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Evaluating Pooled Trusts

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Pooled trusts have become an integral part of special needs planning. Yet selecting and evaluating pooled trust programs is an under-appreciated aspect of special needs planning. Pooled trusts come in many shapes and sizes. Services will vary widely. Different fees will be charged. There may be limited investment platforms. The charity may (or may not) negotiate its right of recovery. Is the charity solvent? How are clients supposed to navigate these shifting waters? How can you help them select the right trust? Let national pooled trust expert Travis Finchum explain what planners should look for when recommending pooled trust programs.

Evaluating Pooled Trusts - A list of questions and some random thoughts

1. What is a Pooled Trust
 - 1.1. 42 U.S.C. 1396 p (d)(4)(C).
 - 1.2. POMS – Social Security Program Operations Manual System
 - 1.2.1. <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120200> - Trusts in General
 - 1.2.2. <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201> - Trusts with the Beneficiary's funds
 - 1.2.3. <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120203> - The Special Needs Trusts
 - 1.2.4. <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120199> - Early Terminations of Trusts
 - 1.2.5. <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120225> - Pooled Trust Management Provisions
2. Most states do not have a formal process to oversee a Pooled Trust
Pooled Trusts are largely unregulated and there are examples of bad trustees and even bad pooled trusts
3. Example in Florida -

Friday, October 18, 2013

**Disbarred Attorney And Her Ex-Husband Sentenced To Prison
For Stealing \$2.8 Million From Clients In Medicaid Planning
Fraud Scheme**

Orlando, FL – Chief U.S. District Judge Anne Conway sentenced Ross Littlefield (48, Kissimmee) and Linda Littlefield (41, Kissimmee) yesterday for money laundering. Ross Littlefield was sentenced to four years in federal prison. Linda Littlefield was sentenced to five years in prison. As part of their sentence, the court also entered a restitution order in the amount of \$2,888,418.05 and a money judgment in the amount of \$155,739.93. The Littlefields pleaded guilty on June 11, 2013. ...

4. First Choice is to go with a recommendation from a trusted friend or colleague.
 - 4.1. Ask who your friends use and how have their experiences been
 - 4.2. Ask the Pooled Trust for references – not beneficiary names, but their attorneys
5. Look for a track record
 - 5.1. Longer in business doesn't necessarily mean better in business, but it doesn't hurt to have a long history of successfully serving customers and their attorneys
 - 5.1.1. Pooled Trusts have been an option since 1993
 - 5.1.2. Review the Documents – use the POMS <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120203#h>
 - 5.2. Check out when the not-for profit was formed and when the Pooled Trust was originally established
 - 5.3. Ask how many people have been served?
 - 5.3.1. The more people served, the more experience the administrators will have
 - 5.3.2. You don't want to be guinea pigs and have the trust administrators learning on your case
 - 5.4. Ask how many beneficiaries are being served now.
 - 5.5. Have you had any formal complaints with any regulatory agencies?
 - 5.5.1. Have you ever been sued by a beneficiary or their representative?
 - 5.5.2. Has your trust ever been denied by Social Security or a local Medicaid Agency?

We know SSA makes mistakes, so was the denial ultimately resolved favorably?
6. Ask questions about responsiveness and turn around time
 - 6.1. What hours can I get a person on the telephone to talk to me or my client?
 - 6.2. How long does it take if I want to get an accounting or statement?
 - 6.3. In what formats can I get this information – fax, email, mail, immediately on-line?
 - 6.4. How long does it typically take to process a requested payment?
 - 6.5. If I want to get with a supervisor because of a problem, how does that occur?
7. What are the qualifications of the people doing the job?
 - 7.1. Are attorneys involved, are they experienced in this area?
 - 7.2. What type of backgrounds do the workers have?
 - 7.3. What safeguards are in place?
 - 7.4. Is there insurance, auditing?
8. Tough decisions
 - 8.1. Who makes the tough decisions – the requests that are questionable, maybe ok but maybe not a good idea
 - 8.2. Is there an appeal process when there is a disagreement on a decision?
9. What is the overall philosophy of the trust administrators?
 - 9.1. Is the trustee like the “parent” in the relationship – the trustee will use the “best interest” standard in making decisions on use of the funds.
 - 9.2. Is the trustee going to be very hands on with the daily life of the beneficiary?
 - 9.3. Is the trustee going to take a “hands off” in the daily life and just oversee the trust funds?
 - 9.4. Does the trustee think the funds must last the beneficiary's lifetime or is it ok for the trust to be exhausted during the beneficiary's lifetime?
10. Investing within the Pooled Trust
 - 10.1. Are there different options for investing or is everyone in all of the same investments?
 - 10.2. If I have a large account, can it be invested individually?

- 10.3. What is a typical investment return for the overall pool?
- 10.4. Has the pool lost money on the investments over a quarter, over a year?
- 10.5. Does the pool take alternative investments – real estate, closely held stock, mineral interests?
11. What are the fees?
 - 11.1. What is the Enrollment fee?
 - 11.2. Ongoing administrative fees?
 - 11.3. What is not included in the published fees?
 - 11.3.1. Investing?
 - 11.3.2. Tax returns
 - 11.3.3. Speedy response?
 - 11.3.4. How many accountings or statements
 - 11.3.5. Limited payments?
12. What happens with retained funds when a beneficiary dies?
 - 12.1. Some states have policies on how much non-profit can retain and how retained funds can be used.
 - 12.2. Does the charity ever pay off Medicaid liens? Does it always pay off Medicaid liens?
 - 12.3. What if there would be money left after paying off a lien?
 - 12.4. Social Security proposed rules a few years back on use of retained funds but withdrew those proposals.
 - 12.5. There have been a few federal cases confirming that States cannot restrict the use of retained funds
 - 12.5.1. See *Lewis v. Alexander*, 3rd Circuit cited as 685 F.3d 325 (2012), that invalidated Pennsylvania’s policy limiting non-profit from retaining more than 50%.
 - 12.5.2. <http://www2.ca3.uscourts.gov/opinarch/113439p.pdf>
 - 12.6. Ask what the non-profit does with retained funds.
 - 12.6.1. Does it support the non-profit’s daily activities, benefit other members of the pool, used for administrative expenses, something else?
 - 12.6.2. Is the non-profit dependent on retained funds to operate? Does this cause an inherent conflict in making disbursements?
13. Pooled Trust directory on ASNP - <http://specialneedsanswers.com/pooled-trust>