw.com and put MAGiC in the subject line. ☞

MAGiC

JOURNAL OF THE MINNESOTA
ASSOCIATION FOR GUARDIANSHIP
& CONSERVATORSHIP ☞

An Organization to Explore Substitute Decision-Making

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MAGiC

SAVE THE DATE 2010

**Quarterly
Membership Luncheons
August 20th**

Please visit the MAGiC website at
www.minnesotaguardianship.org
for details or see page 21.

**Annual State Conference
November 4th**



THE MINNESOTA ASSOCIATION FOR GUARDIANSHIP & CONSERVATORSHIP was organized as a forum to discuss issues concerning substitute decision-making.

Although formal guardianship and conservatorship will be included, this organization explores less restrictive possibilities as well.

Members

MAGiC members come from a diverse background including: attorneys, private and public social services, conservators and guardians, and private citizens interested in substitute decision-making for family members and friends.

Membership Services

Membership provides the following services:

- Annual Conference (participate at a special rate)
- Quarterly Journal
- Informational releases
- Standards for guardians and conservators
- Legislative analysis
- Leadership on topics such as medical ethics, fees, and standards
- Network forum
- “Nuts and bolts” information on guardianship and conservatorship issues
- Membership directory
- E-mail discussion list